
Construction Contractors Association of Western Australia Inc

This Position Paper provides a summary of the CCAWA's Member endorsed approach proposed for the nominated Topic and is intended to be used as a guideline for all CCAWA member interactions, communications and other activities related to the nominated Topic.

Topic: Services Relocations and Modifications

Context

Civil infrastructure projects typically require the relocation or modification of existing services and/or utilities, and the Contractor is required to liaise with various Service Authorities or Utility Owners and to rely on the methodology, pricing and timing that they provide in order to undertake the required relocations or modifications.

It is not uncommon for this to be materially different to the actual methodology, cost and time required to undertake the services relocations or modifications, and Contractors therefore often incur disruption, delay and additional cost to deliver a project. In such circumstances, the Contractor typically has some recourse to recover costs under the contract, but no recourse for any associated delay or disruption to overall delivery of the project.

In addition to the obvious negative impacts on the Contractor, these circumstances also impact negatively upon the Client in terms of delay and additional cost to deliver their project, and the Service Authorities and Utility Owners in terms of their reputation.

Objectives

CCAWA is seeking buy-in from Clients for an alternative approach to the relocation or modification of services that provides a reasonable, fair and equitable risk allocation and certainty of outcome for Clients, Service Authorities, Utility Owners and Contractors, and specifically achieves the following objectives:

- effective pre-tender planning and coordination between Clients and Service Authorities and Utility Owners;
- certainty of cost, time and quality for Services relocations and modifications;
- Service Authorities and Utility Owners provide timely and reliable methodology, cost and programme information to Contractors at time of tender;
- reasonable, fair and equitable contractual conditions, payment and extension of time mechanisms that do not require the Contractor to take on liability for services related risks that they are unable to effectively identify or quantify, and over which they have little or no control; and
- ensuring that Clients, Service Authorities, Utility Owners and Contractors are all jointly motivated to contribute to the minimisation or elimination of disruption, additional costs and delays.

Key Issues and Factors

Many projects experience significant, but avoidable, disruption and additional cost and time impacts due to the following key factors:

- Service Authorities and Utility Owners are typically approached by multiple Contractors during a tender and asked to provide quotes based on differing programmes and methodologies, which requires the Service Authority or Utility Owner to simultaneously respond to multiple, differing tenderer's requests during a limited tender period of time.

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- Service Authorities and Utility Owners are under no obligation to provide Contractors with accurate and reliable methodology, pricing and timing at time of tender; and have no responsibility or liability for any disruption or additional cost and time impacts that their failure to do so may cause. Their quotes and programmes provided to Contractors at time of tender are often provided with a stated low degree of reliability and accuracy (i.e. +/- 25% or more).
- The Contractor has limited ability to minimise or eliminate cost increases, delays or disruption to the relocation or modification of services caused solely by a Service Authority or Utility Owner's failure to provide timely and reliable methodology, cost and programme information to them at time of tender.
- There is currently no regulatory framework that requires Government Clients and Government owned Service Authorities and Utility Owners to jointly maximise the effectiveness, timeliness and reliability of pre-tender planning for the delivery of Government projects.

CCAWA notes that Contractors do have some ability to minimize or eliminate these issue through effective planning, project management and design, while noting that this is not always feasible.

CCA WA Proposed Approach (*outline the change of approach that CCA WA is proposing*)

As an overarching principle, CCA WA maintains that it is not reasonable, fair or equitable for a Contractor to be liable for and/or bear the cost of disruption and delays that are caused by a Service Authority or Utility Owner and over which it has no control.

CCA WA proposes the following:

1. That State Government establishes and implements a WA Code of Practice for pre-tender planning and coordination between Clients and Service Authorities and Utility Owners.
2. That each Client appoints an internal representative with overall responsibility to manage and facilitate all pre-tender planning and coordination with Service Authorities and Utility Owners for consistency of approach and communication.
3. That the Client liaises with the relevant Service Authorities and Utility Owners for a project, who then provide the Client with their preferred methodology, pricing and timing for the relocation or modification of services on the project. The Client would then provide this information to each tenderer at tender commencement.
4. In the event that a tenderer wishes to propose an alternative methodology to that provided by the Client (under Item 3), then the responsibility for the option moves to the tenderer.
5. That all services relocations or modifications of services, regardless of value, are to be dealt with as Provisional Sums, with:
 - i. Contractor's entitlement to recourse for disruption and delay to delivery of the overall project; and
 - ii. If the required services relocations or modifications are undertaken for an actual cost which is less than the Provisional Sum amount, then the savings are shared between the Client and the Contractor.
6. That contractual conditions be amended such that the Contractor has fair and reasonable recourse to recover additional costs associated with services relocations or modifications, and also additional costs and extension of time associated with overall delay to delivery of the project.

Outcomes

The CCA WA proposed approach outlined above would provide appropriate risk allocation in managing the impacts of services on projects so that those best placed can accept and manage the risks and

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prevents the situation where significant unknown risks, both cost and time, are being passed onto the contractors.

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