



Sustainable Tender Pricing

Introduction

1. The purpose of this Construction Policy Note (CPN) is twofold. Firstly, it is to remind public sector clients of their responsibilities in handling abnormally low tenders, as set out in Chapter 8 of the [construction procurement handbook](#) of the *Client Guide to Construction Projects*.

2. Secondly, it is to highlight the importance of bidders putting in realistic and sustainable bids and of clients ensuring that only those bids that represent the best value in terms of whole life cycle and project delivery are accepted. The practice of submitting unsustainably low bids is counter-productive and, whilst we have introduced a tool to assist clients identify abnormally low bids and provided guidance on how then to deal with them, the real issue lies in the culture where this practice of low bidding is seen as the norm and acceptable.

3. Also endemic in the industry, is the practice whereby pressure is applied to the supply chain to reduce bids, offer “main contractor discounts” and endure poor payment practices, all of which impacts on the ability to deliver projects to the specified requirements within the margins of profitability.

Key message

4. This CPN seeks to encourage a change in these practices. In short, the public sector must pro-actively seek to identify where abnormally low tenders are present in construction procurement, investigate them fully and then exclude them from the procurement where there is no reasonable justification for the bid. However, the responsibility is not the public sector’s alone, the construction industry has a duty to ensure that they – and their supply chain – price work in a manner which is sustainable and which will allow the industry to comply fully with contractual requirements.

Target audience

5. This note is intended for all contracting authorities, subject to the Scottish Public Finance Manual, which are involved in the planning and delivery of public works projects. It is also intended for industry bodies considering bidding for these tender opportunities.

Background

6. The Review of Scottish Public Sector Procurement in Construction noted that “Annual Scottish public sector construction expenditure is around £4 billion. This is a

vast sum, and the construction sector is a vitally important part of the Scottish economy. According to Construction Scotland, the 31,000 businesses that make up the industry in Scotland employ some 170,000 people. Construction Scotland also considers that for every £1 spent on construction output, a further £2.94 is generated in the economy.”

7. Abnormally low bids benefit neither the industry nor the client body. They set up projects for poor and adversarial relations, result in claims to maximise financial recovery and discourage the delivery of quality outputs on time and to budget. They also underpin fragility in the industry and mean that it is more susceptible to economic bumps.

8. The origins of abnormally low tenders are wide but may be attributed, in part, to a perception by bidders that price is everything in winning a tender and that winning the tender is the start of the discussion on price. Whilst the Public Contracts (Scotland) Regulations 2015 and procurement best practice are clear that tenders may not be assessed on price alone; it is entirely feasible that in some cases public contracting authorities may, misguidedly, put a greater emphasis on price than is healthy for the successful delivery of their projects and the services that are to be delivered from them.

9. The Public Contracts (Scotland) Regulations 2015 states that awards must be made on the basis of the *Most Economically Advantageous Tender* (MEAT) and that this is an assessment that takes account of both quality and price. Whilst these Regulations apply to above threshold procurements we expect that this principle is also applied to below threshold procurements.

The sustainable delivery of whole life quality

10. Chapter 3 of the Construction Phase Handbook provides a definition of quality and notes:

“The purpose of any construction project is to deliver an output which contributes to one or more outcomes. In order to do this, the output, a physical built asset – whether a road, a hospital, a school or other public structure - must meet the requirements of the client in all respects.”

11. The delivery of that quality, however the client specifies it, must be paid for and it is a false economy to expect the contractor to deliver that quality at unsustainable prices. To do so may result in a number of outcomes, including but not restricted to:

- contractor claims;
- unacceptable pressure on supply chains to cut their prices;
- extensive snagging and latent defects;
- poor payment practice by the contractor to its supply chain
- difficult contract management
- use of inferior materials, poor work practices and failure to adhere to the specification
- short terms solutions
- contractor insolvency (either direct or supply chain)
- reduced economic multiplier gain
- inability of the asset to deliver the services it is designed for

12. It is therefore essential that clients properly estimate the cost of the job and set the specification according to what is affordable within current and future budgets for the delivery of the built asset and its whole life management and do not put unfair demands on the contractor by squeezing more out of the contract than is reasonably deliverable.

13. Similarly, contractors must ensure that their submissions accurately reflect what they are contractually bound to deliver in accordance with the client's specification and for the price at contract award.

14. The Scottish Government is considering alternative tender price scoring mechanisms, which will aim to reduce the incentive to submit very low bids.

Summary

15. Unsustainable pricing benefits no one and it is the responsibility of contractors and clients to end this corrosive practice and incorporate the culture that such practices are unacceptable.

16. Everyone must work together to ensure that the construction industry is sustainable for years to come and benefits everyone in terms of businesses, employment and the infrastructure of Scotland. The tool published at Chapter 8 of the [construction phase handbook](#) provides a process to assist in dealing with abnormally low tenders but the practice of unsustainable pricing which necessitates such a tool requires a cultural change and that needs contractors, clients and any third party involved in the contract award decision making process to re-establish their approach.

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