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Discussion Paper

Early Contractor Involvement (ECI) and

Early Tender Involvement (ETI)

Reimbursement of Tendering Costs to Competing Contractors

QUEENSLAND MAJOR
CONTRACTORS ASSOCIATION

Foreword

One of the key strategic initiatives of the Queensland Major Contractors Association (QMCA) is to promote good practice in selection of procurement models and contractor engagement.

Early Contractor Involvement (ECI) and Early Tender Involvement (ETI) Contracts are becoming an increasingly favoured procurement option in Queensland and provide government agencies with a two stage approach to project delivery which can offer substantial benefits when compared to other procurement options. Though these two stage contracts adopt greater relational contracting principles and more equitable risk allocation than most other procurement options contracts, they do not embrace the risk sharing, no disputes and no liability framework of the alliance contract.

The cost of tendering competitive ECI and ETI Contracts can be substantial, as they generally require Contractors to retain a large project and design management team through a competitive procurement stage to assist the government agency complete design and tender documentation. This team are then required to price the final documentation, develop project execution plans and complete the tender offer. Whilst a part of the competing contractors tender costs are sometimes reimbursed, QMCA members are becoming increasingly concerned that in some cases, the cost of tendering is both disproportionate to the costs reimbursed; the value delivered to the government agency; and to the returns available to the Contractor in completing the Work.

The QMCA has prepared this discussion paper as a basis for well-informed consultation and discussion with government agencies, the private sector and procurement managers who are considering the use of competitive ECI and ETI Contracts.

Discussion Paper on ECI and ETI Procurement Reimbursement of Tendering Costs to Competing Contractors

Wilson M; Abson S

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		Project Delivery Managers

Brief Overview:

Depending on the project risk profile and business case, Clients in Queensland utilise a number of different procurement options for delivery of major capital works infrastructure projects. In addition to the traditional D&C, Lump sum or Schedule of Rates Contract, Clients can opt for a Relationship Contract such as Alliance, Early Tender Involvement (ETI) or a Double Early Contractor Involvement (dECI). Whilst Alliancing is generally understood, the ETI and dECI Contract are less understood and are emerging as a popular procurement vehicle.

Early Tender Involvement (ETI) is generally a Construct Only procurement approach.
It involves selecting two or three competing contractors to participate in value engineering and refinement of a Clients preliminary design. Through this process the design is amended and the tender documentation finalised. The competing contractors then offer a schedule of rates or lump sum price based on the refined tender documentation conformed into a traditional contract form (such as AS2124 amended). Often, the Contractor will be asked to prepare and submit with its Tender a full suite of sophisticated project execution plans and detail the way in which it intends to control and manage key project risks such as stakeholder and community management.

Double Early Contractor Involvement (dECI) is generally a Design and Construct procurement approach. It involves selecting two competing groups, each group consisting of a contractor (or joint venture) and it's designer, to develop concept designs and undertake pricing in parallel; one of these groups is then selected to undertake detailed design and construction. This model allows for competitive tension during the concept design stage — helping to drive innovation and ensure the best value for money. The competing groups would normally be asked to prepare and submit with their Tender a full suite of design & project management plans and detail the way in which they intend to control and manage key project risks and Government priorities such as stakeholder and community management.

Clients sometimes reimburse Contractors for the costs of bidding in both ETI and dECI procurement options, however the rational is not well understood and the reimbursement amounts are somewhat variable. Proposed reimbursement amounts are sometimes not published in the initial RFP and in the case of ETI's are sometimes not visible to Contractors until the procurement process has in fact commenced.

QMCA have prepared this discussion paper to assist in quantify the differences and similarities in cost and benefits between the ETI and dECI procurement models so that Clients and Contractors can achieve consensus on a reasonable value for reimbursement of tendering costs.

Designers:

As a general rule:

- For Competitive Alliances and dECI's, Main Roads request that the Contractor join with a Designer and design the project from a low to medium level of scope fixity. Contractors have the advantage of working with a technically and commercially aligned partner.
- For ETI's, Main Roads retain the Designer and require the Contractor to apply his skill and knowledge to optimise or value engineer a mature preliminary design. Often, the Contractor will appoint his own sub-design consultants to 'prove-up' certain aspects of the design or provide alternatives.

Current Reimbursement of bid costs to Contractors

As a general rule:

- For Competitive Alliances, Clients (such as Main Roads) reimburse approximately 1% of the value of the Project to the Contractor. This amount would be expected to contribute towards external bid costs (i.e. the Designer's and other consultants costs) and a small component of the Contractors' internal costs;
- For dECI's reimbursement is typically around 0.9% of the value of the Project to the Contractor. Again, this amount would be expected to contribute towards the external bid costs (ie the Designer's, other consultants costs);
- For ETI's, Clients have been reimbursing Contractors at a much lower rate than for dECI's or Competitive Alliances, typically 0.2% of the value of the Project. The amount reimbursed varies from contract to contract reflecting that the procurement model has not matured sufficiently. It is not clear to the QMCA what the rational is for calculating this reimbursement.

The Issue:

In an ETI process, Contractors are spending considerably more (sometimes 4 to 5 times more) than the amount reimbursed. Further, the tender costs expended are significantly greater than those for a traditional tender, even though the risk transfer to the Contractor (through the Conditions of Contract) is the same or similar.

Whilst the QMCA appreciate that the tender field is reduced in an ETI compared to an RCC tender, we consider that this requires further review and consideration. Key observations that support the requirement for a review are:

- The ETI process develops considerable additional value to Clients, including such things as better design, improved risk identification and management,

stakeholder & community engagement planning and better dispute avoidance through improved contract documentation;
- Contractors transfer vast amounts of its own existing IP and company knowledge into an ETI process to support the value engineering and construction planning;
- Contractors assist in development of the final documentation to be priced;
- The losing Contractor's IP may be shared with the successful Contractor and Consultant engaged on the project;
- The losing Contractor's IP is considered a commercial advantage for future projects which is eroded and insufficiently rewarded after being revealed; and
- The ETI process sometimes results in new intellectual property (IP) being developed that could be retained by Clients;

The ETI process involves considerably more time, effort and design co-ordination than a standard fully documented RCC tender. The ETI model also requires the 'bells and whistles' normally associated with an Alliance during the Tender competition period in order to challenge and optimise design, determine community consultation and stakeholder requirements, build team relationships, assess and apportion key project risks and collaborate with the Clients project team.

Contractors are also becoming exposed to additional costs beyond their control due to delays in the Clients appointed Design consultants finalising the design and documentation, leading to longer than anticipated retention of key staff to support the tender.

Value to Clients

QMCA believe that the ETI procurement model delivers significant value to Clients, comparable to an Alliance TOC process and is significantly greater than a traditional procurement model.

This increase in value is driven primarily from the better and more complete understanding of a Clients risks and constraints and the early formation of project objectives that result from the interactive ETI process. A further benefit of this process is the development of a relationship between the Contractors and Clients that greatly improves communications early in the contract in comparison to a traditional model. This relationship is more likely to lead to dispute avoidance and reduce the overall business transaction costs of Clients.

In order to meet the Tender requirements, competing ETI Contractors will typically undertake:

- o Value management to develop the Contractor's understanding of Client requirements and subsequent management of alternatives.

- Alternative designs resulting in lower capital or operating costs (usually led by the Contractor and developed with a third party designer to retain the confidentiality necessary in a competitive bid)
- Value engineering sessions facilitated by the Contractor's and often external consultants.
- Alternative construction methodologies that result in safer, faster or improved quality outcomes.
- Improved programme outcomes.
- Improved Community and other stakeholder understanding and management.
- Development of relationship and governance strategies to promote lower potential for disputation resulting from the improved mutual understanding of each party's position and risk profile.
- Participation of the Contractors senior management or executive team.

Additionally Clients typically own the IP from both bids and are able to use innovations from the unsuccessful tenderer to further enhance the winning tender and hence the delivery value.

Costs to Contractors

While the additional value to Clients is visible, these benefits come at a significant cost to Contractors. Unless an equitable cost reimbursable regime is implemented it is likely that the current high levels of inputs by Contractors (and accordingly the benefits to Clients) will diminish over time.

Table 1 represents a comparison of the typical costs incurred by Queensland Major Contractors in bidding an RCC (Traditional schedule of rates), ETI, dECI and a Competitive Alliance, expressed as a percentage of the Contract Value (CV). Projects in regional centres would typically attract additional costs associated with travel to these areas.

Table 1 – Typical bid costs to Contractors for different procurement types

Procurement Type	External costs % CV	Internal costs % CV	Total bid costs % CV	Amount typically reimbursed % CV
RCC	0 – 0.4	0.3 – 0.4	0.3 – 0.8	0
ETI (1)	0.1 – 0.4	0.5 – 0.9	0.6 – 1.3	0.2 – 0.3
dECI (1)	0.6 – 1.0	0.4 – 0.7	1.0 – 1.7	0.8 – 1.0
Competitive Alliance TOC (1)	0.9 – 1.9	0.6 – 0.7	1.5 – 2.6	0.9 – 1.1

Note 1 – Costs are *post*-short listing into the competition phase

This table demonstrates the relationship between costs incurred by Contractors in bidding a project of a similar nature. The costs include the time required in an ETI, dECI and Competitive Alliance bid to assemble and keep together a Contractor's core project team during the bid period to prepare for the regular meetings and workshops with Clients and develop the scope of work and required documentation. In addition, the Contractor must undertake and progress the innovation and value management sessions with their own internal personnel and third party consultants.

As the table demonstrates, the cost of an ETI bid to Contractors is significant, but attracts the least reimbursement. The QMCA consider that this requires re-assessment by Clients and a commensurate increase in the level of reimbursement, particularly when the full value, knowledge transfer and potential new IP value is considered.

Summary

The QMCA would like to establish with Clients a rational basis for the reimbursement of tender costs in both dual ECI and ETI tenders that reflects the true value that Clients receive from this form of procurement.

ENDS