



## Chapter 4

### Appointment of the Architect

#### The Decision to Hold a Designer Competition

4.1 When Donald Dewar visited the Old Royal High School on 30 May 1997, Dr Gibbons recalled that he discussed the use of an architectural competition as a means of procuring the new Parliament Building. Dr Gibbons thought that was a “courageous” step for Government, since the process was “obviously not the safest of routes to procure a building”.<sup>139</sup> He went on to point out that there was a long history of difficulty with architectural competitions, which was well known and well documented. In his evidence,<sup>140</sup> Dr Gibbons made it clear that Donald Dewar was keen to keep control of the appointment process, and that he took heed of the difficulties which had emerged with competitions in the past. Dr Gibbons described the competitive selection process as having, in his view, a “higher probability” of delivering a successful Parliament building on time and on budget. In evidence, he recognised that these aspirations should all be tempered by experience, and that significant cost and time risks attached to the process however it was tackled.

4.2 Mr Brown’s comprehensive minute of 12 June 1997 on accommodation options for a Scottish Parliament went through a number of revisions in its preparation but did not mention any

<sup>139</sup> Evidence of Dr John Gibbons on 24 November 2003, Para 91

<sup>140</sup> Evidence of Dr John Gibbons on 24 November 2003, Para 191

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competition for the selection of an architect. It noted that "...any publicly funded project of this kind should be subject to a value for money appraisal before a favoured option is identified."<sup>141</sup> While the need for such an appraisal had been identified, it is also clear that at that stage only the most basic estimates of likely cost had been attempted.<sup>142</sup>

- 4.3 At a meeting of 16 June 1997 Donald Dewar indicated a preference for a "new build" solution, as helping "to symbolise the new approach" and left others at the meeting with his understanding that once a design had been procured, no substantive changes to specification and design should be permitted.<sup>143</sup> Officials recognised that a design brief would inform any competition and its eventual results and, even before the publication of the White Paper, they were being contacted by developers keen to advance their own proposals.<sup>144</sup> It is quite clear and not surprising that officials were taken up with the issues of site selection long before considering how the building might be designed, and that the political pressure upon them was significant, and unusually heavy.
- 4.4 On 16 July 1997 Donald Dewar announced that a competition would be held to select "...the best design for a new Scottish Parliament."<sup>145</sup> He emphasised architectural quality, accessibility, value for money, cost-saving efforts and a design "worthy of the hopes and aspirations of the Scottish people". He stated his reservations about the ORHS, and indicated that it would be considered as one of a number of options. The time frame which he wished was clear, and the demand was for a designer to be in place early in 1998 and for the building to be completed for the new millennium. The Press release said "We want value for money as well as quality. We will be looking at ways in which the cost of the Parliament can be kept to a minimum." That was the architectural equivalent of motherhood and apple pie. Who would not want all these desirable architectural and economic virtues? It appears to me that Scottish Office officials were not slow in understanding their task. What they were to struggle with was where the priority lay: Quality? Cost? Or speed of the completion of the building? As events unfolded it appears to me that they understood their task to be one of trying to achieve early delivery of the new Parliament building, whilst maintaining quality. In my opinion that meant inevitably that whatever lip-service was paid to it, the cost of the building took a back seat.
- 4.5 On 24 July 1997 *The Architect's Journal* headlined the dissatisfaction of the Royal Incorporation of Architects in Scotland (RIAS) with the announcement of a competition. This view of events was, however, soon contradicted when Mr Sebastian Tombs, the Secretary and

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<sup>141</sup> SE/2/092-100 – Minute from Mr Alistair Brown to PS/Henry McLeish and PS/Secretary of State, 12 June 1997

<sup>142</sup> SE/2/1547-1548 – Minute from Mr Alastair Wyllie to Mrs Barbara Doig, 10 June 1997

<sup>143</sup> SE/2/126-128 - Minute from Mr Alistair Brown to Ms Thea Teale, 16 June 1997

<sup>144</sup> SE/2/081 - Minute from Mrs Barbara Doig to Mr Anthony Andrew and Mr Graeme Purves, 23 July 1997

<sup>145</sup> SE/3/207-208 - Press Release – 'Design Competition for New Parliament', 16 July 1997

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Chief Executive of the RIAS wrote to the Scottish Office underlining the willingness of the RIAS to assist with the conduct of a competition and pointed to its experience with architectural competitions. His first detailed letter<sup>146</sup> on the subject was far-thinking, in that he appeared to fully understand and expressed well the complexities of competition management, procurement of such a competition within Europe, and the necessary timescales. He sounded a very clear note about timing, the importance of the accuracy and precision of a brief, the uses of internal spaces, the significance of public consultation, and above all the need to take the necessary time to 'get it right'. The letter also covers the different types of competition (open and closed), the need for development of the brief, and the avoidance of unwarranted assumptions about the final needs of the users. This was a perceptive letter addressed to Dr Gibbons, which in my opinion should have remained in the forefront of his mind. This advice was repeated a number of times by the RIAS<sup>147</sup> both in meetings<sup>148</sup> and in subsequent correspondence.<sup>149 150</sup>

- 4.6 On 12 August 1997 Mr Brian Peddie, an official in one of the Scottish Office Finance Divisions, noted in dialogue with HM Treasury Donald Dewar's intention to hold an architectural competition, to be held "within the explicit constraint of a stated building cost budget, which has yet to be set."<sup>151</sup> It might be argued that this assertion was fulfilled, but it is another question as to whether or not a realistic budget was set. A progress report by Mr Brown<sup>152</sup> submitted on 25 August 1997 underlined officials' understanding that there would be a competition, but that its type and scope had not yet been decided, and would be a matter for Ministers.
- 4.7 On 1 October 1997 Mr William (Bill) Armstrong, then in post as a consultant Project Manager, produced a highly ambitious draft timetable for a design competition running from 31 October 1997<sup>153</sup> to 30 March 1998.<sup>154 155</sup> This programme, acknowledged by its author to be controversial, only allowed eight weeks for the preparation of proposals (between 19 December and 14 February 1998.) On any but the most optimistic view it should, in my opinion, have been regarded immediately as unworkable, as only three weeks later he was to produce a very different timetable. In part this might have been occasioned by the emergence, for the first time, of the Holyrood site as a candidate.

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<sup>146</sup> RI/1/029-031 - Letter from Mr Sebastian Tombs to Dr John Gibbons, 21 July 1997

<sup>147</sup> RI/1/034-035 - Letter from Mr Sebastian Tombs to Dr John Gibbons, 6 August 1997

<sup>148</sup> RI/1/036-038 - Mr Sebastian Tombs' notes from Meeting of 1 October 1997

<sup>149</sup> RI/1/042-043 - Letter from Mr George Wren to Donald Dewar, 1 December 1997

<sup>150</sup> RI/1/044-045 - Letter from Mr George Wren to Donald Dewar, 8 December 1997

<sup>151</sup> SE/2/472-474 - Letter Mr Brian Peddie to Mr Barry Coidan, 12 August 1997

<sup>152</sup> SE/2/309 - Minute from Mr Alistair Brown to PS/Henry McLeish and PS/Secretary of State, 25 August 1997

<sup>153</sup> The date of the Advertisement in the Official Journal of the European Communities ('the OJEC Notice')

<sup>154</sup> The expected date for the announcement of the winner

<sup>155</sup> SE/2/735-736 - Minute from Mr William Armstrong to Dr John Gibbons, 1 October 1997

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- 4.8 Mr Armstrong's note of 21 October 1997<sup>156</sup> substantially revised his earlier timetable and he envisaged completion of the appointment of a designer by July 1998, Stage D – Scheme Design of the RIBA Work Stages by October 1998, and a site start on 1 April 1999. Mr Brown had the good sense to see the force of this advice, which he appears to have accepted as being realistic.
- 4.9 The press release of 9 January 1998,<sup>157</sup> announcing the selection of Holyrood as the site for the Scottish Parliament, stated that the Parliament “will be the subject of an architectural design competition. The way is now clear for detailed consideration to be given to the precise form that the competition might take.”<sup>158</sup> It explained the two types of competition and indicated that the objective would be to choose the type of competition “that is most appropriate in the circumstances, and that gives the greatest certainty of delivering a building of high quality and civic importance, but at the same time is built to our cost budget and completed on time”. It concluded that “these criteria (pointed) to a designer competition with opportunities to the public to see options as they are developed”.

### Form of the Competition and its Announcement

- 4.10 In an earlier submission to Ministers dated 6 January 1998<sup>159</sup> Dr Gibbons had set out the options for the design competition. He suggested that a decision was required urgently as it was “essential to move ahead quickly to keep up momentum.” He went on to comment that design competitions as a procurement process had a long history but enjoyed a somewhat mixed reputation. He pointed out that such well-known buildings as the Houses of Parliament, Sydney Opera House, the Tate Modern and the new Museum of Scotland had all been the subject of design competitions and stood as testament to what could be achieved. He also noted that in recent times design competitions had been used to procure the Australian Parliament building in Canberra, the Saxony State Parliament in Dresden, the Dutch Second Chamber in The Hague and the re-modelled Reichstag in Berlin.
- 4.11 In the same submission he had explained the different types of design competition:

‘There are fundamentally two types of design competition:

Those competitions which are held in order to find a **design**, and

Those competitions which are held to find a **designer**. These competitions are more accurately known as **competitive selection** procedures.

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<sup>156</sup> SE/2/995 - Minute from Mr William Armstrong to Mr Alistair Brown, 21 October 1997

<sup>157</sup> SE/3/011-12 - ‘Dewar Opts for New Building in Historic Heart of Edinburgh’, 9 January 1998

<sup>158</sup> SE/2/1262- 1270 – Briefing Note from Mr Paul Grice to PS/Secretary of State , 8 January 1998

<sup>159</sup> SE/3/003-006 – Minute from Dr John Gibbons to PS/Henry McLeish and PS/Secretary of State, 6 January 1998

In short the advantage of the classic design competition is that it is a very transparent process which can explore widely differing design philosophies. It can also easily be used to allow public consultation and debate about alternative proposals. The advantages of the competitive selection process, intended to find a designer rather than a design, are that it is quicker and cheaper than a classic design competition and that it allows a creative dialogue to take place between architect and client at a much earlier stage in the process. This method is also less likely to be subjected to external influence as the selection process is more clearly in the hands of the client.<sup>160</sup>

and concluded with his recommendations:

‘The choice lies between design competition, with the opportunity to attract very high quality architectural talent to the job of designing a Scottish Parliament building, but with a significant risk that the job will take longer and cost more than presently estimated; and a competitive selection process which would have a rather narrower focus, would come across as being less ambitious and exciting, but would have a higher probability of delivering a successful Parliament building on time and to budget.

On balance, officials would recommend the choice of the competitive selection route, with full advantage being taken of every opportunity for public participation through exhibition and through ensuring as far as possible that a wide range of architectural talent joined in the designer competition. We would be grateful for Ministers’ views, and would of course be happy to discuss further.<sup>161</sup>

- 4.12 The advice given by Dr Gibbons was very much in line with guidance set out in the Department of the Environment handbook “Architectural Competitions - A handbook for promoters”<sup>162</sup> which had been published as recently as 1996. In evidence, Dr Gibbons explained that there had been discussion about the handbook with those at the RIBA with experience of architectural competitions and that it represented “by and large” the model that was followed when it was later decided to proceed by way of a competitive interview to select a designer rather than by way of a design competition.
- 4.13 The minute of the meeting held on 6 January 1998<sup>163</sup> at which the Holyrood site was selected<sup>164</sup> discloses that the features of a competition were also discussed. Dr Gibbons again outlined the main characteristics of competitions to choose a design and competitions to choose a designer. He offered the suggestion that a designer competition would be quicker and offer “closer control”. There was a clear emphasis that time was a priority and that control over the process was required. Ministers agreed that there should be a designer competition (or “competitive interview process”, as it was sometimes referred to). Donald Dewar sought to achieve wider political acceptance by expressing a wish to involve the Royal Fine Art

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<sup>160</sup> *ibid*

<sup>161</sup> SE/3/006 - Minute from Dr John Gibbons to PS/Henry McLeish and PS/Secretary of State, 6 January 1998

<sup>162</sup> RI/1/001-028 – ‘Architectural Competitions – a Handbook for Promoters’, by the Department of Environment, 1996

<sup>163</sup> SE/3/007-010 - Minute from Mr Kenneth Thomson to Mr Robert Gordon, 23 January 1998

<sup>164</sup> Evidence of Mr Kenneth Thomson on 3 February 2004, Para 226

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Commission for Scotland (RFACS) and the RIAS. The RIAS was said to prefer an open design competition but it was believed that it would “go along with the proposals provided they were given their place”.<sup>165</sup>

- 4.14 Notwithstanding the decision taken on 6 January 1998, at a meeting with Ministers on 14 January 1998<sup>166</sup> the RIAS emphasised the importance of timescales, noted the tight selection criteria proposed by Dr Gibbons and suggested the appointment of an eminent architect to assist the Scottish Office through the process. Interestingly Dr Gibbons, who was present, appears to have highlighted the difficulties which could arise from the use of foreign “name” architects forming local marriages with Scottish practices.
- 4.15 In a Position Report for the RIAS Council Meeting held on 21 January 1998 Donald Dewar is quoted as having said that “he had a mandate to act as the most important patron of the architecture of government for 300 years”.<sup>167</sup> The mechanics of the competition were explained to officials of the RIAS and RFACS at a meeting on 22 January 1998<sup>168</sup> attended by Mr Gordon, Mr Grice and Mr Wyllie of the Scottish Office and Mr Armstrong. Once again, emphasis was laid upon the “highly accelerated programmes set by Donald Dewar”.
- 4.16 The RIAS was so concerned about what it saw as the undue haste with which the process overall was proceeding that its President, Mr George Wren, wrote on 23 January 1998 to Donald Dewar, drawing his attention in particular to the concern shared amongst many in the profession.<sup>169</sup> “Speed”, he wrote, “had two inevitable consequences”. Firstly, there was the reduction in the availability of design time. The need for quick methods of construction, combined with the truncation of sufficient time to “work through” a design and refine it, both impacted on the subtlety and elegance of the design solution itself, and influenced the design towards increased levels of prefabrication and standardisation. He was also concerned that the competition would create an ambiguous bias in favour of the larger practices, given the scale of the Project, and he repeated his plea for a design competition, rather than one for a designer. This disappointment was repeated in an RIAS press release issued on 26 January 1998, in which it publicly warned that the Scottish architectural community considered that the process was being “unduly rushed.”<sup>170</sup>
- 4.17 Following a submission by Mr Grice on 22 January 1998 Ministers agreed the terms of a press release formally announcing the competition. Mr Grice set out the procedure devised within

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<sup>165</sup> SE/3/013(R)-017 – Minute from Mr Paul Grice to PS/Henry McLeish and PS/Secretary of State, 22 January 1998

<sup>166</sup> RI/1/050-054 – Minutes of Holyrood Parliament Building Meeting of 14 January 1998

<sup>167</sup> RI/1/057-062 – RIAS Scottish Parliament Position Report, 21 January 1998

<sup>168</sup> RI/1/063064(R) – RIAS Note of Meeting on Designer Selection Procedure, 22 January 1998

<sup>169</sup> RI/1/137-138 – Letter from Mr George Wren to Donald Dewar, 23 January 1998

<sup>170</sup> RI/1/139 – ‘Architects Disappointed at Secretary of State’s Decision’, 26 January 1998

the Scottish Office to select the architectural design team and the panel, or jury.<sup>171</sup> The minute dealt in detail with media arrangements and also with the proposed membership of the panel, which, it was suggested should appropriately have between five and seven members. It was, at that time, envisaged that it would be chaired by Henry McLeish and would include both Dr Gibbons and Mr Gordon. The question was posed “if we want to be sure of having a majority ... that would mean having another Scottish Office person on the panel.” The proposition was put that it was important to keep the Scottish Office membership in the majority to ensure that “we could not be outvoted” but, with the participation of an independent architect who was considered by officials to be “utterly reliable”,<sup>172</sup> there appears to have been confidence that further independent membership could be limited to two. Mr Grice went on to suggest the appointment of a lady journalist to redress the gender balance and to introduce a perception of representation of the public interest. Names were suggested, including that of Ms Kirsty Wark.<sup>173</sup> Having heard her evidence, I am quite satisfied that Ms Wark agreed to join the panel in the public interest. I cannot but wonder whether she would have been so accommodating had she known that within the Scottish Office plans were afoot to ensure that the Scottish Office nominees on the panel “could not be outvoted.”

### Conduct of the Competition

- 4.18 The competition itself was duly launched with a press release on 26 January 1998.<sup>174</sup> The OJEC notice<sup>175</sup> of the same date described the commission, giving the Project cost as being in the region of £50 million excluding VAT and the gross floor area of the accommodation as approximately 17,000m<sup>2</sup> (excluding car parking).
- 4.19 Pre Qualification Questionnaires<sup>176</sup> to elicit information about would-be competitors had been designed by Mr Eric Kinsey, Member of the Project Team, and were to be returned by 2 March 1998. They included a requirement for information on the following:
- business organisation and principles;
  - evidence of the ability to provide relevant professional indemnity insurance of at least £5 million for each and every claim;
  - numbers of suitably qualified staff specialising in the services to which the contract relates, including principals and their professional qualifications;
  - a list of clients for whom comparable services had been provided in the past three years with the contract sums, dates and recipients of the services provided;
  - relevant experience in conversion and refurbishment of listed buildings; and

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<sup>171</sup> SE/3/013-017(R) – Minute from Mr Paul Grice to PS/Henry McLeish and PS/Secretary of State, 22 January 1998

<sup>172</sup> *ibid*, Para 13

<sup>173</sup> SE/3/013-017(R) – Minute from Mr Paul Grice to PS/Henry McLeish and PS/Secretary of State, 22 January 1998, Para 15

<sup>174</sup> SE/3/029 - ‘Secretary of State Gets Design for Scottish Parliament Underway’, 26 January 1998

<sup>175</sup> SE/3/031-033 - OJEC Advertisement for the Architectural Design Services, 26 January 1998

<sup>176</sup> SE/3/040-053 – Minute from Mr Eric Kinsey on Design Services Appointment, 30 January 1998

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- the availability of ongoing interface with the client; a description of measures for insuring quality control; for example certification to BS5750/ISO9000/EN29000.
- 4.20 The form of PQQ, like the OJEC notice, left open the legal question of how a team might be formed to carry out the commission.
- 4.21 The award criteria (other than price) were stated in the OJEC notice to be the “economically most advantageous tender, relevant experience and design ability”. European Procurement Rules<sup>177</sup> are designed to ensure fair competition and transparent procedures for candidates throughout the European Union, and will normally apply where the promoter is a ‘contracting authority’ and the value of the contract is likely to exceed 130,000 Special Drawing Rights.<sup>178</sup>

### The Appointment of the Selection Panel

- 4.22 As previously noted, the original proposal was that the selection panel would be chaired by Henry McLeish.<sup>179</sup> However, a decision appears to have been made on 6 February 1998<sup>180</sup> by Donald Dewar that he would chair the panel himself. Membership of the panel was finally settled on 27 February 1998.<sup>181</sup> In addition to Donald Dewar it comprised Dr Gibbons, Mr Gordon, Ms Wark, Professor Andrew MacMillan, formerly Professor of Architecture in Glasgow University and Head of the Mackintosh School of Architecture in Glasgow, and Miss Joan O’Connor, a former President of the Royal Incorporation of Architects in Ireland.

### Evaluation of Pre-Qualification Questionnaires

- 4.23 The OJEC Notice resulted in the submission of 70 Pre-Qualification Questionnaires,<sup>182</sup> including separate submissions by the firms of Enric Miralles y Moya of Barcelona<sup>183</sup> and by RMJM (Scotland) Ltd<sup>184</sup> of Edinburgh. An evaluation of the 70 PQQs was undertaken by Mr Armstrong<sup>185</sup> adopting a scoring system<sup>186</sup> that he had agreed with Dr Gibbons and which was intended to establish the capacity of the various contenders to undertake the Project. In Mr Armstrong’s analysis, Snr Miralles’ practice was assessed as 44<sup>th</sup> out of the 70 PQQs on the basis of the adequacy of the practice’s resources and Snr Miralles’ extensive teaching commitments. He did not recommend that it be included in the initial long list of 20 for consideration by the panel.

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<sup>177</sup> Directive 92/50/EEC UK implementation by Public Services Contracts Regulations 1993 (SI 1993 No. 3228)

<sup>178</sup> The threshold at the time, equivalent to just over £100,000

<sup>179</sup> SE/4/007-009 - Minute of Building Steering Group Meeting of 15 January 1998

<sup>180</sup> SE/3/058-059(R) – Minute from Mr Paul Grice to PS/Secretary of State, 9 February 1998

<sup>181</sup> SE/3/068-074(R) – Minute from Mr Paul Grice to PS/Secretary of State, 27 February 1998

<sup>182</sup> SE/3/087-088 - List from Mr William Armstrong of Returned PQQs, March 1998

<sup>183</sup> CB/1/137-195(R) – Enric Miralles y Moya Pre-Qualification Questionnaire, 2 March 1998

<sup>184</sup> CB/1/087-136 - RMJM Scotland Limited Pre-Qualification Questionnaire, 2 March 1998

<sup>185</sup> Evidence of Mr Armstrong on 2 December 2003, Para 526 *et seq*

<sup>186</sup> MS/5/004-007 - Blank Scoring Sheet , the sheets scored by Mr Armstrong have not been produced for reasons of confidentiality

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4.24 The Inquiry also heard that Mr Armstrong had overlooked an apparent shortcoming in Snr Miralles' PQQ in relation to Professional Indemnity Insurance.<sup>187</sup> The PQQ required applicants to demonstrate evidence of ability to provide PII cover. It was only in the course of this Inquiry that it was identified that Snr Miralles had provided an out of date certificate of insurance and one that did not provide the required level of cover. It was Mr Armstrong's view that had this been picked up at the time he would have consigned the application to the bottom of his ranked list, notwithstanding that the matter only merited 10% of the marks under his scoring system. I do not consider this to have been a fatal flaw in the application although it does demonstrate a lack of clarity in what was actually being sought in response to the OJEC notice. I am aware that appropriate PII cover was eventually arranged through the offices of RMJM Ltd on behalf of the eventual joint venture company.

### The Short-listing Process

4.25 The selection panel first met on 23 March 1998<sup>188</sup> in Glasgow. In a minute advising Donald Dewar of the arrangements, Dr Gibbons records that he had previously held a number of "bilateral" meetings with individual panel members. He stated "we have thoroughly examined all 70 of the submissions, as have some panel members..." and that consensus had begun to emerge amongst panel members that there were 20 submissions which commanded more or less their universal support. A systematic approach was not adopted towards the handling of the PQQs by panel members. All members appear to have been issued with copies of the PQQs although no instructions seem to have been given that would ensure a methodical approach to shortlisting. Some panel members adopted their own scoring systems; some members scrutinised the PQQs in Victoria Quay, others did it independently; and Donald Dewar was taken through the applicants in a long session with Dr Gibbons. Mr Armstrong's scoring matrix was not shared with all the panel members. Nevertheless, the meeting on 23 March did succeed in identifying a long list of 17 candidates, each of which was considered in detail before the panel reduced the number to 12. The identities of the 12 were publicised on 27 March 1998 although the record of how this was achieved is rather threadbare. Notably, Enric Miralles y Moya's entry succeeded in making the final 12 but RMJM Ltd did not. The Inquiry heard of the strong support within the panel for Snr Miralles, particularly from Professor MacMillan.<sup>189</sup>

4.26 The Inquiry learned that visits were undertaken by members of the selection panel and, in some cases, officials to the premises of most but not all 12 of the shortlisted candidates.<sup>190</sup>

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<sup>187</sup> Evidence of Mr Armstrong on 2 December 2003, Paras 688 to 719

<sup>188</sup> SE/3/089-091 - Minute from Dr John Gibbons to PS/ Secretary of State, 20 March 1998

<sup>189</sup> Evidence of Mr William Armstrong on 2 December 2003, Para 653

<sup>190</sup> Evidence of Mr Laurence Bain on 26 November 2003, Para 745

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The visits were intended to verify the information contained in the applicants' PQQs by inspecting the previous work of the competitors, meeting individuals to be assigned to the Project and exploring the basis of joint submissions. Oral accounts of the visits were made to the panel who, it was suggested, were able in many instances to supplement this with their own personal knowledge of output from the practices. There was however no consistency in the personnel undertaking these visits, no written reports of the visits and no evidence of any structured assessment of the candidates against a fixed set of criteria. This rather haphazard arrangement does not strike me as an exemplar for a competition process and, in exposing individual members of the selection panel to candidates in a random way, could even be considered as irregular. I do not question the integrity of those involved but I cannot see this as other than an expensive distraction which, in the way it was conducted, added little to the panel's ultimate ability to select the most appropriate candidate and may possibly have given rise to a perception of unfairness by some.

4.27 The panel reconvened from 3 May to 5 May and interviewed all 12 of the long-listed candidates. All members of the panel participated in all of these interviews which were fashioned around Donald Dewar's schedule. No formal minute of this part of the process was kept and again there does not appear to have been a systematic approach to the assessment for each candidate. A scoring system was proposed but apparently was abandoned in the course of the interviews.<sup>191</sup> Five clear front runners emerged from these interviews including Enric Miralles, who impressed as "an inspirational architect of stature".<sup>192</sup>

4.28 The final five design teams named on 7 May 1998, were as follows:

- Rafael Vinoly
- Michael Wilford
- Richard Meier with Keppie Design
- Enric Miralles y Moya
- Glass Murray & Denton Corker Marshall International.

### Public Display of Concept Designs

4.29 Before final interviews the five shortlisted candidates were required to submit concept designs which were sent on public exhibition around Scotland. There was a clear view from the panel<sup>193</sup> as to the importance of making these designs as visible to the public as possible across Scotland. Importantly it was made clear that the exhibition was not to be regarded as a public consultation exercise and was to be treated simply as an opportunity for the public to express their views. The responses of the public were tabulated.<sup>194</sup> From 4,480 responses,

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<sup>191</sup> WS/12/001-007 - Miss Joan O'Connor's Witness Statement, 25 November 2003

<sup>192</sup> *ibid*

<sup>193</sup> SE/3/097-102 - Minute from Mr Paul Grice to PS/Secretary of State, 23 April 1998

<sup>194</sup> SE/3/077F-J - Interim Report: Results of Public Information/Consultation Exercise, 19 June 1998

the Vinoly and Miralles concepts were evidently preferred, but all received some degree of negative comment. The analysis seems a sensible one and was plainly and clearly set out.

### **EMBT/RMJM Ltd Joint Venture and Contractual Arrangements**

- 4.30 On 5 June 1998 a press release from the Scottish Office<sup>195</sup> disclosed that the identity of the fourth competitor had changed and was now to be described as Enric Miralles y Moya and RMJM (Scotland) Limited. While the evidence is not clear, it appears that during the visit of Dr Gibbons and Professor MacMillan to the studio of Snr Miralles in Barcelona there was some discussion about the possibility of a link up with a Scottish practice. Of those mentioned, RMJM was one.
- 4.31 When Enric Miralles and RMJM subsequently emerged as the selected architects after the final round of interviews on 22 June, no formal or legal arrangements had been put in place with regard to the constitution of the proposed joint venture. The Inquiry has ascertained that Randotte (No 452) Ltd, a shelf company, was incorporated on 17 February 1998, and a resolution to change its name to EMBT/RMJM Ltd passed on 13 August 1998. The company had a share capital of £100 divided into 100 ordinary shares of £1 each, of which two shares were issued and fully paid. A Certificate of Incorporation on Change of Name was issued by the Registrar of Companies on 9 September 1998. In other words, until that date there was no company registered under the Companies Act having the name “EMBT/RMJM Ltd”. The initial Minute of Agreement dated 7 August with the Secretary of State for Scotland signed by Enric Miralles purportedly on behalf of EMBT/RMJM Ltd was without contractual validity.
- 4.32 After this inauspicious start and good legal advice, a new Minute of Agreement was agreed on 4 November 1998 after the Registrar of Companies had granted a Certificate of Incorporation on Change of Name. Prior to the signing of this Minute of Agreement, some work had already been done by the two constituent parts of the joint venture for which invoices were charged to the Scottish Office<sup>196</sup> without there being in existence any valid contract.
- 4.33 It is a matter of surprise to me that so little inquiry was made of the joint venture and how it was to operate. The architectural commission for the new Scottish Parliament building was let to a company with a nominal share capital of £100 and only £2 issued and fully paid up. I would have expected a rigorous process of due diligence to have been undertaken and collateral warranties to have been obtained from both RMJM Ltd and EMBT. None was sought; none was obtained and this major and expensive project moved forward with a breathtaking degree of informality and an almost non-existent legal framework. I have since learned that in early

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<sup>195</sup> SE/3/105-106 – ‘Visions for Holyrood Parliament Go On Show’, 5 June 1998

<sup>196</sup> RM/6/168-169 – Letter from Mr William Armstrong to Mr Brian Stewart, 15 October 1998

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2004 RMJM Ltd has offered to subscribe to an undertaking by which it will formally bind itself as accountable for the past, present, and future performance of the architect. In other words, it has offered a form of collateral warranty. I consider this to be commendable, but to reinforce the point which I have made above.

- 4.34 Miss O'Connor told the Inquiry that she had assumed that the Scottish Office had "lawyered" the link up between Snr Miralles and RMJM Ltd but conceded that the link up was seen as an administrative solution to a problem.<sup>197</sup> That problem was seen as the relatively light weight of Snr Miralles' office, in terms of staff and other logistics and resources, whilst RMJM was able to provide efficiency, international reach, a range of professional services, and of course their well-established Scottish contacts. In my opinion that was a reasonable assumption on her behalf and possibly of the remainder of the lay members of the panel.
- 4.35 I am very critical of this episode. It appears to me to have been sloppy, unprofessional and fraught with danger. However, in the event the Architect has not sought to take advantage of the lack of definition in the legal relationships and I am slow to suggest that this incomplete legal framework caused delay or expense, although it set an unhappy precedent in the history of the Project.

### External Advice to the Selection Panel

- 4.36 Mr John Hume, the former Chief Inspector of Historic Buildings with Historic Scotland, had submitted a commentary on the long listed candidates separately on the concept designs of the five short-listed candidates.<sup>198</sup> He described the approach of the ultimate winner as "radical ... but very thoughtful and considerate. The involvement of RMJM is still an unknown quantity." He endorsed the ability of EMBT and RMJM to deliver, although he did not make clear how he was aware that that was the case. The ultimate winner was ranked first by Mr Hume,<sup>199</sup> who offered the view that "Enric Miralles' vision might require modification to achieve a workable and acceptable building, but the combination of that vision with the practical approach of RMJM could deliver an inspiring but operationally satisfactory outcome".
- 4.37 Mr Armstrong, by now appointed as Project Manager, offered his views on 11 June 1998. He regarded Snr Miralles as a "serious contender" but underlined that "whoever is appointed (before it is formalised or announced) will have to be told the home truth, that there are three priorities – budget, programme and design, and they must all be achieved to an equal degree". With perception he advised: "I should think none of these proposals could be built within the

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<sup>197</sup> Evidence of Miss Joan O'Connor on 25 November 2003, Para 905

<sup>198</sup> SE/3/107-110(R) - Paper by Mr John Hume, Selection of Design Team, 8 June 1998

<sup>199</sup> *ibid*

budget.”<sup>200</sup> He also emphasised his doubts on the EMBT/RMJM marriage. He would have disqualified each of the candidates for ignoring the brief; EMBT/RMJM specifically for presenting concept drawings that extended outwith the site boundary. He cautioned further that “all our previous questions on RMJM’s abilities, which took them out at the first sift, are liable to be overlooked”.

### Costing of Concept Designs

4.38 DLE, who had by this time been appointed as quantity surveyors for the Project, undertook a cost commentary on the design entries,<sup>201</sup> carefully making the points that any figures should be treated with caution at this stage, that a comparative exercise was inappropriate and that a like for like comparison was not possible. The area in the Building User Brief schedule of accommodation at that stage totalled 20,740m<sup>2</sup> (gross, including car-parking). DLE applied uniform cost allowances for demolition and archaeology, highways work, fit-out and repairs to Queensberry House and costed the schemes as follows:

COMPETITOR	ESTIMATED COST (Budget £50 million)	AREA m <sup>2</sup> (User Brief – 20,740m <sup>2</sup> )
Glass Murray/Denton Corker Marshall	£57.89 million	23,620
Richard Meier/Keppie	£43.00 million	Impossible to tabulate
EMBT/RMJM	£62.60 million	27,610
Rafael Vinoly/Reiach & Hall	£89.60 million	38,700
Michael Wilford & Partners	£73.40 million	39,885

4.39 At this stage DLE also reported a figure of £1.4 million in connection with work to the existing roads and pavements adjacent to the site. Their conclusion was that the five entries were each indicative of a “style of approach” rather than a specific design solution which made cost assessments rather academic. Importantly, they also concluded that “the variety of approach taken by the individual teams is confirmation of the vital necessity for the selected design team (which DLE will join) to establish a meaningful financial framework within which design development can proceed. This must be achieved very early in the process. The brief must be understood and adhered to in order that the risks inherent in undertaking such a project within an extremely tight timescale and a finite budget and be properly managed.” They added: “The cost commentary forms part of the first stage of the process. Its use is informing a basis on which to proceed with the stated architect/design team and as a pointer towards the very detailed cost management that must accompany the design development of this challenging project.”

<sup>200</sup> SE/3/114-117(R) – Minute from Mr William Armstrong to Dr John Gibbons, 11 June 1998

<sup>201</sup> SE/3/118-129(R) – DLE Architectural Selection Process - Cost Commentary, 10 June 1998

## Appointment of the Architect

- 4.40 The importance of these passages is that it is clear that none of the finalists adhered either to the User Brief or the budget. Yet the panel felt confident that it could proceed to the selection of a winner without any of these discrepancies being highlighted and without querying whether these significant variations placed the competition outwith the EU procurement rules and OJEC advertisement requirements. I have my reservations about the legitimacy of this, but if necessary, it will be for a court of law to reach a determination on this and not me. Of more immediate interest is why, if the earliest assessments revealed in almost every bid that a significant cost over-run was expected, no fee-tapering or other incentive to keep costs down was in contemplation. So far as I can ascertain it was never in mind until much, much later and never implemented until the present Presiding Officer, George Reid, stamped his foot and required it.

### Final Selection Interview and Decision

- 4.41 The final interviews of the 5 short listed candidates took place in Glasgow on 22 June 1998. The candidates gave presentations to the panel illustrating their concepts using design boards and models. The evidence suggests that Enric Miralles and his EMBT/RMJM colleagues gave a significantly superior presentation to that of the other candidates. Panel members were particularly impressed by Snr Miralles' sensitivity to the location of the Holyrood site and its juxtaposition with Holyrood Palace and the Royal Park. His vision of a parliament building which "sits in the land because it belongs in the land" appears to have struck a chord with Donald Dewar and his colleagues.
- 4.42 In her written evidence, Miss O'Connor suggested that the panel were aware that the selection of EMBT/RMJM carried some risk but it was their assessment that the risk was worth it. She said:

'We unanimously took the decision in favour of EMBT/RMJM at the end of the meeting on 22 June. ... Miralles' presentation and concept were unquestionably head and shoulders above the others and by consensus he came out top. In deciding on EMBT/RMJM we were alert to an element of risk arising from the personality of Enric Miralles and the working methods of the design studio. We were alert to potential problems in the relationship between EMBT and RMJM but were assured by both that difficulties were not expected and that such minor problems as might arise would not be insuperable. My note (*of the interviews*) records the panel asking itself whether Miralles was "controllable". As per my note we all identified this as a significant risk but a risk that was worth taking. I should say that I am myself normally risk averse.'<sup>202</sup>

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<sup>202</sup> WS/12/001-007 Miss Joan O'Connor's Witness Statement, 25 November 2003

4.43 Ms Wark too hinted of the panel's awareness that the choice carried some risk:

“Even Donald Dewar, who I had initially thought of as normally a cautious man, was clearly in favour of Miralles.”<sup>203</sup>

4.44 Prior to the final interviews the panel had been shown the DLE cost commentary on each of the five finalists' concepts.<sup>204</sup> Miss O'Connor had noted that none of the concepts proposed by the five finalists could be delivered within the £50 million target. She did not see that as being a concern for the panel:

‘I was of the view, which was generally shared by the panel, that the object of the exercise was to choose a winner on the basis of design intent and that it would be for the architect to complete the design in accordance with a final brief and agreed cost constraints. It seemed likely that the brief would change and that as a result the costs would also do so.’<sup>205</sup>

4.45 That cost was not a consideration in the decision to appoint EMBT/RMJM was graphically illustrated in a revealing exchange between Counsel to the Inquiry and Ms Wark:

**“Mr Campbell QC:** Can I suggest to you perhaps that, without knowledge of the competing fee rates, it is difficult for a panel to make a decision about the economically most advantageous tender?

**Ms Wark:** That is certainly the case, but there was no way that we were making a decision on economically the most advantageous tender; you would have ended up with a shed.

**Mr Campbell QC:** Why so?

**Ms Wark:** Because, that was not what it was about. It was getting a building which was the most exciting, innovative building — a modern building — so therefore the most advantageous tender as the very, very first thing you were looking at is not right. I mean all three taken together, the design ability, relative experience, fine; but we would never have begun simply with the most... I mean you would not have gone through all that process to rely on envelopes.”<sup>206</sup>

4.46 I did not need to learn at this Inquiry that both Ms Kirsty Wark and Miss Joan O'Connor were persons of steely will, independence of mind and a keen appreciation of architecture. Both acquitted themselves in their evidence with distinction and were unswerving in their conclusion that ultimately the unanimous selection of the team led by Enric Miralles was correct. I cannot and do not challenge the aesthetic judgment of any of the panel members.

<sup>203</sup> WS/13/001-008 Ms Kirsty Wark's Witness Statement, 26 November 2003

<sup>204</sup> SE/3/118-129(R) – Architectural Selection Process – DLE Cost Commentary, 10 June 1998

<sup>205</sup> WS/12/001-007 Miss Joan O'Connor's Witness Statement, 25 November 2003

<sup>206</sup> Evidence of Ms Kirsty Wark on 26 November 2003, Para 395

### The Tender Opening Process

4.47 The opening of the tender of the preferred Design Team took place on 26 June 1998.<sup>207</sup> Donald Dewar agreed that the Design Team proposed by Enric Miralles and RMJM Ltd be appointed for the design of the Scottish Parliament at Holyrood. There is a curious hybridity in this which was later to bedevil progress on the Project. The panel had selected a designer, namely Snr Miralles, and had undoubtedly been unanimous in that selection, albeit with some misgivings over the organisational capacities of his 'atelier' practice. Now, though, the appointment was to be awarded to EMBT/RMJM (Scotland) Ltd. Leaving aside the propriety of that change at this late stage in the designer competition process in terms of EU Procurement Rules, there is a further problem over these Rules. Within the United Kingdom the procedure has been to identify a preferred tenderer on non-cost grounds, to estimate an acceptable fee and, if that preferred candidate's tender came within the acceptable range previously fixed, to accept it without opening other rejected candidate tenders. There is a clear logic in following such a course, but it is not what EU Rules require. As I understand it, they allow for a first stage preference to be expressed comparable to past UK practice but require all tender letters to be opened – not in the first place just the tender of the preferred bidder to determine whether it falls within an acceptable range.

4.48 The EU logic is, again as I understand it, that if one who has not been otherwise preferred comes up with such an interestingly low tender on fee rate, then that might lead to a re-assessment overall of what is on offer. This essential change in practice required under EU Rules does not appear to have been grasped at this stage. As I have already indicated I am not a court of law and if challenge is to be made of the then Scottish Office procedures, it will be for the Courts to decide and I do not seek to usurp their function. I only observe that in the Harmon case<sup>208</sup> which related to Portcullis House, a new Parliamentary building in Whitehall, and which was not appealed, the Court found against the authorities. That decision was later at the centre of very useful advice from the Comptroller and Auditor General. The DoE guidelines on Architectural Competitions<sup>209</sup> explicitly states: "Where the two envelope system is used all fee proposals must be considered before a selection is finalised".<sup>210</sup>

4.49 The press release announcing the success of Snr Miralles in the competition confirmed his intention to team up with RMJM and his intention to postpone many of his international commitments and base himself in Edinburgh during the design and construction stage of the

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<sup>207</sup> SE/3/186-187 - Tender Opening Record, signed by Dr John Gibbons and Mr Robert Gordon, 26 June 1998

<sup>208</sup> *Harmon CFEM Facades (UK) Ltd v. The Corporate Officer of the House of Commons* [1999] EWHC Technology 199 (28th October, 1999)

<sup>209</sup> RI/1/001-028 – 'Architectural Competitions – A Handbook for Promoters', Department of Environment, 1996

<sup>210</sup> *ibid*, RI/1/023

Parliament Building.<sup>211</sup> The panel's decision to select Snr Miralles had been unanimous. The levels of each candidate's fee were kept confidential, but the briefing material used by Ministers at the press conference stated the budget to be £50 million excluding VAT and fees. This has to be contrasted with DLE's estimate of £62.6 million for the winning entry. As I have said, it is of concern to me that the so-called budget, which never had any basis in reality, was not at this stage set against even the most tentative of cost estimates.

- 4.50 Dr Gibbons wrote to Snr Miralles on 3 July 1998 confirming his appointment, and advised him that he had been selected in association with RMJM (Scotland) Limited to be the architect and lead consultant for the new parliament building. The commission was offered on the basis of the information that had been provided and the fee proposal, which was accepted.<sup>212</sup>
- 4.51 Reliance was certainly placed on the assertions by the architectural joint venture at interview that the Project could be delivered within the £50 million budget and adapted to bring about additional cost improvements.<sup>213</sup> It is difficult to see how that assertion could have been given conscientiously or taken seriously, given the embryonic state of the designs.
- 4.52 The competition process that was followed was in general a sound one. All of the surviving members of the selection panel gave evidence to the Inquiry and I was impressed by the obvious commitment they had applied to their task. The diversity of the panel contributed to its strength and I have no reason to question their unanimous conclusion as to the eventual winner. Some parts of the process were, however, less systematic than they should have been. In particular I point to the obvious uncertainty as to how the PQQs were to be evaluated and the almost whimsical series of visits undertaken to some candidates. I do no more than query that a member of the jury, Dr Gibbons, should also play such a prominent role in the administration of the process. I also have to highlight the absence of a meaningful record of many aspects of the conduct of the competition; somewhat unusual in the civil service culture. In effect there is not an audit trail of the designer competition and it has only been through this Inquiry that much of the process has been explored for the first time.

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<sup>211</sup> SE/3/134 – Press Release – 'Architect Chosen to Design Scottish Parliament', 3 July 1998

<sup>212</sup> SE/3/178-179 – Letter from Dr John Gibbons to Snr Enric Miralles, 3 July 1998

<sup>213</sup> See also Para 8.8