

Response Requirements Document – City Centre to Māngere Project

The Response Requirements Document (RRD) sets out the minimum response requirements for NZTA and NZ Infra as they develop their proposals for the City Centre to Māngere Project.

The Ministry for the Environment (MfE) was provided with a copy of the draft RRD for comment on 16 July 2019.

The table below sets out MfE's feedback and the Ministry of Transport's response.

The document has now been finalised and provided to NZTA and NZ Infra.

| Ministry for the Environment Comments | Ministry of Transport Response |
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| <p>MfE support the inclusion of CO2 emissions reduction as a criteria. Consideration should be given to how this criteria will be measured.</p> <p>Environmental considerations should also include resilient to natural hazards and the impacts of climate change – this potentially ties in with the resilience component for “Experience”</p> | <p>CO2 emissions will be measured based on change in vehicle kilometres travelled at network level compared to base.</p> <p>The Environment outcome narrative notes the need to embed climate change considerations into planning decisions and infrastructure design and delivery.</p> <p>Each of the Key Outcomes will be considered in the evaluation of all Response Requirements as well as the specific Environment Key Outcome Narrative Response.</p> <p>The Evaluation Plan will provide evaluators with further guidance.</p> |
| <p>Early engagement with Iwi and the process for undertaking this engagement should be clear. Council/AT may be able to provide advice on existing relationships with Iwi to facilitate this Iwi/Māori engagement should link to the more substantive requirements in section 38 of this document</p> | <p>The Ministry has engaged with organisations to confirm the role of Iwi and intends to seek further advice.</p> <p>The RRD includes a specific Maori Engagement Response Requirement including development of a draft Maori Communications and Engagement Plan. The Ministry will work closely with partner agencies in agreeing all Iwi engagement through future stages of the Project.</p> |
| <p>28.2.2 Respondents are to describe the design methodology proposed, including but not limited to the following:</p> <p>To include: Approach to assessment of environmental effects</p> | <p>This section has been removed with each component covered elsewhere within the RRD.</p> <p>Respondents are required to describe their strategy for managing environmental impacts.</p> |
| <p>28.11 Construction Methodology and Staging</p> | <p>Each of the Key Outcomes will be considered in the evaluation of all Response Requirements as well as the specific</p> |

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| <p>This section needs to address the approach to managing environmental impacts as a component of the construction methodology</p> <p>Management of these effects are not limited to traffic and economic/social impacts on residents and businesses</p> | <p>Environmental Key Outcome Narrative Response.</p> <p>The Evaluation Plan will provide evaluators with further guidance.</p> <p>There is a specific reference in this section to the minimising of construction waste.</p> |
| <p><i>31.5 Approach to Consenting</i></p> <p>This section needs to require respondents to identify their approach to meeting the requirements of the RMA, as indicated they should strive for below.</p> <p>Identifying existing consents is not a sufficient consenting approach.</p> | <p>Agreed</p> <p>This section has been amended to include a response requirement in relation meeting the terms of the RMA.</p> |
| <p><i>31.6 Legislative Exemptions</i></p> <p>MfE are concerned that the lack of requirement for an approach to consenting in the previous paragraph indicates an inevitability of seeking a legislative exemption.</p> <p>There are a number of existing tools available to deliver large scale infrastructure under the RMA, and to indicate otherwise erodes the integrity of the RMA and sets a precedent for legislative exemptions.</p> | <p>Agreed.</p> <p>The wording in section 32.4 reflects a requirement to comply with the RMA and Building Act, sufficiently discouraging an exemption.</p> <p>However, if a Respondent considers these frameworks impose a constraint, it should identify that in its proposal.</p> |
| <p><i>31.6.3 If a Respondent's proposal is dependent on, or assumes, any exemptions, Respondents are to describe the approach for obtaining such exemptions, including but not limited to the following:</i></p> <p>For this to be comprehensive, a thorough approach to consenting needs to be identified, and the risks and opportunities evaluated with reference to the legislative requirements under the status quo.</p> | <p>As above.</p> <p>Respondents must include a Consenting Strategy in their proposals.</p> <p>Further, Respondents are required to make clear the reasoning for any required legislative exemption.</p> |
| <p><i>31.8 Legislative or Regulatory Changes</i></p> <p>As per 31.6 – this section indicates a requirement for legislative change – there is also a large amount of repetition between 31.6, 31.8 and 31.9</p> | <p>Agreed.</p> <p>Amended and consolidated.</p> |

| Overall comments | |
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| <p>1. MfE recognise that MoT are operating on tight timeframes to provide the Response Requirements to the ALRT bidders.</p> <p>2. Our key concerns with the document are as follows:</p> <ul style="list-style-type: none"> - the ability to hold respondents to their proposals - the probity of the proposed Interactive Engagement Process - identification of iwi as a Treaty partner and key stakeholder - evaluation criteria - public interest in the project investigations - maintenance of the integrity of the RMA - ensuring appropriate checks and balances, and transparency where possible | <p>The Proposal will form the basis of detailed discussions with a Preferred Delivery Partner. This is following an early deliverable which sets out, at a high level, the commercial terms the Respondent requires to complete the Project. These two factors should be sufficient to ensure the Respondent responds in a manner which reflects their true intention.</p> <p>We have made adjustments to the RRD to incorporate changes to the Interactive Engagement Process (IEP), acknowledgement of the role of Iwi, evaluation criteria and maintenance of the integrity of the RMA.</p> <p>Public interest will be managed at this stage to prevent confusion, considering the differences in the two responses.</p> <p>Both the IEP and evaluation processes have been used on other major projects (and specifically complex projects such as Public Private Partnerships) and are fit for purpose. Appropriate probity measures have been put in place (both through an external probity auditor and internal) to put checks on individual evaluators.</p> <p>Further, we are in the process of finalising an Evaluation Plan which incorporates further checks and balances.</p> |
| <p>HOLDING RESPONDENTS TO COMMITMENTS MADE IN THEIR PROPOSALS</p> <p>3. Further consideration is required into the ability for the respondent to be held to the position included in their submitted Proposals (p.7). It seems likely that the process beyond the initial evaluation of options will be quite fluid and that it is not realistic to expect that an initial proposal based on a relatively short bidding process will be certain enough to expect it to be taken to completion without adaption. This uncertainty needs to be considered more fundamentally in the bidding evaluation process. This might change the tone of the bidding</p> | <p>As above, we appreciate greater certainty would be desirable, however timeframes do not allow for fully committed proposals. We have taken measures through the Probity and Process arrangements, Proposal Response Form (particularly para 12) to ensure that Respondents understand that their submitted Proposals, while not binding, will form the basis of negotiations [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Withheld to maintain effective conduct through free and frank expression of opinion</p> |

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| <p>process somewhat as well as the way in which evaluations are undertaken.</p> | |
| <p>PROBITY OF INTERACTIVE ENGAGEMENT PROCESS</p> <p>4. The need for and the value of the Interactive Engagement Process is accepted. The process as described in the paper is not particularly transparent – the insistence that IEP meetings will not be formally minuted is an example (p.15). This process has the risk of being quite contentious as private meetings with each bidder separately might easily be seen as the source of some commercial advantage for one party. The precautions proposed in the IEP process (eg. Pre-determined agendas) may ease some of this risk but there probably should remain some formal account of what has taken place in each meeting in case the integrity of the process or of those taking part in it are questioned.</p> | <p>Noted.</p> <p>The Probity Auditor will likely attend some IEP Meetings and the Ministry and its advisors are comfortable that this process has been effectively applied to previous large scale projects.</p> <p>Para 14.1.5 requires that Respondents submit a Clarification Question to formally confirm any topic discussed as part of an IEP Meeting. This initiates a formal process and provision of a response to both Respondents unless the matter is Commercial in Confidence.</p> |
| <p>IDENTIFICATION OF IWI PARTNERS</p> <p>5. Clause 11.1.5 makes no specific mention of iwi as stakeholders and should do. The proposal that MoT will identify iwi relationships (p.14) is a little vague. Given the short period over which the bidders are required to prepare their bids, greater initial certainty should be offered over how bidders are to engage with iwi and who these iwi are. We understand that AT has a strong iwi liaison framework and suggest that MoT could utilise this to avoid ambiguity and delays.</p> | <p>The process requires all engagement with Iwi or other parties to be managed through the Ministry's Authorised Representative. This will ensure that the process is appropriate. The Ministry intends to utilise existing frameworks and relationships that Auckland Council, AT and NZTA hold, noting the unique nature of Iwi entities and engagement in the Auckland region.</p> |
| <p>EVALUATION PROCESS AND CRITERIA</p> <p>6. We support the inclusion of CO2 emission reductions (p.10) as an important criteria and believe considerable thought should be given to how this impact is measured. Assessing such reductions will probably require comparison against a default option and</p> | <p>Noted.</p> <p>CO2 emissions will be measured based on change in vehicle kilometres travelled at network level compared to base.</p> <p>Measurement of CO2 will also occur through a number of the Evaluation Criteria, the requirement to determine the sustainability rating of the Project.</p> |

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| <p>it is important to ensure any defaults are consistent and credible.</p> | |
| <p>7. Consideration should also be given to resilience to natural hazards and the impacts of climate change as a component of sustainable management.</p> | <p>See above.</p> <p>The Environment outcome narrative notes the need to embed climate change considerations into planning decisions and infrastructure design and delivery.</p> |
| <p>8. We note that an assessment criteria is the reliability of travel time and not travel time itself. Why is this given that travel times are critical to the passenger experience? It seems more likely that a variable but generally fast travel time is preferable to passengers over a reliably slow travel time.</p> | <p>Noted.</p> <p>“Improved travel times” is now included within the Key Outcomes section.</p> |
| <p>PUBLIC INTEREST IN SITE INVESTIGATIONS</p> <p>9. The issue of bidders undertaking investigations in public and them engaging with the public in doing so is raised in the paper (p.17). There is likely to be considerable local interest in these investigations and especially those around route investigations. We suggest that MoT front foot this interest by making some public announcements around the bidding process and the likelihood of local investigations by bidders as they construct their bids.</p> | <p>Noted.</p> <p>Respondents will not be directly undertaking site investigations (with all, if any, undertaken by the Ministry). It is not envisaged that substantive testing will be undertaken during this phase.</p> |
| <p>INTEGRITY OF THE RMA AND ENSURING APPROPRIATE CHECKS AND BALANCES</p> <p>10. A project of this scale may elicit proposals for special legislation to bypass the RMA and other regulatory processes in the name of flexibility and efficiency. Such exceptionalism is alluded to in section 36.1 where bidders are more or less invited to ask for legislation exemptions. (p.41). We maintain our views that the RMA is an effective regulatory framework capable of producing quality decisions efficiently and effectively, and that making exceptions for large scale projects being</p> | <p>Reference to the RMA has been incorporated throughout.</p> <p>See specific response above regarding compliance with the RMA and process for any proposed departure.</p> |

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| <p>undertaken for a public good should happen only in extremis.</p> | |
| <p>11. We note that the level of detail required around the technical design and management of the project (ie identifying an approach to traffic management) is quite detailed for this stage of the project, and is not commensurate to the requirements for identifying the approach to managing other environmental effects.</p> | <p>The technical design and management section has been adjusted.</p> <p>The current requirements set out in the RRD are considered to be the minimum level of detail required to evaluate the merits (and likely success) of each respondent's proposal, particularly given the high profile this project will have and the need to minimise disruption within the CBD.</p> |

Proactively released by
the Ministry of Transport