

# Practice Note

## Achieving value through bid cost contribution

### EXPLANATORY NOTE:



This Practice Note is a product of the Construction Industry Leadership Forum. It provides a principle-based strategy with options that are available to procuring agencies in response to the identified challenge. Implementation of options may necessitate change to existing government policy or procurement rules to give them broader application.

### PRINCIPLE:

There is value to government in providing bid cost contribution where this encourages industry to do more upfront work to provide greater certainty in tenders and de-risk major infrastructure projects. To address the high cost of bidding major infrastructure projects, government will broaden the application of bid cost contributions, engage with industry through market sounding to inform potential contributions and make the criteria for determining upfront bid costs contributions more transparent.

### CURRENT CHALLENGE:

It is recognised that high bid costs may, at times, be an impediment to participating in tender processes. Managing increased design and technical costs is a common theme underlying the high cost of responding to tenders, as well as the quantity of material required to respond to tenders within procurement timeframes.

There are multiple factors influencing a contractor's willingness to participate in a tender process. The availability of bid cost contributions is one factor that will influence a contractor's willingness. In assessing tender opportunities industry participants will consider the following factors:

- » **Contracting model:** does the risk allocation inherent in the contract suit the project specific circumstances so a return can be achieved;
- » **Opportunity cost:** in devoting significant resources to a tender, including having them available post bid submission, what other opportunities may or may not be able to be pursued;
- » **Potential for success:** influenced by the number of bidders to be shortlisted and a reluctance to offer construction smarts and innovative approaches without recognising the value of this effort;
- » **Client experience and track record:** relationship with the client, track record in managing projects, and the level of experience of key people;
- » **Certainty of timeframes:** likelihood of tender process meeting announced timeframes;
- » **Replicable versus bespoke project:** is it a large-scale and/or complex the project where external design, legal and commercial advisers are required;
- » **Availability of bid costs:** is a contribution available and if so is it sized to reflect the expected effort; and
- » **Volume of response requirements:** likely volume of documentation required to be submitted at the tender stage.

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Upfront and early market sounding is critical for delivery agencies to analyse market appetite and determine if bid cost contributions would enhance the contestability in the tender process. Other practices aimed at improving tender efficiency and reducing bid costs also have relevance for both the private and public sector in deciding whether to tender. Therefore, this practice note has strong links to the 'Reducing Procurement Costs' practice note and related government guidelines.

### OPTIONS:

The NSW and Victorian Governments have policies in relation to contributions to bid costs. This practice note should be read in conjunction with those policies.

Set out below are options available to address the principle as applicable to the particular circumstances.

The practices outlined below should not be considered mutually exclusive.

#### PRACTICE

- 1** Undertake early market soundings and market analysis to inform decisions on contributions to bid costs. The market engagement process should consider market appetite for different procurement methods, the degree of design development required and associated costs of bidding, having regard to the scale and complexity of the project, procurement and completion timeframes, client capacity and capability and current market conditions. Key considerations include:
  - » from a contractor's perspective, the relative priority of multiple factors impacting market appetite (refer above list); and
  - » from a government perspective, the complexity of the project and the likelihood of bid cost contributions enhancing contestability to achieve a value for money outcome.

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- 2** Early communication of the proposed quantum and conditions associated with recovery of bid costs to enable contractors to target select opportunities and form suitable bid teams. Key considerations include:
  - » terms and conditions to be developed considering differences between a capped versus lump sum contribution, contribution towards in-house as well as external resources, and appropriate payment timeframes (in some cases post bid submission);
  - » tender briefings to provide sufficient certainty on bid cost contributions and tender documents that clearly outline eligibility and conditions;
  - » the potential for overlapping should be minimised between Probity and Process Deed, bid bond requirements (if used), and the terms and conditions of bid cost contributions set out in the tender documents; and
  - » timely verification and payment of verified contributions to minimise payment delay and recognise the cost of tying up funds which could be released for other bid processes.

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- 3** Adoption of consistent criteria across Government for determining when contributions to bid costs will be made to unsuccessful bidders to promote decision making by market participants on their capacity and competitiveness to tender and value for money in the use of public funds. Key considerations include:
  - » a broader application of bid costs contributions will be considered on a project-by-project basis, noting it is not a default application;
  - » bid cost contribution policies should include transparent criteria to assist procuring agencies consistently assess the need for bid cost contributions; and
  - » Where a bid cost contribution is proposed, ensure there is sufficient funding allocated in the business case submitted to Government.

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### PRACTICE

- 4** In determining the contribution to bid costs of unsuccessful tenderers, consideration should always be given to the value Government receives from providing bid cost contribution that encourages industry to do more upfront work resulting in the de-risking of projects. Intellectual property (IP) conditions attaching to bid cost contribution should ideally be tested with contractors during market sounding, to inform potential contributions based on assessed value to government. Any IP provisions should be carefully assessed as to what (if any) specific elements would be subject to transfer. Key considerations include:
- » IP conditions attaching to bid cost reimbursement can inadvertently constrain the opportunity for innovation due to reluctance of bidders to 'give away' their IP without appropriate reward; and
  - » contractors may view IP as covering not just design, but also contractor construction methodology and service delivery models.
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