

## RESPONSE TO PRODUCTIVITY COMMISSION DRAFT REPORT ON INFRASTRUCTURE COSTS

April 2014

ACIF welcomes the Productivity Commission Draft Report on Public Infrastructure. Several of our members have made their submissions in relation to the Draft Report's findings, information, and information request. This submission concentrates on the procurement, risk allocation, and knowledge issues raised in the Draft Report.

For convenience the Findings and Recommendations to which we have responded are included in bold italics.

### ACIF BACKGROUND

ACIF is the construction industry's peak consultative body. It provides the industry with a unique vehicle to raise, discuss and resolve issues. And gather and disseminate useful information. It publishes forecasts of industry activity twice a year.

ACIF has 18 members, each of them a national organisation representing a part of the building and construction industry. Their interests cover most of the industry and its 3 sectors, residential building, non-residential building, and engineering construction.

- Air Conditioning and Mechanical Contractors' Association of Australia
- Association of Consulting Architects Australia
- Australian Constructors Association
- Australian Institute of Architects
- Australian Institute of Building
- Australian Institute of Building Surveyors
- Australian Institute of Quantity Surveyors
- Consult Australia
- Engineers Australia
- Facility Management Association of Australia
- Fire Protection Association Australia
- Housing Industry Association
- Master Builders Australia
- Master Plumbers Australia
- National Fire Industry Association
- National Precast Concrete Association
- Property Council of Australia

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#### DRAFT RECOMMENDATION 7.1

***Institutional arrangements for the provision and delivery of public infrastructure should incorporate good governance arrangements, including:***

- ***the principal objective of ensuring that decisions are undertaken in the public interest***
- ***clear and transparent public infrastructure service standards***
- ***effective processes, procedures and policy guidelines for planning and selecting public infrastructure projects, including rigorous use of cost–benefit analysis and transparency in cost–benefit assessments, public consultation, and public reporting of the decision (including a transparent review of the decision by an independent body, for example, an auditor-general or Infrastructure Australia)***
- ***efficient allocation and monitoring of project risks between government and the private sector***
- ***use of transparent and competitive processes for the selection of private sector partners for the design, financing, construction, maintenance and/or operation of public infrastructure***
- ***sufficiently skilled employees who are responsible and accountable for performing their functions***
- ***principles and processes for considering funding arrangements, including application of user-charging as the default funding arrangement where this is appropriate, and transparency of funding decisions (including public reporting of decisions and periodic review by an independent body, for example, an auditor-general or Infrastructure Australia)***
- ***principles and processes for selecting efficient financing mechanisms and transparency of financing arrangements***
- ***performance reporting and independent evaluation of public infrastructure project performance.***

ACIF strongly supports this suggestion. Government is a large customer, and should be confident enough to demand innovation. Government agencies should however be clear eyed about the potential risks, and be able to encourage innovation by being prepared to accept part of the downside of innovations that do not deliver what was intended. Otherwise you just don't get the creative tension needed. It's difficult to drive behaviour to get the best ideas, in a lump sum contract environment. It's even harder to ask for innovative ideas and a focus on best value if the client brief is not clear.

#### INFORMATION REQUEST 7.1

***The Commission's current inclination is that the package of measures proposed in this report would be sufficient to constitute a 'pipeline' that would assist purchasers and tenderers in forward planning and to minimise costs. The Commission seeks views on the appropriate organisational framework to collect and disseminate information about a pipeline of projects and the extent to which private organisations should provide information about their plans to build significant infrastructure.***

ACIF supports the need for a consolidated data set of upcoming public sector infrastructure projects, including both horizontal and vertical assets. The industry is used to boom and bust cycles, but finds it difficult to plan beyond the shortest of horizons. This is a feature also found in like project-based industries in other countries. Whilst it may be something we are used to, it is not conducive to rational skills formation policy, nor to the potential for a "reserve list" of public sector projects to be used to soften the effects of declines in work from the private sector. Conversely, when demand from the private sector is stronger, it would make sense for the public sector to hold off adding project demand to moderate cost increases driven by resource limitations.

ACIF trusts that the data required for a consolidated pipeline of public sector projects would be an outcome of the package of measures recommended in the Draft Report. However to be useful it would need to be matched with supply data drawn from employer organisations, learning providers, and other sources of information. That data would need to encompass the entire industry, to reflect the mobility of disciplines across the three sectors that make up the industry.

The Australasian Procurement and Construction Council (APCC) has in the past undertaken the collection of project information primarily from agencies delivering public sector non-residential projects. It is presently working with the Department of Infrastructure to test whether a similar “pipeline” collection can be developed for infrastructure including state and territory agency projects. ACIF has indicated that it is prepared to work with APCC to coordinate that work and the demand forecasts produced by ACIF every 6 months.

#### DRAFT RECOMMENDATION 11.1

***Governments should invest more in the initial concept design specifications to help reduce bid costs, but in doing so, provide opportunities for tenderers to contest the specifications of the design.***

#### DRAFT RECOMMENDATION 11.2

***When tendering for major infrastructure work under design and construct arrangements, governments should consider contributing to the design costs of tenderers on the condition that governments own the design, where a thorough prior assessment has demonstrated that design innovation is both worth seeking and likely to be received.***

Government as buyer should be seen to balance its responsibilities to taxpayers to ensure it receives value for money outcomes with sound commercial behaviour in its dealings with suppliers. Contract conditions that seek to blindly transfer risk to contractors do not satisfy that balance test.

Regular clients of the industry understand the construction industry's maxim that they should take responsibility for risks they can best manage. ACIF strongly supports this suggestion. Government is a large customer, and should be confident enough to demand innovation. Government agencies should however be clear eyed about the potential risks, and be able to encourage innovation by being prepared to accept part of the downside of innovations that do not deliver what was intended. Otherwise you just don't get the creative tension needed. It's difficult to drive behaviour to get the best ideas, in a lump sum contract environment. It's even harder to ask for innovative ideas and a focus on best value if the client brief is not clear.

When government decides to pass a particular risk on to suppliers, it should also ensure that the supplier is rewarded for taking that risk. Procurement policy should clearly require officials to demonstrate that they have considered the cost of passing risk to contractors and made appropriate contingencies for doing so.

Governments have for more than a decade been driving more and more risk on to contractors, in many cases acting without regard to what would otherwise be considered unethical behaviour. This includes demanding that contractors waive their rights to the protection of the statute of limitations, that they accept all the risk associated with governments' own designs, and demanding that contractors on major Design and Construct jobs take risks that might be appropriate to alliance projects, but not on D&C projects.

Project risks are known early in the asset delivery process, starting with the client's brief. The brief and commercial documents that flow from it should be aligned, ensuring appropriate risk management protocols are implemented, and driving minimal rework and enhanced functionality. Using Early Contractor Involvement (ECI) delivery strategies and Building Information Modeling (BIM) in concert has the potential to drive real productivity gains, particularly if the same project team is appointed to deliver more than one project in sequence.

It is common for industry practitioners to observe that some clients rarely spend enough time or sufficient attention on making sure that their briefs address whole of life costs and functionality. Nor do clients appear to appreciate as well as they might the difficulties posed for contractors by aggressive risk transfer.

ACIF recommends that the Commonwealth Government sets a standard for ethical commercial behaviour by directing its agencies to not demand unethical conditions including that contractors waive their rights to the protection of the statute of limitations, that they accept all the risk associated with governments' own designs, or demanding that contractors on major Design and Construct jobs take risks that might be appropriate to alliance projects, but not on D&C projects.

We further recommend that the Commonwealth Government should require its agencies to adopt and implement procurement policy that clearly requires officials to demonstrate that they have considered the cost of passing risk to contractors and made appropriate contingencies for doing so.

#### DRAFT RECOMMENDATION 11.3

***Government clients should alter the timing of information provision in the tendering process for infrastructure projects so that non-design management plans are only required of the preferred tenderer. The obligation to produce documents upon becoming a preferred tenderer should remain a condition of the initial request for tender.***

#### DRAFT RECOMMENDATION 11.4

***The 'early contractor involvement model' should be trialled to test the costs and benefits of applying past contract performance by tenderers as a means of constructor selection, consistent with the practices of some private sector clients.***

#### DRAFT RECOMMENDATION 11.5

***For complex infrastructure projects, government clients should provide concept designs using Building Information Modelling (BIM) to help lower bid costs, and require tender designs to be submitted using BIM to reduce overall costs. Governments should give serious consideration to where in their better practice guides they may specify the use of BIM.***

Done properly demand side innovation will not inhibit competition or transparency. It can lift standards that flow across the public sector and to the private sector. These innovations include requiring the use of integrated project teams, the use of BIM, and mandating the use of supply chains by head contractors.

Innovation needs to be resourced, with the right people and time and budget. However since the late 1980s governments across Australia have abandoned the once traditional role of public works agencies acting as internal project managers for all capital works projects within each jurisdiction. One consequence of this has been the almost total elimination of project management skills within government, (with the notable exception of Defence). In turn that has substantially denied government internal skills sufficient to manage the scoping, selection and management of project teams to deliver assets.

That lack of capacity engenders a lack of confidence amongst officials charged with managing the delivery of capital works asset. Innovative proposals are unlikely to be considered when, as is often the case, there are risks associated with them.

Another example of the loss of productivity that flows from lack of internal skills and confidence is found in the common practice of government client briefs and specifications requiring the use of "world's best" standards, often without being clear as to what such a standard involves, and regardless of whether a particularly high standard is indeed required to deliver the required functional outcome. Scoping of

requirements is often poorly done, and gold plating infrastructure is all too common amongst public sector agencies.

Providing officials with appropriate procurement and project management skills would help. ACIF suggests that the Commonwealth take the lead by setting up a collaborative program with a university or universities, around project management, to encourage industry and government people to learn together.

Government has roles as legislator and buyer in the procurement area. ACIF understands that procurement frameworks need to be transparent and satisfy probity and value for money requirements. Within those frameworks government agencies in Australia (and overseas) have been prepared to adopt innovative procurement strategies, including alliances, two stage managing contractor, and early contractor involvement appointments.

Ideally, government procurement policy should encourage collaborative working. Productivity gains will come from greater attention being paid to collaborative working, rather than the traditional trade and professional discipline "silos". Silos inhibit collaboration and the ability of all parts of the industry to contribute to design, buildability, and generation of value for money service deliveries from capital works assets.

The more challenging and potentially more rewarding, opportunity lies in government challenging the orthodox approaches to ensuring probity and value requirements are met, by finding innovative ways to appoint project teams before design solutions have been finalised. As mentioned in section F of this paper, the benefits of early appointment coupled with use of BIM to develop design solutions to meet needs, are significant. The orthodox approach of appointing contractors only after designs are sufficiently developed to allow for tendering denies buyers opportunities for productivity gains, both in capital and recurrent cost.

ACIF suggests that legislative frameworks governing procurement be opened up to encourage the selection of members of project teams before the scope of design is settled, to facilitate those opportunities. Further, we suggest that existing policies, laws, regulations and procedures be re-visited to allow expansion of alternative approaches to selection of service providers (rather than competitive selection), including negotiation.

#### DRAFT RECOMMENDATION 11.6

***Within the request for tender, government clients should provide opportunities for tenderers to contest the key standards of the design where they have previously assessed scope exists for innovation to occur.***

ACIF supports this suggestion. Government is a large customer, and should be confident enough to demand innovation. Government agencies should however be clear eyed about the potential risks, and be able to encourage innovation by being prepared to accept part of the downside of innovations that do not deliver what was intended. Otherwise you just don't get the creative tension needed. It's difficult to drive behaviour to get the best ideas, in a lump sum contract environment. It's even harder to ask for innovative ideas and a focus on best value if the client brief is not clear.

#### DRAFT RECOMMENDATION 12.1

***All Australian governments should adopt the Victorian building code guidelines (or ones with an essentially similar framework) for their own major infrastructure purchases. The Australian Government should require compliance with these guidelines as a precondition for any infrastructure funds it provides to State and Territory Governments.***

ACIF supports this Recommendation.

DRAFT RECOMMENDATION 13.1

***The Australian Workforce and Productivity Agency should make and publish regular projections of labour demand from public infrastructure construction. Information collected and produced as part of the proposed benchmarking activities should support this activity, including data from all cost-benefit analyses undertaken for infrastructure projects that receive Commonwealth funding. The private sector and State and Territory Governments should be invited to participate in providing data pertaining to non-Commonwealth-funded projects.***

As mentioned above in our response to Information Request 7.1, supply data across the 3 sectors of the industry needs to be m