

Local Government

MAY | 2009

Change to Auckland governance has consequences for contractors

The Local Government (Tamaki Makaurau Reorganisation) Act dealing with the transitional process for Auckland governance, has important implications for those who currently, or intend to, contract with a local government organisation in the Auckland region.

What is the Auckland Transition Agency?

The Act establishes the Auckland Transition Agency (ATA). The ATA is responsible for making arrangements to enable the Auckland Council to operate from its establishment on 1 November 2010. These arrangements will involve developing the Auckland Council's structure and operational arrangements and determining how the systems, plans, and policies of the existing local authorities and other government organisations will be linked to, and integrated within, that structure.

Review and written confirmation of new contracts

One of the most significant powers conferred on the ATA is the ability to review decisions made by, or on behalf of, existing local government organisations (which include local authorities and council-controlled organisations) and to review any item on the agenda for a meeting of any such organisation.

Moreover, local government organisations will not be able to make binding decisions on a wide range of matters without written confirmation from the ATA. For example, the ATA must confirm any decision by a local government organisation to enter into any contract (other than an employment agreement) that imposes, or will continue to impose, any obligation on the existing local

government organisation after 30 June 2011 and the consideration for which is, or is equivalent to, \$20,000 or more. A decision to which this applies is void and of no effect until it is confirmed. These requirements do not apply to Ports of Auckland Limited or to any subsidiary of Ports of Auckland.

Where an application is made to the ATA to confirm a decision, it is under a duty to respond in writing as soon as practicable either: confirming the decision, overturning the decision with reasons, or requesting further information on receipt of which it must do one of the above.

As a consequence it will be important to check, prior to entering into a contract with a local government organisation, whether it may be captured by these requirements.

Effect on existing contracts

It is expected that existing contracts will be honoured. Tenders and similar processes that are currently underway should generally continue subject to the ATA's powers. To the extent that any existing contract continues past 1 November 2010, it will likely be assigned or novated to the Auckland Council (subject to the terms of the contract itself).

After 1 November 2010

On 1 November 2010 all rights, liabilities, contracts, entitlements and engagements of each of the existing local authorities become the rights, liabilities of the new Auckland Council. The Act includes an obligation on the Auckland Council to complete any matter or thing that would otherwise have been completed by one of the existing local authorities.

Contracts entered into on or after 1 November 2010 will need to be made with the new Auckland Council.

All the employees of the existing local authorities, who are still employed as at 31 October 2010, will be transferred to the Auckland Council so maintaining relationships with these employees will continue to be of importance.

Want to know more?

If you need more information on how the Act will affect your business, or would like to talk to one of our experts, please contact:

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