



How should Stage 2 of the Palais Lease be assessed?

April 2015

Introduction

In March 2015 Council endorsed a Request for Proposal (RFP) from a shortlist of respondents to an Invitation for Expressions of Interest for a long-term lease of the Palais. What evaluation criteria are appropriate? How should they be evaluated?

This submission to the Council has been drafted by unChain Inc. It is made following a meeting between members of ilovemypalais and Council officers. We understand that Councillors will be consulted about the documentation for the RFP but this will not be presented to a formal Council meeting. Therefore we have no formal opportunity to make a submission on the RFP.

Council has released the names of the short-listed candidates. They are:

- Palais Theatre Management (the current operator)
- Live Nation
- Playbill

It is submitted that:

1. The RFP should spell out Council's objectives in more detail than was done in the EOI Invitation.
2. Alignment with Council's objectives should count for 50% of the Non-Price criteria and the respondent's capacity and capability should count for the other 50%.
3. Council should consider evaluation of the RFP by two independent sub-panels, one to evaluate the Non-Price criteria and one to evaluate the Price criteria. Council should also consider whether Councillors should be included on the evaluation panels.

1. What are the Council's Objectives for the Palais?

The Invitation for EOI asked information about:

- The respondents' capacity and capability
- Alignment with Council's objectives
- Financial contribution

The Invitation for EOI said:

'the respondent should explain their vision for the Palais. Provide details of how and the extent to which the vision aligns with Council's objectives, how it takes into account the community's expectations for the Palais including heritage, urban design quality and the

extent to which ensures strong financial, cultural future for theatre. Respondents should clarify any proposed variation to Council's preferred lease boundary and any additional facilities or functions which are proposed as part of the respondent's vision'.

But just what are the Council's objectives? These can be found (*inter alia*) in the Municipal Strategic Statement, the St Kilda Foreshore Area Policy, the St Kilda Foreshore UDF and St Kilda Triangle 2012. However these were not spelled out in the Invitation for EOI. It is submitted that they should be detailed in the RFP, the second stage of the long-term lease.

For example, the St Kilda Foreshore Area Policy has the following objectives (Port Phillip Planning Scheme C1 22.09-2)

- ♣ *To reposition St Kilda for the future based on its threefold seaside residential, leisure and entertainment, and marine recreational roles.*
- ♣ *To create an equitable balance between local community needs and the regional tourism role of the St Kilda Foreshore area.*
- ♣ *To maintain and reinforce the unique cultural heritage of St Kilda Foreshore area embodied in iconic buildings, spaces and attractions.*
- ♣ *To enable the viable use and development of buildings, spaces, facilities and services, which benefit the community.*
- ♣ *To encourage design excellence in buildings, structures and spaces:*

When applied to the Palais, Council policies would include the following considerations:

1. *'St Kilda-ness'*: Respondents should address how they will contribute to the unique cultural heritage of St Kilda. This is a major challenge identified in the Municipal Strategic Statement. The MSS says that a key planning challenge is *'Maintaining the special features, sense of community and cultural diversity that contribute to the "St Kilda-ness" of St Kilda'*. Rather than attempting to define 'St Kilda-ness' we can use an analogy from the restaurant industry: Council wants a Galleon restaurant or a Cicciolina's, not a MacDonaldis.

2. *Palais Neutrality*: To maximise the leisure and entertainment roles of the Palais, the Council should consider whether respondents will make the Palais available for all interested parties. The Palais should not be monopolized by a particular stable of artists. If a respondent is a vertically integrated entertainment conglomerate, it should spell out how it would separate out its 'wholesale' and 'retail' functions like Telstra does in the telecommunications industry.

3. *Community Service*: The Council should consider the extent to which the respondent will provide for local community needs by providing the Palais at reduced rates to appropriate users. Will the respondent simply attempt to maximise profits and not to provide for local community needs? Respondents who promise community benefits should demonstrate their track record in so doing. Specifically respondents should provide examples of community service and document notable achievements and successes. The RFP should also consider enforcement mechanisms for any successful respondent who fails to deliver promised community benefits.

4. *St Kilda Triangle Vision*: Respondents to the EOI process were invited to share their vision for the Palais with Council within the context of the Triangle, the future of which is being collaboratively explored with the community. Respondents' understanding of and commitment to the *Cultural Charter* for the Triangle, and the issue of the Palais' cultural, functional and physical integration with the future Triangle need to be tested in the RFP.

5. *Design Excellence*: The St Kilda Foreshore Area Policy aims to encourage design excellence in buildings, structures and spaces. All restoration, modifications or 'functional upgrades' proposed for the Palais are potentially complex, prominent and highly significant architectural projects, and at the very least highly sensitive heritage interventions. Prospective developers must be challenged to deliver the highest standard of architectural ambition, architectural insight and architectural appropriateness to the Palais Theatre, the future Triangle and to the St Kilda Foreshore

6. *Heritage*: Enhancement of the heritage values of the Palais is clearly an important Council objective. Respondents should address this including a promise that the name of the theatre will remain 'The Palais' and that the theatre will not be commercially branded.

7. *Other*: There may be other important considerations that this document has not identified. One possibility is that the RFP should invite applicants to suggest ways in which performance on all the criteria, especially those that are difficult to quantify like 'St-Kilda-ness' and 'community service', should be measured and reported on during the life of the contract.

2. Weighting of the Criteria

The Invitation for Stage 1 of the had six evaluation criteria

1. *experience and track record in venue operations and management;*
2. *experience and track record of managing significant capital works in complex operating environments;*
3. *financial capability and capacity;*
4. *quality of personnel;*
5. *Palais vision; and*
6. *justification of possible financial contribution.*

It is common in tender evaluation to separate Price and Non-Price criteria.

- Criteria 1 to 4 cover the Non-Price issues of the respondent's capacity and capability.
- Criteria 5 covers the Non-Price issue of the Council's objectives. As discussed above, these should be spelled out in more detail in the RFP.
- Criteria 6 covers Price issues. It is expected that the RFP will spell this out in more detail.

It is submitted that 50% if the weighting for the Non-Price criteria should be alignment with Council's objectives and 50% should be the respondent's capacity and capability.

3. How should the Stage 2 submissions be assessed?

It is submitted that the tender evaluation should be done through two independent panels. One would report on Price considerations and one would report on Non-Price considerations. This is commonly done to insure that the Price considerations do not swamp the Non-Price considerations.

It is also submitted that Council should consider whether Councillors should be on the evaluation panels. The officers have indicated that it is not presently intended to include Councillors. This should be reconsidered.

The Victorian Local Government *Best Practice Procurement Guidelines* (2013) clearly envisages that Councillors can be involved in the evaluation panels, subject of course to appropriate probity measures. (See section 9.5).

Ultimately it is for the CEO to decide how the evaluation panels should be set up. It is suggested that the CEO should consider Councillor membership in the evaluation panels for the Palais RFP because:

- The St Kilda Triangle and the Palais are a tier 1 priorities for Council
- Councillors are in the best position to assess Non-Price considerations such as 'St Kilda-ness', heritage, Palais-neutrality and community service.

Alternatively the CEO should consider how officer reports to the Councillors should be structured to ensure that Councillors have a full and comprehensive basis to decide which respondent is the best long-term tenant of the Palais.