



**CIVIL CONTRACTORS
FEDERATION**

POLICY DOCUMENT

Submission to the Draft Productivity Commission Report into
Performance Benchmarking of Australian Business Regulation:

The role of Local Government as Regulator

May 2012

Inquires relating to Submission to:

Julie Abramson Deputy CEO National



TABLE OF CONTENTS

PART A

Executive Summary of Key Recommendations	4-6
---	-----

PART B

1.1	An introduction	7
1.2	The Civil Contractors Federation	7
1.3	Members interaction with local government as regulator.....	7
1.4	Previous studies and research conducted by CCF	8
1.5	Other Reports.....	8

PART C

2.0 Main issues experienced by Contractors	9
2.1 Business perceptions of local government regulation.....	10
2.2 Role of local government and local laws.....	11
2.2.1 Legislation and Duplication	11
Example A – land development	11
Recommendation 1	12
2.2.2 Consistency of application of regulatory controls.....	12
Recommendation 2	13
Recommendation 3	13
2.2.3 Inadequate resourcing and deskilling in local government	14
(a) Loss of engineering skills.....	14
(b) Lack of capabilities in procurement practices.....	14
Recommendation 4	15
2.3 What is the cost of this regulatory burden?	15

3.0 Building and Construction

– Response to Chapter 7 of the Draft Report	16
3.1 Need for forward capital works programs.....	16
Recommendation 5	17
3.2 Responsiveness of Councils	17
Recommendation 6	18
3.3 Standardisation of processes and regulatory streamlining	18
3.3.1 Some context for the recommendations we make in this section	18
Recommendation 7	
– Recommendations for reform in Standardisation issues	19
3.3.2 Recommendations for Reform in Regulatory Streamlining	19
Recommendation 8	20
Recommendation 9	20
Recommendation 10	20
3.4 Contract Management Practices	20
Recommendations for Reform.....	21
3.5 The cost of disputes	21
4.0 Conclusion	22

PART D

Annexures to this Report

Victorian branch submission to the Victorian Competition and Efficiency Commission (VCEC)

Inquiry into streamlining local government regulation November 2009.

Key Principles Best Practice Guide to tendering and contract management.

Submission to the Draft Productivity Commission Report into Performance Benchmarking of Australian Business Regulation: The role of Local Government as Regulator March 2012

The Civil Contractors Federation (CCF) welcomes the opportunity to contribute to this important review “Performance Benchmarking of Australian Business Regulation: The role of Local Government as Regulator”.

We commend the Commission on the draft Report as it raises a number of the key concerns of contractors together with some suggestions for reform through adoption of leading practices.

This Submission is divided into 4 parts as follows:

Part A – is the summary of our key recommendations for reform

Part B – Deals with the background to this submission

Part C – Covers in the main a response to Chapters 6 and 7 of the Report

Part D - Annexures to this Report

PART A
EXECUTIVE SUMMARY OF KEY RECOMMENDATIONS

Role of Local Governments Local Laws, monitoring and reviewing

Recommendation 1

That as part of the process of making a local law, a regulatory impact statement (RIS) be a requirement of the development phase in the same manner as required for changes to Federal/State legislation.

Recommendation 2

That Governments both Federal and State continue work with local governments in relation to model laws to assist standardisation of local laws across local government.

Recommendation 3

That performance measures be developed for the administration of local laws with the results published in the council's annual report.

Inadequate resourcing and deskillling in local government

Recommendation 4

That active steps be taken to ensure early contractor involvement in the early stages of a project and in the design and construction of infrastructure projects.

Forward Planning of Capital Works programs by Councils

Recommendation 5

Councils be required by regulation to prepare and publish their detailed achievable forward 3 year capital works programs on their website and to update that information by 30 June each year.

Responsiveness of Councils including inconsistent application of regulation – strengthening reporting standards of councils

Recommendation 6

Local Government be required to have common service standards and an annual report against a service charter in a Council's Annual Report.

Recommendations for Reform on Standardisation issues

These recommendations deal with a range of standardisation issues from procurement and tendering, technical specifications through to contract management.

Recommendation 7

- (a) adoption by **all** councils of the principles embodied in the MAV/IPWEA/CCF *Best Practice Guide for Tendering and Contract Management*;
- (b) adoption by **all** councils of AS4000 as the General Conditions of Contract for all infrastructure contracts;
- (c) development and adoption of a common tender evaluation tool;
- (d) development and adoption of a common electronic tendering platform;
- (e) resolution of contract disputes by mediation rather than costly arbitration; ...and
- (f) ensure that the standardisation of technical specifications does not contribute to the considerable overdesign of some elements of infrastructure currently endemic throughout Local Government (i.e. pavements in residential streets that could accommodate 747's!), nor the capacity for councils to unilaterally prescribe higher standards of design and construction.

Regulatory Streamlining and better regulation making processes

Recommendation 8

Support for processes which cuts delay or multiple regulatory approvals for example one stop shops, one environmental regulation approval process etc.

Monitoring and reviewing performance of local government

Recommendation 9

Regulations should be introduced requiring local government to advise of their performance against a key set of defined performance indices to be developed in consultation with industry and stakeholders.

This Recommendation needs to be implemented with **Recommendation 3**

Recommendation 10

That local laws be subject to sunset requirements to dispense with redundant and increasingly inappropriate regulation by Local Government.

PART B

1.1 An introduction

The Civil Contractors Federation welcomes the opportunity to contribute to this important review "Performance Benchmarking of Australian Business Regulation: The role of Local Government as Regulator". ("the Draft Report")

We commend the Commission on the draft Report as it raises a number of the key concerns of contractors together with some suggestions for reform through the adoption of leading practices.

Our current submission refers to and relies on a very detailed submission which was made to the Victorian Competition and Efficiency Commission in November 2009. That inquiry was into streamlining local government regulation. Whilst that submission was made in Victoria it is reflective of issues impacting and effecting members around Australia.

In this submission we respond in the main to Chapters 6 and 7 of the draft Report.

1.2 The Civil Contractors Federation

The CCF is the member based representative body of civil engineering contractors in Australia providing assistance and expertise in contractor development and industry issues.

Through our Federation we represent over 2000 small, medium and large sized contractors who in turn work in an industry of more than 350,000 people.

Our members are involved in a variety of projects and activities including the development and maintenance of civil or "horizontal" infrastructure such as roads, bridges, sewer, water and drainage pipelines, dams, wharves, commercial and housing land development. Members are also involved in the preparatory works for mining and other resource developments.

Infrastructure development plays a vital role in our national prosperity. Given the nature of the work that contractors do they have a very live interest in the efficiency and performance of local government.

1.3 Members interaction with local government as regulator

Dealing with and working with local government is a key part of many contractors daily activities. This can occur through the local government being the direct procurer of work and also on sites in which are members are operating as sub-contractors.

Members also deal with a number of authorities including water and power companies and road and other infrastructure authorities.

Whilst much of this submission focuses on subdivision and infrastructure development the criticisms and concerns have broad application.

1.4 Previous studies and research conducted by CCF

This submission references two major pieces of work undertaken by our Victorian branch.

The first is a Report by the CT Management Group "Subdivision and Infrastructure Development Report February 2009.

The CT Management Group was engaged by the Civil Contractors Federation (CCF) to undertake a research project aimed at assessing the impediments to the efficient delivery of subdivisions and road infrastructure.

The research project involved face-to-face interviews with 20 CCF members actively involved in the provision of subdivisions and road infrastructure. We refer to this as the February 2009 Report.

Please note that this Report surveyed more broadly than just interaction with local government but also involved authorities. Having said that however the comments made in the Report are none the less referable to local government.

The second is the submission by the Victorian branch to the Victorian Competition and Efficiency Commission (VCEC) Inquiry into streamlining local government regulation November 2009. This is referred to as the November 2009 Submission. That Submission is at Appendix D to this Submission.

In addition in October 2007 the CCF (Victoria) in conjunction with the Institute of Public Works Engineering Australia and the Municipal Association of Victoria published a Best Practice Guide for tendering and contract management.

The Guide includes the best attributes of Codes from other states, the then current Victorian Code of Practice for the Building and Construction Industry as well as work in New Zealand.¹

It reflects accepted best practice in tendering and management of contracts and focuses on efficient delivery of projects through a collaborative approach between client and contractor. The Guide has been widely distributed to councils and relevant government departments and their agencies in Victoria.

As the Productivity Commission is inquiring into issues other than procurement we have not attached the full copy but of course it is available on request. The key principles referred to in Recommendation 7 are at Appendix D.

Whilst these submissions are Victorian centric we are confident that the concerns of the Victorian members are reflected nationally amongst our membership.

1.5 Other Reports

There are a number of other reports referenced in our submission in particular

¹ The New Zealand Transport Agency (formerly Transit NZ) has developed a methodology for evaluating non price weighted attributes for certain contracts such as the PQM simple contract through a process known as "non price attribute assessment". See <http://www.transit.govt.nz>

- The Victorian Competition and Efficiency Commission 2010, *Local Government for a Better Victoria: An Inquiry into Streamlining Local Government Regulation*, draft report, April (VCEC Report).²
- The consultant Report by the Allen Consulting Group (the “Allen Report”) which was requested by VCEC. Importantly, the Allen Consulting Report also seeks to put a cost on this regulatory burden. This is referred to further in this submission.
- We also refer to the *Local Government Procurement Strategy* which was prepared by Ernst & Young in 2008 (“the E&Y Report”). They were commissioned by the previous Victorian State Government to undertake a detailed assessment of existing procurement practices employed by councils and to identify opportunities for councils to work in partnership to improve these practices. Ernst and Young conducted a series of workshops, interviews and detailed data analysis involving more than 40 Councils to develop the *Local Government Procurement Strategy*. The research concludes that the adoption of better procurement practices across the sector has the potential to yield annual savings in the region of \$180-350 million; and
- Finally we refer to the Aurecon 2009 Report *Achieving Civil Infrastructure Procurement Best Practice* - a study by Civil Contractor’s Federation in conjunction with VicRoads (the Aurecon Report)

PART C

In this section we comment on a number of the issues raised in the draft report in Chapters 6 and 7

2 MAIN ISSUES EXPERIENCED BY CONTRACTORS

For some time the CCF has been drawing to the attention of State and Local Governments the extent to which inappropriate regulatory controls, inconsistent applications of standards, over-engineering, unnecessary processes and poor tendering and contract management practices are impacting negatively upon civil construction activities, the construction of subdivisions and road infrastructure.

We are therefore very pleased that at Section 6.3 of the Report two major areas where local government impact on our members are identified namely; planning and land use and building and construction.

We note that the Draft Report refers particularly to

- complex regulatory frameworks
- Inter and intra-jurisdictional overlaps and inconsistencies
- Regulatory creep;
- Protracted timeframes; and
- Inadequate resourcing of local governments

² At the time of completing this submission the Final Report does not appear to be published through the Victorian Parliament

These are all in one form or another encapsulated in our comments in paragraph 1 above.

The comment in regard to the cumulative cost of regulation as noted in Section 6.2 of the Draft Report is also a very important concern for business, particularly small business. Local government regulation has to be seen in the context of an ever expanding regulatory burden on the construction industry particularly in relation to new taxation arrangements³, Work Health and Safety reforms and environmental reporting⁴. For many of our members they report that they have had to increase the number of administrative personnel in their back office just to keep pace with regulatory requirements.

For the smallest operators they have very little real prospect of keeping up with the avalanche of new regulations and requirements and are therefore at substantial risk of action for non-compliance.

Whilst Governments frequently talk about reducing the “red tape” burden in a practical sense for business this rarely happens.

2.1 Business perceptions of local government regulation

In our industry two important factors are at work which will impact on perceptions of local government regulation and will tend to mask what the industry really thinks in terms of direct feedback to local authorities.

Firstly, one of the difficulties for our members is that whilst they may be very prepared to offer helpful and constructive suggestions they are dependent on the procurement process to deliver work which works against them raising issues directly with councils.

Secondly, whilst contractors are critical of overdesign and over-specifying in contracts in most cases they accept the Principal’s right to specify what they want. Contractors tended to be very pragmatic about this putting this down to the current “risk averse” approach of authorities or their consultants. In a practical sense if a particular authority wanted a drainage pit constructed a certain way then to be successful in a tender the contractor would construct on that basis even though it may not be the most efficient solution.⁵

This is why reports such as those you are undertaking are so important as our members certainly share a number of the concerns raised in your report.

Table 3 is particularly illustrative as we note that some 65% of respondents in building and construction reported that since 2007 regulation had become more demanding. This is absolutely supported by the anecdotal evidence of our members and we have provided some further feedback on this below.

³ There is a raft of new taxation arrangements including reporting contractor payments, changes to the Fuel Tax Credits Scheme and regulatory burden associated with the Carbon Tax

⁴ For example NGER reporting

⁵ See the 2009 Report at page 3

Finally, in respect of the issues that have been highlighted for benchmarking in building and construction namely technical building standards and construction site management we have provided a range of suggested actions as listed below.

2.2 Role of local government and local laws

2.2.1 Legislation and Duplication.

The problem of overlapping and duplicatory regulation is well noted in the Draft Report. This can particularly be a problem for our members working in subdivision and land development.

In our 2009 submission the Victorian branch noted “ Victorian local government is responsible for the administration, either wholly or in conjunction with state authorities, for twenty-nine separate pieces of legislation.”⁶

The issue of duplication and regulation is dealt with in detail in section 6.10 of that report.

In addition to the example provided in that Report at 6.10.2 we also cite the following example from one of our members as illustrative of the problems.

Example A – land development

One of our members who works in land development advises that compared with 5 to 10 years ago it now takes triple the time to meet all the planning and regulatory requirements of land development. This would also seem consistent with the Commission’s own survey work.

It is important to note that the civil contractors who construct the earthworks are in reality the first trades on the site. A contractor can be engaged and ready to commence when a council requires further environmental works to be undertaken notwithstanding that all other required permits are in place.

Weather conditions are particularly important for contractors and with slim margins can make all the difference. What can and does happen is that a contractor prices a project on the basis of being able to complete the earthworks in a certain timeframe say in the warmer months with little rainfall. However, due to delays over environmental and heritage controls the job could finally commence some months later in winter with inclement weather. Not only will there be delays when works cannot be undertaken but plant working in heavy and wet soil will use more diesel and hence at a greater cost.

On occasions too different plant has to be used and moved from elsewhere to complete the job all of this adds to the cost of doing the work. For example, the heavy clay soil might require an excavator with greater capacity than the one originally scheduled for the job meaning that other projects might be delayed or the contractor forced to hire in additional plant and operators.

⁶ 2009 Submission at Page 9

These type of delays are typical and out of the control of the contractors. In many cases costs can't be passed on but even when they can as your report notes there are lost opportunity costs as the contractor has to complete on that job and cannot move on to other projects.

In building and construction where time is of the essence, delays in relation to approval processes can be particularly costly both in terms of finance and also in labour and plant availability.

Whilst this would clearly not overcome all these practical problems in our view a good start would be the strengthening of Council reporting processes and the mandatory use of a RIS process. We note the Commission sees this as leading practice in its Report⁷

Recommendation 1

That as part of the process of making a local law, a regulatory impact statement (RIS) be a requirement of the development phase in the same manner as required for changes to Federal/State legislation.

2.2.2 Consistency of application of regulatory controls

In Section 6.2 of the Draft Report reference is made to unnecessary regulatory burden. We note that in Box 6.1⁸ examples of unnecessary burdens include:

“inconsistent processes within and across councils, including differences in interpretation of similar requirements”⁹

As noted in the 2009 submission:

“Combined with the matters set out in 6.10.2 (*the legislative duplication*) ..is the lack of consistency in interpretation of the various acts and regulations associated with each and every activity listed above within a defined region and across the state. This situation is further compounded by the application of Federal legislation which may not always align with State legislation and brings another layer of bureaucracy to a project.”¹⁰

Practical examples in one state include:

- Anecdotally, over 60 different general conditions of contract
- Again anecdotally more than 100 different profiles for kerbs and channel construction;
- Councils requiring higher levels of materials or construction than that contained in a relevant Australian standard;
- Different standards of construction for roadworks in like foundation conditions; and
- Differing levels of allocation of risk to the contractor across the sector for like projects.

⁷ Please see Draft Report Page 22

⁸ PC Draft Report page 220

⁹ Ibid

¹⁰ 2009 Submission at page 26

Working towards common standards and specifications where circumstances allow would be a major step forward and this is dealt with further in section 3.3 below.

Our members commonly refer to the over engineering and over specification issues as requiring a Rolls Royce solution when other more practical and efficient solutions are at hand. As noted previously Contractors tended to be very pragmatic about this putting this down to the current “risk averse” approach of authorities or their consultants.

If contractors are asked to tender to particular technical specifications they will do so as failure to do so will result in a non-conforming tender.

One of our members related to us an example where his company was required to construct and install drainage pits to what was regarded as the most expensive option notwithstanding that from an engineering point of view in our member’s judgement this was totally unnecessary.

Aligned with loss of engineering skills in local government which is discussed further in the next section the cost to business, the community and indeed the taxpayer becomes apparent and is discussed in more detail at section 2.3 below.

The Commission has noted in its draft report the important work that is being undertaken on developing local laws we believe that such work should continue to be strongly encouraged.¹¹

Whilst the Draft Report notes that in various jurisdictions there is the capacity to review performance and that at least in NSW there are tools for local government to self-assess we believe further is needed as indicated in Recommendation 3.

Recommendation 2

That Governments both Federal and State continue work with local governments in relation to model laws to assist standardisation of local laws across local government.

Recommendation 3

That performance measures be developed for the administration of local laws with the results published in the council’s annual report.

¹¹ PC Draft Report at Page 22

2.2.3 Inadequate resourcing and deskilling in local government

In the Draft Report we note that “ a number of participants expressed concern that inadequate resourcing of LGs is impacting on LG regulatory processes and decision making creating unnecessary burdens on business”.¹²

A number of the suggestions for leading practice in the Draft Report should be encouraged however in the case of civil construction we would make two key points. It is not just inadequate resourcing but rather the actual loss of civil engineering skills from local government and lack of procurement skills which add costs to projects.

There is now considerable data which supports our comments. This is referred to below.

(a) Loss of engineering skills

In the CT Management Group 2009 Report into impediments to the efficient delivery of sub-divisions and road infrastructure one of the findings of that research was that:

“Authorities were losing the older more experienced supervisors and replacing these with younger less experienced personnel. Many contractors felt that authorities needed to improve succession planning and programs to pass on the experience to younger personnel.”¹³

In practice what this results in is over-engineering of contracts and poor contract management practices which adds to the cost of the project which has been illustrated in the examples above.

In an environment of acute skills shortages especially in engineering this is not easily resolved. However, there are solutions to this which include involving the contractor in the early stages of a project and in the design and construction.

(b) Lack of capabilities in procurement practices.

There are also problems in the capability of councils in relation to procurement. We have made some further comments on procurement in Section 3 below.

The E&Y Report found

“An assessment of procurement capability across the sector reveals a self assessed “low/medium-only” level of capability, with higher levels of maturity in metropolitan compared to regional councils. The level of interest by senior council staff in the *Local Government Procurement Strategy* workshops, interviews and

¹² PC Draft Report page 227

¹³ 2009 Report at page 3

data collection suggests a growing appreciation of the importance of procurement.”¹⁴

Importantly, overall that report found that there is a real and tangible cost to poor or sub optimum procurement practices:

“After undertaking category-specific analysis, and considering existing procurement practices, the adoption of better practice procurement across the sector has the potential to yield annual savings in the order of \$180-350 million per annum. This is a significant number, even at the lower end of the scale.”¹⁵

Recommendation 4

That active steps be taken to ensure early contractor involvement in infrastructure planning and development.

2.3 What is the cost of this regulatory burden?

CCF’s has indicated in a number of previous submissions to VCEC and other stakeholders that inappropriate regulatory controls, inconsistent applications of standards, over engineering, unnecessary processes and poor tendering and contract management practices have impacted upon the provision of infrastructure and the cost of developing subdivisions and hence housing affordability.

Indeed, CCF Victorian members in 2009 believed that in some instances, subdivision construction costs could be reduced by upwards of 10% through the removal of the impediments to the efficient delivery of infrastructure. This equates to approximately \$8,000 per house allotment. That cost anecdotally is now likely to be between \$9000 and \$10,000 an allotment.

Both the E&Y report and the Allen Consulting Report attempt to quantify the cost in dollar terms of regulatory burdens.

As noted previously E&Y research concluded that the adoption of better procurement practices across the sector has the potential to yield annual savings in the region of \$180-350 million¹⁶.

The Allen Consulting Report undertaken for VCEC found that the total cost of planning and building requirements administered or imposed at the local government level (including costs associated with private building surveyors issuing permits rather than councils) is estimated at \$795.9 million per annum. It did not quantify if this was either productive or unproductive regulation¹⁷.

¹⁴ E&Y Report at Page 4

¹⁵ E&Y Report at Page 4

¹⁶ E&Y Report at page 5

¹⁷ Allen Consulting Report at vii

3 BUILDING AND CONSTRUCTION – RESPONSE TO CHAPTER 7 OF THE DRAFT REPORT

A number of the key points made in this section of the Draft Report are highly relevant and are commented on further by us in this section.

Whilst the chapter focuses on building and building approval processes we would like to focus particularly on the civil construction which as noted previously are usually the first “trades” on the site.

One of the major issues we would like to draw attention to is procurement because how local government undertakes this process has a considerable impact on the cost and efficiency of infrastructure delivery.

In this section we make a number of suggestions for reform.

3.1 Need for forward capital works programs

The failure of many councils to publish and implement rolling capital works programs inhibits the efficient delivery of infrastructure projects and therefore has a real cost to communities and the taxpayers.

As noted in the 2009 submission:

“Capital works programs tailored to the council’s annual budget cycle contribute to:

- multiple tenders being invited in clusters;
- inadequate scoping of projects;
- contract periods being unrealistic;
- construction being required to be undertaken in adverse weather conditions;
- lumpiness in cash flows; and
- little incentive to invest in skills formation, innovation and long-term planning. “¹⁸

Lack of forward capital works programs also have an impact on skills development. Contractors in such circumstances either don’t take on employees, don’t retain employees or are unable to keep employees for longer term training required for apprenticeships. This in turn accentuates skills shortages.

Noted below we make the recommendation that Councils be required by regulation to prepare and publish their achievable detailed forward 3 year capital works programs on their website and to

¹⁸ 2009 Submission see page 19

update that information by 30 June each year. The word “achievable” is important. It is of no benefit to contractors or councils if the list is merely a “wish list” of what the Councils would like to achieve.

Recommendation 5

Councils be required by regulation to prepare and publish their achievable detailed forward 3 year capital works programs on their website and to update that information by 30 June each year.

3.2 Responsiveness of Councils

In Chapter 7 there is considerable discussion in relation to responsiveness of councils generally in terms of variation from building standards, approval delays, on site construction management and construction stage inspections.

We would echo and support such concerns however one matter we would also add is frustration from contractors in relation to tendering processes which also lead to delay and additional costs.

In the 2009 Report problems in tendering was a focus of the concerns of contractors with many believing that whilst the tendering process complied with normal probity requirements many elements of the process were causing concern.

These included extending the tender beyond 90 days, requesting additional or amended prices when the contractor is clearly not in the running and a lack of proper evaluation leading to price being the only criteria in nearly all cases¹⁹.

Further comment as noted in our 2009 Submission were as follows:

“Particular areas of concern include:

- Letters not being responded to in a reasonable period or at all.
- Telephone calls not returned.
- Responses to requests not addressing all issues raised.
- Need for regular follow-up of requests.
- Promises for supply of information/responses and further feedback not being honoured.
- Convoluted processes to secure access to the right person.
- Lack of courtesy.
- Prescribed timelines for processing of tenders not being honoured.
- Feedback not being provided to tenderers on the status of the evaluation of the tenders received.

¹⁹ 2009 Report at page3

- Inadequate advice to tenderers on the outcome of their tenders.”²⁰

All of this adds to cost both actual and has noted earlier opportunity costs.

Recommendation 6

Require common service standards and an annual report against a service charter in a Council's Annual Report.

3.3 Standardisation of processes and regulatory streamlining

A number of the comments made in relation to Building standards and processes are also applicable to civil construction.

One of the major concerns of the civil sector is in relation to issues related to standardisation or lack thereof

This a broad ranging issue as it starts with the tender and procurement process, includes the contract process, technical specifications and on site management.

In Section 6.4 of our 2009 Submission we made a number of suggestions for reform. These reforms deal with the range of standardisation issues raised above and are highly relevant in the context of this draft Report. It is useful to provide some further context on these reforms as follows:

3.3.1 Some context for the recommendations we make in this section

As noted in section 1.4 of this submission in October 2007 the CCF (Victoria) in conjunction with the Institute of Public Works Engineering Australia and the Municipal Association of Victoria published a Best Practice Guide for tendering and contract management.

The Guide includes the best attributes of Codes from other states, the then current Victorian Code of Practice for the Building and Construction Industry as well as work in New Zealand.²¹

The principles referred to in the Guide are at Annexure D. A copy of the Guide is available on request.

In relation to the other recommendations below the following cross referencing to issues raised in this submission may be of assistance.

²⁰ 2009 Submission at page 20

²¹ The New Zealand Transport Agency (formerly Transit NZ) has developed a methodology for evaluating non price weighted attributes for certain contracts such as the PQM simple contract through a process known as “non price attribute assessment”. See <http://www.transit.govt.nz>

- Recommendation 7 (b) responds to the comments made in section 2.2.2 supra.
- Recommendations 7 (c), (d) to section 3.2 supra.
- Recommendation 7 (e) to section 3.5 post
and
- Recommendation 7 (f) to a number of statements in this submission generally.

Recommendation 7 - Recommendations for Reform in Standardisation issues

These recommendations subject to some amendments to reflect the National focus of this submission are as follows :

“to bring about standardisation in the delivery of civil infrastructure, (*reforms are needed*) including:

- adoption by **all** councils of the principles embodied in the MAV/IPWEA/CCF *Best Practice Guide for Tendering and Contract Management*;
- adoption by **all** councils of AS4000 as the General Conditions of Contract for all infrastructure contracts;
- development and adoption of a common tender evaluation tool;
- development and adoption of a common electronic tendering platform;
- resolution of contract disputes by mediation rather than costly arbitration; ... and
- importantly**, ensure that the standardisation of technical specifications does not contribute to the considerable overdesign of some elements of infrastructure currently endemic throughout Local Government (i.e. pavements in residential streets that could accommodate 747's!), nor the capacity for councils to unilaterally prescribe higher standards of design and construction.²²

3.3.2 Recommendations for Reform in Regulatory Streamlining

In relation to issues of regulatory streamlining any process which cuts delay or multiple regulatory approvals would be welcomed. The example give at section 2.2.1 shows how delay can particularly impact upon contractors and the work they undertake.

Additionally, regulations should be introduced requiring local government to advise of their performance against a key set of defined performance indices to be developed in consultation with industry and stakeholders.

We also support the use of sunset requirements as a means of dispensing with redundant and increasingly inappropriate regulation although we note that it may be that additional resources would be required to assist local government in undertaking this.

Recommendation 8

Support for processes which cuts delay or multiple regulatory approvals for example one stop shops, one environmental regulation approval process etc.

Recommendation 9

Regulations should be introduced requiring local government to advise of their performance against a key set of defined performance.

Recommendation 10

That local laws be subject to sunset requirements to dispense with redundant and increasingly inappropriate regulation by Local Government.

3.4 Contract Management Practices

Another issue raised by our members which is in part related to the issues of skills referred to in section 2.2.3 above is that the skills and experience of those people managing contracts was seem to be below the level required to effectively and efficiently manage the contract process.

This is separate to but aligned with managing construction site activity.

The major problems cited by member included lack of experience, slow decision making, lack of appropriate delegation to Superintendents Representatives and in some cases a bureaucratic approach to the process.

As was noted in the 2009 Report:

“All companies identified having problems with the manner in which contracts are managed by the client or authority. Contracts managed by consultants, such as private subdivisions or special projects for local government, were managed in a more professional and consistent manner than contracts managed by in-house staff.”²²

²² Note that former Recommendations 5 and 7 have been removed as they rated more to Victorian matters

Recommendations for Reform

See Recommendation 2

Early contractor involvement in the early stages of a project and in the design and construction of infrastructure projects.

3.5 The cost of disputes

We note that the Draft Report does deal with the need for appropriate dispute resolution mechanisms within local government, however we would like to raise a slightly different issue.

Rather than a dispute in relation to a particular local government decision multiple and inconsistent regulation, poor procurement and contract management practices and application of different regulatory standards can themselves lead to disputes.

There is research available which seeks to quantify the cost of disputes. For example the CRC Construction Innovation Study on "Dispute Avoidance and Resolution"²³. That study found that on an analysis of available industry data regarding the direct cost of resolving disputes, and feedback from clients, contractors and legal practitioners:

"...that an industry-wide general magnitude estimate of the direct cost of resolving disputes of between about \$560 million and \$840 million per year. When the direct cost of resolving disputes is added to the avoidable costs, the total waste exceeds \$7 billion per year, given construction industry turnover of \$120 billion in 2008-09."²⁴

Whilst these figures relate to construction generally none the less it is reasonable to assume a portion of these costs will relate to disputes with councils and local authorities..

The Aurecon Report also noted that:

"The time, effort and energy spent on resolving claims and disputes represents and opportunity cost to the civil infrastructure industry. If these costs can be avoided by appropriate attitudes and practices the same resource pool is capable of producing more public and private infrastructure for the benefit of the community as a whole. Traditional methods of dispute resolution are adversarial in nature and do not start until the parties have developed contrary positions and a difference or dispute has crystallised.

²³ CRC Construction Innovation Study on "Dispute Avoidance and Resolution" available at www.construction-innovation.info

²⁴ Ibid Page 3

Today's best practice requires proactive issue resolution processes to be employed that attempt to resolve issues as they arise and before a dispute forms. That is proactive issue resolution seeks to resolve claims as well as disputes."²⁵

It is noted that an outcome of the CRC study was the Guide to leading practice in dispute resolution this might be a publication which should be the source of further consideration within local government building and construction activities.

4 CONCLUSION

In this submission we have responded to a number of the issues raised in the Draft Report. Additionally, we have added a perspective from the civil construction industry with particular reference to the impact of local government procurement and tendering practices and how these impact on costs.

In particular we note with approval the comments in the Overview at page 2 that:

“Unnecessary business burdens will be minimised when LG’s regulate well. Central to this are the state/territory regulatory frameworks and having the requisite resources and expertise. The most important gaps in that support provided by states to LG’s include:

- limited guidance on how to administer, inspect and enforce regulations;
- no clear indication of state regulatory priorities
- insufficient consideration of LG capacity to administer and enforce regulation
- no central register of the state laws for which LG has a role in administration, enforcement and/or referral.”

In our submission we have made 10 detailed recommendations for reform which we commend to the Commission.

²⁵ Page ix

APPENDIX D

- D1 Victorian branch submission to the Victorian Competition and Efficiency Commission (VCEC)
Inquiry into streamlining local government regulation November 2009
- D2 Key Principles Best Practice Guide to tendering and contract management



Inquiry into Streamlining Local Government Regulation

Submission number: LG-21

Name of participant: Civil Contractors Federation

Date received: 8 December 2009

Number of Earlier Submissions: 0

Number of Pages: 57

Comments:

Attachment 1: Final Draft CCF Procurement Study



**Inquiry into Streamlining
Local Government Regulation**

Victorian Competition and Efficiency Commission

SUBMISSION

November 2009

Civil Contractors Federation
PO Box 6165
HAWTHORN VIC 3122

Contents

EXECUTIVE SUMMARY	3
1 INTRODUCTION	7
2 CIVIL CONTRACTORS FEDERATION	7
3 SCOPE OF THE INQUIRY	8
3.1 Terms of Reference	8
3.2 Regulations Administered by Local Government	9
3.3 Matters to be Addressed in this Submission	11
4 LOCAL GOVERNMENT	11
5 COMMENT ON IDENTIFIED ISSUES	12
5.1 Relevant reports, reviews or studies	12
5.2 Regulations Administered by Local Government	13
5.3 Case Studies	14
5.4 Local Government Administration of State Regulations	14
5.5 Access to Procurement	16
5.6 Regulatory Performance of Local Government	18
6 SPECIFIC ISSUES RELATING TO PROCUREMENT.....	18
6.1 Capital Works Programs Delivery	19
6.2 Forward Capital Works Programs	19
6.3 Responsiveness of Councils	20
6.4 Standardisation	21
6.5 Coordination of Services	22
6.6 Dial Before You Dig	22
6.7 Power Companies	23
6.8 Benchmarking	23
6.9 Role of Local Government & Local Laws	24
6.10 Legislation and Duplication	25
6.10.1 Environmental Legislation.....	25
6.10.2 'One Stop Shop' Approvals Processes.....	25
6.10.3 Consistence of Application of Regulatory Controls.....	26
6.11 Resolving Contractual Disputes	27
7 ACHIEVING CIVIL INFRASTRUCTURE PROCUREMENT BEST PRACTICE	27
8 SKILLING THE INDUSTRY	29
9 CONSULTATION WITH THE CIVIL CONSTRUCTION SECTOR	30
10 CLIMATE CHANGE	31
11 IMPLEMENTING VCEC RECOMMENDATIONS	32
12 ATTACHMENTS.....	
12.1 Attachment 1 - Victorian regulations administered by local government	34
12.2 Attachment 2 – Report on Subdivision and Infrastructure Development Costs	37
12.3 Attachment 3 – Global Financial Crisis – Report April 2009	41
12.4 Attachment 4 – Submission to the Minister for Energy & Resources	43
12.5 Attachment 5 – List of Environmental Legislation & Regulations.....	50
12.6 Attachment 6 – Achieving Civil Infrastructure Procurement Best Practice - Summary	52
12.7 Attachment 7 – Submission to Premier – Australian Apprentices Taskforce	54
12.8 Attachment 8 – VCEC Regional Inquiry Submission.....	57
12.9 Attachment 9 – Victorian Civil Construction Industry Alliance Terms of Reference	58
12.10 Enclosure - Report: Achieving Civil Infrastructure Procurement Best Practice	

EXECUTIVE SUMMARY

The Civil Contractors Federation (CCF) represents those companies responsible for the delivery of Victoria's infrastructure such as roads, bridges, subdivisions, water, sewerage, drainage, gas and telecommunication facilities.

In previous submissions to the Commission we have underscored how inappropriate regulatory controls, inconsistent applications of standards, over engineering, unnecessary processes and poor tendering and contract management practices have impacted upon the provision of infrastructure and the cost of developing subdivisions and hence housing affordability. Indeed, CCF members believe that in some instances, subdivision construction costs could be reduced by upwards of 10% through the removal of the impediments to the efficient delivery of infrastructure. This equates to approximately \$8,000 per house allotment.

Whilst the Inquiry relates specifically to local government regulation we submit that many of the issues to which we have referred have a solution not in changed legislation but rather in the State Government providing clear direction, supported by a tight compliance regime, on the processes that local government should follow.

In this submission we have revisited and updated many of the issues previously submitted to the Commission and introduced some new issues for consideration. We have made a number of recommendations for your consideration which we believe will reduce costs and bring long standing benefits to the community. Those recommendations are:

1. Regulations Administered by Local Government

That regulations be introduced setting out in detail the reporting regime required to advise the community and stakeholders of the performance of each Local Government unit against a set of defined key performance indices.

2. Local Government Administration of State Regulations

That a Task Force consisting of the Municipal Association of Victoria, Institute of Public Works Engineering Australia, Victorian Civil Construction Industry Alliance and the Insurance Council of Australia be convened to develop a framework for level of insurance required and any special requirements for the civil construction sector.

3. Access to Procurement

That Local Government be required by regulation to competitively test all works and services with a value in excess of \$250,000 or alternatively produce in a prescribed form why that should not occur with such resultant documentation being available for inspection by the public.

4. Capital Works Programs Delivery

That a Task Force consisting of the Municipal Association of Victoria, Institute of Public Works Engineering Australia and the Victorian Civil Construction Industry Alliance be convened to develop a framework for the efficient planning and delivery of capital works, making due allowance for the constraints of all relevant legislation.

5. Forward Capital Works Programs

That all councils be required by Regulation to prepare and publish their forward 3-year capital works programs on their website and to update the information by the 30 June of each year.

6. Responsiveness of Councils

That it be regulated to require each council to:

- prepare common service standards in relation to the interaction between councils and their providers, drawing on the work undertaken by the Small Business Commissioner in the development of the Small Business Service Charter; and
- report annually on their performance against the Service Charter in the council's Annual Report.

7. Standardisation

That the Commission consider the need for regulation to bring about standardisation in the delivery of civil infrastructure, including:

1. adoption by **all** councils of the principles embodied in the MAV/IPWEA/CCF *Best Practice Guide for Tendering and Contract Management*;
2. adoption by **all** councils of AS4000 as the General Conditions of Contract for all infrastructure contracts;
3. development and adoption of a common tender evaluation tool;
4. development and adoption of a common electronic tendering platform;
5. reduction of the volume of material required to be submitted with tenders in the interest of meeting the Government environmental objectives;
6. resolution of contract disputes by mediation rather than costly arbitration;
7. standardising all aspects of the processes for the approval and final "sign-off" of subdivisions including provision for private certification, where appropriate, similar to the administration of the building regulations ; and
8. **importantly**, ensure that the standardisation of technical specifications does not contribute to the considerable overdesign of some elements of infrastructure currently endemic throughout Local Government (i.e. pavements in residential streets that could accommodate 747's!), nor the capacity for councils to unilaterally prescribe higher standards of design and construction.

8. Coordination of Services

That a review of the content and application of the *Coordination of Streetworks Code of Practice – Victoria* and its interaction with the *Management of Infrastructure in Road Reserves – Code of Practice 2008* be undertaken with the view to achieving a standardised approach to the coordination of location and installation of utility services within road reserves.

9. Dial Before You Dig

That it be regulated to make it mandatory for all Victorian councils to be a member and contributor to Dial Before You Dig.

10. Power Companies

That the Commission support the findings of the *Submission to the Minister for Energy & Resources into the Responsiveness of Power Companies Report - August 2009*.

11. Benchmarking

That the Essential Services Commission be asked to examine how the proposed benchmarking regime can be extended into the civil construction sector as a means of enhancing the planning and delivery of infrastructure.

12. Role of Local Government & Local Laws

1. That as part of the process for making a local law, a Regulatory Impact Statement (RIS) be a requirement of the development phase in the same manner as required for changes to State legislation;
2. That Local Government Victoria prepare a standard template for local laws to assist in achieving some standardisation across the State;
3. That performance measures be developed for the administration of local laws with the results published in the council's annual report.

13. One Stop Shop Approvals Process

That consideration be given to pursuing a 'one-stop-shop' approval process for civil infrastructure works, wherever possible.

14. Consistency of Application of Regulatory Controls

That Local Government Victoria develop guidelines for a consistent approach to the administration of legislation by Local Government in relation to the activities of the civil construction sector.

15. Resolving Contractual Disputes

That Local Government Victoria, in conjunction with the Victorian Civil Construction Industry Alliance, develop alternative options to arbitration for inclusion into standard contract documentation for Local Government.

16. Achieving Civil Infrastructure Procurement Best Practice

That where appropriate, the Commission support the implementation of the recommendations of the Aurecon Report – *Achieving Civil Infrastructure Procurement Best Practice*.

17. Skilling the Industry

That the Commission support our position in relation to the implementation of the COAG decision relating to the skilling of the civil construction sector.

18. Consultation with the Civil Construction Sector

That the Commission examine the potential for the Victorian Civil Construction Industry Alliance to serve as the stakeholder reference group for the civil construction sector under the auspice of a Government Department.

19. Climate Change

That the Commission support the development of the necessary tools and guides to ensure that all recording and reporting requirements across the three spheres of government, i.e. Federal, State and Local, are simple and uniform.

20. Implementing VCEC Recommendations

That Local Government Victoria develop an Implementation Strategy that makes provision for additional targeted resources, an implementation timetable and evaluation criteria.

CONCLUSION

On behalf of our Members, we thank you for the opportunity to submit these recommendations which we believe, if implemented, will assist in reducing costs for the provision of infrastructure and drive the infrastructure dollar further. On behalf of the CCF we confirm our commitment to work with yourselves and the Government to address the specific issues raised in this submission.

We would welcome the opportunity to elaborate on the issues and recommendations contained within this submission.

Bob Seiffert
Chief Executive Officer
Civil Contractors Federation

1 INTRODUCTION

This submission is presented by the Civil Contractors Federation in response to the review of “*Streamlining Local Government Regulation*” currently being undertaken by the Victorian Competition and Efficiency Commission (VCEC).

The CCF welcomes this Inquiry and hopes that the CCF’s contribution to the Inquiry is viewed not only in a positive light, but also as a genuine attempt to influence current and future regulatory regimes for Local Government in the best interests of the people of Victoria.

This submission will highlight the current implications and impact of existing regulations, or lack thereof, on the Victorian community as experienced by the membership of the CCF in providing the civil infrastructure upon which the economic viability and sustainability of the State depends.

2 CIVIL CONTRACTORS FEDERATION

The Civil Contractors Federation is a national industry organisation representing companies responsible for building Victoria’s infrastructure such as roads, streets, subdivisions, water supply, sewerage, drainage, bridges and telecommunications.

From its humble beginning at a meeting in Kensington in September 1943, the CCF has grown to represent some 2,000 members nationally, ranging from the smallest operation to some of the largest construction companies in Australia.

The Victorian Branch represents more than 620 members involved in developing and maintaining the States infrastructure.

Today, the CCF still upholds its original aims of improving the civil construction industry and providing a voice for civil contractors at all three levels of Government.

It also provides a range of member services that includes an extensive training program, OH&S, human resources and industrial relations consultancy advice, as well as the sale and implementation of integrated quality management systems.

Based on a recent survey, members of the Victorian Branch undertake more than \$2.5 billion of works annually and construct in excess of 90% of the State’s new civil infrastructure.

In addition:

- 89% of Members have a turnover of less than \$7.5 million (7% have a turnover of between \$7.5 million and \$25 million)
- 59% of Members employ less than 10 staff (27% between 11 and 60 staff)
- 29% of Members own/operate less than 10 items of plant (55% own/operate between 11 and 40 items of plant)

The principal works undertaken by Members include:

- | | |
|---------------------------|-----|
| • Earthworks | 73% |
| • Minor Road Construction | 52% |
| • Major Road Construction | 17% |

- Drainage 46%
- Water supply and sewerage 37%
- Concrete paving, etc. 28%
- Dams 23%
- Asphalt and sealing 26%
- Quarrying 14%

Reflecting one of the reasons for its establishment, the CCF seeks to influence public policy in the areas where new legislation or departmental policy are likely to adversely impact upon the people of Victoria or the viability of CCF Members, particularly in regards to:

- Strategic direction for the Civil Construction Industry
- National Training Framework
- Standards and Industry Standards specifications
- Government regulations and policies
- Industrial Relations and Workplace Safety
- Infrastructure funding
- Industry codes of practice
- Contracts and Tendering Procedures
- Taxation Issues
- Small business viability
- Urban and rural planning and development
- Contractor Accreditation/Prequalification
- Responding to climate change

In summary, the CCF strives to be seen as a credible and relevant industry association capable of influencing the political landscape to the benefit of Victorians and civil construction companies.

Further information regarding the CCF may be found on its website at www.civilcontractors.com.

3 SCOPE OF THE INQUIRY

3.1 *Terms of Reference*

The Commission (VCEC) is to inquire into and report on:

1. Impacts of regulations administered by local government on business, including small businesses such as home based businesses.
2. Scope for streamlining and harmonising the practices adopted by Local Government to administer State Government regulation, and options for both levels of government to support best regulatory practice.
3. Inconsistencies between councils in Local Government regulations and in practices for their administration, and options for greater streamlining and harmonisation of regulations and their administration.
4. Regulatory impediments to small and medium enterprise (SME) access to procurement associated with major infrastructure projects and options for removing these impediments.

5. The extent of costs incurred by Local Government in administering regulation, and options for councils to reduce these costs.
6. An estimate of overall economic impact (including reductions in the regulatory burden on business) of options identified in this inquiry, including any incremental benefits to existing reforms being progressed at Commonwealth or State level.

The emphasis in the inquiry is on administration of regulations by local government rather than on a direct evaluation of legislative frameworks themselves.

The structure of local government and performance of individual Local Governments are outside the scope of this inquiry.

The Commission will take into account any substantive studies or developments undertaken in Victoria and elsewhere – including by the Commonwealth and other States, and international best practice – that may help it provide advice on this Reference.

3.2 Regulations Administered by Local Government

Victorian Local Government is responsible for the administration, either wholly or in conjunction with State Authorities, for twenty-nine separate pieces of legislation. A full list is attached as Attachment 1. Of these seven (7) have a direct impact on members of the CCF in their activities as contractors or associated activities eg developers.

Legislation having a direct impact includes:

Planning and Environment Act 1987

This legislation has a direct impact through the planning process which is administered by Local Government and sets out the conditions for the development of land for residential and commercial purposes. Conditions can relate to the standards for construction through to environmental controls on works on the site. A review of the Act is currently underway.

Environment Protection Act 1970

Whilst the Act provides a framework for protection of the environment, it is administered by a number of different government departments in conjunction with Local Government. This tends to create inconsistencies in relation to interpretation which invariably leads to delays in works.

Road Management Act 2004

Both Councils and civil contractors are required to comply with the requirements of regulations and codes of practice made under this Act. Those regulations and codes having a major impact on CCF Members include:

- *Road Management (Works and Infrastructure) Regulations 2004* – These regulations and complimentary code of practice now regulate the issue of permits for opening roads. At the present time Local Government is not taking a consistent approach to the processing of applications for permits to undertake works in road reserves. These inconsistencies invariably contribute to increased costs which are passed onto the consumer.

- *Workplace Safety – Traffic Management Code of Practice* – This code sets out the requirements for the preparation of Traffic Management Plans. The CCF has made various submissions from time to time to VicRoads seeking a review of the code to remove ambiguities and uncertainties in its application. This Code is currently under review and is nearing finality.
- *Management of Infrastructure and Road Reserves Code of Practice*, October 2008 – This code provides practical guidelines for Councils as road authorities and the various other utilities and companies that are required to work together within the road reserve. The code lays down the guidelines for coordinated works planning, consent and notification, works management and the sharing of information.

Subdivision Act 1988

This Act sets out the procedures for the subdivision of land placing a key role of certifying compliance on Local Government.

Whilst direct impact is not always evident, many contractors, particularly in regional areas are often also developers and subsequently are required to comply with Local Government requirements which lack consistency across the State.

In addition, this Act provides the basis for the legal enforcement of engineering standards for design and construction which contractors are required to comply with onsite.

Crown Lands (Reserves) Act 1978

This Act provides for the management of Reserved Crown Land, including the involvement of Council through committees of management. Contractors may become involved where roadworks are required over Reserved Crown Land and could be subject to terms and conditions that specifically relate to a particular reserve.

Road Safety Act 1986

Councils have enforcement responsibilities and prosecution powers under the Act, particularly parking. Inconsistencies in enforcement of clearway requirements across Councils is impacting negatively on the Governments objectives to reduce congestion on arterial roads.

Water Act 1989

Although Local Government has only limited responsibilities under the Act, it does impact directly on the operation of contractors in relation to the ability to obtain access to water for road construction and subdivision works.

More importantly is the role that Local Government plays in issuing permit conditions for new subdivisions. The various water authorities set out their conditions which are then automatically incorporated into the planning permit conditions for compliance by the contractor. It is the lack of consistency of these conditions across the various water authorities that leads to confusion in interpretation and ultimately costly delays on developments.

3.3 Matters to be Addressed in this Submission

The Commission, in its “Issues Paper” dated September 2009, has outlined a number of matters that it wishes to see addressed in submissions. The CCF has addressed these issues in this submission.

The CCF has also identified the following “issues” as having a major impact on its members and has submitted comments in support of its current position in relation to:

- i. Relevant reports, reviews or studies
- ii. Regulations administered by Local Government
- iii. Case studies
- iv. Local government administration of State regulations
- v. Access to procurement
- vi. Regulatory performance of Local Government.

These are each addressed in detail in Section 5 of this Submission.

In addition, the CCF has nominated the following matters as relevant to the Terms of Reference and hence worthy of comment:

- Capital works programmes delivery
- Forward capital works programmes
- Responsiveness of Councils
- Standardisation
- Coordination of services
- Dial Before You Dig
- Benchmarking
- Local laws
- Legislation and duplication
- Resolving contractual disputes
- Achieving civil infrastructure procurement best practice
- Skilling the industry
- Consultation with the civil construction sector
- Climate change

4 LOCAL GOVERNMENT

Local councils are commonly referred to as the third sphere of government, the Commonwealth and State Governments representing the first and second spheres. Unlike the Commonwealth and State Governments, the status of Local Government is not enshrined in the Australian Constitution. It is the State Government which enacts the legislative framework for councils and which makes the regulations within that framework.

Local Government performs a critical role in the community. Councils are the sphere of government that the majority of individuals and firms have the most direct contact with. Thus local councils have a substantial and immediate impact on their local communities in a diverse range of areas, from regulation and planning to provision of community and other services.

Not the least of the impacts is the part that councils play in the local economy. These impacts arise as a result of councils actively promoting new business developments and also by the financial transactions that councils undertake in order to carry out their functions. In view of these considerations, it is important that the financial affairs of councils are managed in an efficient manner. Other aspects required of councils in their financial dealings are probity, transparency and accountability. These elements have their own vital importance in providing confidence in the council and they are relevant to the efficient spending of ratepayers funds.

Regulations made under the Local Government Act 1989 impact on councils in two broad ways:

- they provide powers to councils to undertake their regulatory functions; and
- they provide a framework for the management of councils and place controls on how councils operate.

5 COMMENT ON IDENTIFIED ISSUES

5.1 *Relevant reports, reviews or studies*

Are there other relevant reports, reviews or studies, both Victorian or from elsewhere that have examined the business impacts of regulations administered by local councils. Do you have any comments on the findings of the reports above or any you have identified, and the implementation of those findings?

a) **Comment and Response**

A number of reports, reviews and studies have been undertaken by a number of bodies (including the CCF) in recent times that have examined the impacts of regulations administered by Local Government on the Victorian community. Whilst most of these are already known to the Commission they are listed again for completeness and include:

- *Achieving Civil Infrastructure Procurement Best Practice - Report CCF & VicRoads.*
- *Best Practice Guide for Tendering and Contract Management, October 2009* - endorsed by the Institute of Public Works Engineering (IPWEA), Municipal Association of Victoria (MAV) and the CCF.
- *Best Practice Local Laws Strategy 2008* - Local Government Victoria.
- *Civil Construction & Climate Change* - September 2009, Pitt & Sherry for the CCF.
- *Code of Practice for the Building and Construction Industry* (March 1999)- Department of Planning and Community Development.
- *Guide to Leading Practice for Dispute Resolution* November 2009, CRC Construction Innovation.
- *Local Government Procurement Strategy*- September 2008, Department of Planning and Community Development.
- *Local Government (Tendering) Regulatory Impact Statement- 1999*, Department of Local Government, NSW.

- *Report on Subdivision and Infrastructure Development Costs*- January 2009, CCF.
- *Room for Improvement, June 2009*- UK Audit Commission.
- *Small Business Red Tape Survey*, June 2006 - Ehrenberg-Bass Institute for Marketing Science, UniSA.
- *Submission to the Minister for Energy & Resources into the Responsiveness of Power Companies*, August 2009 - CCF.
- *VCEC Submission to Regional Inquiry* September 2004 - CCF.
- *VCEC Submission to Regulation of the Housing Construction Sector* March 2005 - CCF.
- *VCEC Submission to Liveability Inquiry* January 2008 - CCF.
- *VCEC Submission to Environmental Legislation* February 2009 – CCF.
- *Victorian Climate Change Green Paper*, 2008 - State Government of Victoria.
- *Submission to the Minister for Energy & Resources into the Responsiveness of Power Companies* - August 2009, CCF.

These documents have been used as references in the CCF's research for this Submission.

5.2 Regulations Administered by Local Government

- a) How do the regulations administered by local governments benefit the community, particularly those State and local laws administered by councils in the areas of building and construction activity, planning, road management, public health and environmental impacts?
- b) What are the specific problems that State and local laws relating to these areas of regulation are designed to address? What information is available on the significance of these problems and differences between municipalities?
- c) What performance reporting and evaluation occurs covering the administration by councils of State regulation?

a) Comment and Response

Regulations administered by Local Government benefit the community by introducing standards and practices that are designed to improve the community amenity and promote the efficient and effective delivery of services. The CCF submits that the latter objective is not being achieved and needs to be addressed.

b) Comment and Response

Whilst the various regulations set down the rules, each Local Government unit (there are 79 across the State) is required to interpret and administer the regulations within their municipal area. This leads to inconsistencies across the State. This is discussed in detail in Section 6 of the submission.

c) Comment and Response

The lack of performance reporting on the both the administration of State regulation and the performance of councils themselves is of concern. Refer to Section 6 for a detailed discussion on this matter.

It is **recommended** that regulations be introduced setting out in detail the reporting regime required to advise the community and stakeholders of the performance of each Local Government unit against a set of defined key performance indices.

5.3 Case Studies

- a) Are you able to provide specific case studies and/or examples where the administration of State and local laws by councils (in areas such as building and construction activity, planning, road management, public health and environmental impacts) has added to uncertainty, time and costs to business and any information about the magnitude of those impacts?
- b) Examples are also sought of initiatives implemented by councils to improve the administration of regulation to reduce uncertainty, time and costs to business.

a) Comment and Response

A CCF member advised of a regional council that had used its local laws powers to require a permit for filling of residential blocks that was not covered by the local planning scheme. This resulted in delays, additional fees and cost increases that were not required under the planning provisions.

b) Comment and Response

An initiative that is designed to reduce uncertainty, and hence costs, is the preparation of a draft “Memorandum of Understanding (MOU) between Council, Developer and Contractor” through the Local Government Collaborative Procurement Program being administered by the City of Wyndham for the Growth Area Councils. This MOU will clarify the different roles of each of the parties to land development including council supervisors, the developer, consulting engineers and the contractor. This initiative alone could have savings in the order of \$2,000/residential lot.

5.4 Local Government Administration of State Regulations

- a) How does the administration of State regulations by local councils differ in Victoria, especially in relation to building and construction, planning, road management, public health and environmental regulation? If you deal with multiple local governments, have you found it less costly or quicker to deal with some and if so, which? What are the reasons for any differences? What is the impact on business and the broader community of any differences you have observed? Specific examples and/or case studies would be most useful.
- b) Where are there the greatest opportunities to streamline and harmonise local councils’

administration of State regulation, particularly in relation to building and construction, planning, road management, public health and environmental regulation?

- c) What scope exists to improve local councils' processes for implementing regulation through application of risk-based approaches and greater use of alternatives to regulation such as information provision and financial incentives?
- d) Have other jurisdictions in Australia and overseas implemented worthwhile approaches to streamlining and harmonising the administration of regulation by local governments?
- e) What are the nature and extent of any benefits and costs to business and the broader community of streamlining and harmonising initiatives?
- f) How effective have the requirements in the *Victorian Guide to Regulation* and the Intergovernmental agreement between the State and local government been in addressing concerns about councils' capacity to administer State regulations? Are any problems remaining due to gaps in these requirements or how they have been implemented?

a) Comment and Response

Time is always money, therefore any savings in time will immediately turn into savings for the contractor and ultimately the community. We consider that the principal cause of inconsistencies across the State is a direct result of a lack of relevant regulatory controls, over-regulation and serious skills shortages across the industry.

b) Comment and Response

Regulation can best be harmonised through legislated requirements on local government to:

- standardise documentation;
- standardise insurance requirements for contracts in line with the level of risk; and
- adopt and comply with industry Codes such as the *Best Practice Guide for Tendering and Contract Management, October 2007*, endorsed by the Institute of Public Works Engineering (IPWEA), Municipal Association of Victoria (MAV) and the CCF.

c) Comment and Response

Most councils have adopted a "Risk Management Policy" and generally these are supported by Risk Management Procedures based on the Australian Risk Management Standard AS 4360. However, the application in practice tends to be very limited, particularly in relation to insurances for civil construction works. It is still not uncommon to find councils asking for types of insurance that may no longer be available or only at an extreme premium, setting levels of insurance that do not relate to the risk i.e. \$20M for professional indemnity insurance for simple non-design engineering tasks, or for insurance of works where the risk of losing the works is virtually zero e.g. loss of pavement material on a road reconstruction.

It is **recommended** that a Task Force consisting of the Municipal Association of Victoria, Institute of Public Works Engineering Australia, Victorian Civil Construction Industry Alliance and the Insurance Council of Australia be convened to develop a framework for level of insurance required and any special requirements for the civil construction sector.

In the area of planning control, a risk assessment approach could be taken to reduce the detail of, or requirement for, a planning permit. This is particularly relevant in the area of removal of native vegetation where often detailed and involved assessments are required to be submitted to multiple agencies, each providing a different requirement for compliance.

d) Comment and Response

It is often difficult to compare with other countries due to different government structures. This is not an area that the CCF has researched in detail and therefore no further comment is made.

e) Comment and Response

The benefits of harmonising initiatives can be significant over the entire industry. The *Local Government Procurement Strategy* prepared for the Department of Planning and Community Development by Ernst & Young (September 2008) concluded that, amongst other actions, by taking a more strategic and regional approach to procurement Local Government could achieve annual savings of \$180-\$350M. Independent research undertaken by the CCF (*Report on Subdivision and Infrastructure Development Costs*, January 2009) supports this position. See Attachment 2 for the Executive Summary of this latter report.

The major issue here is that the industry will need incentives or regulatory control to make Regional Procurement a reality. The savings achieved through Compulsory Competitive Tendering (CCT) would not have been achieved without the State Government mandating the CCT requirement.

f) Comment and Response

The *Victorian Guide to Regulation* provides an excellent framework for assessing impacts of regulation on businesses however it does not address the basic issue of differing levels of administration by councils due to wide variances in resources and skills available. The CCF believes that it is imperative that local laws adopted by councils be standardised and subject to a Regulatory Impact Statement as applies to other laws adopted at the State level. Refer to Section 6.8 for a more detailed discussion and recommendation.

5.5 Access to Procurement

- a) Are there any regulatory impediments to small and medium enterprise (SME) access to procurement contracts of local councils? How significant are these regulatory impediments compared to other factors that can influence the capacity of SMEs to access procurement such as the scale of contracts?
- b) What are the options for removing any impediments to SME access to procurement and what are the likely benefits and the costs of any changes for SMEs, councils and the broader community?

a) Comment and Response

Tendering is widely accepted as a valuable process in the commercial sector as a means to test the market so as to be able to make decisions on contracts which generate best value for money. Tendering is no less valuable in purchasing and contracting activities of the public sector, and in particular of councils.

Many of the tendering processes used for major projects at the State level eg Alliance contracts, are not generally used in Local Government. The major impediment encountered by contractors is the practice of councils to award, without any competitive process, large works and services to in-house teams. This process has a lack of accountability with generally poor monitoring of costs and standards of delivery. To overcome this situation it is **recommended** that Local Government be required by regulation to competitively test all works and services with a value in excess of \$250,000 or alternatively produce in a prescribed form why that should not occur with such resultant documentation being available for inspection by the public.

b) Comment and Response

A recent study undertaken by CT Management Group for the CCF entitled "Report on Subdivision and Infrastructure Development Costs" (February 2009) found that whilst overall most contractors believed that the tendering process adopted by public authorities complied with normal probity requirements and was acceptable to the industry, in many cases elements of the process are causing concern and could possibly lead to cost pressures on the contractor. The major issues most commonly raised included:

- Bills of Quantities are either not provided or inappropriately structured leading to errors in calculations and difficulties in comparing tenders and assessing progress claims.
- Issue of "addenda", particularly late in the tender period, often causes problems and may lead to contract disputes post-award, once again increasing the costs for both parties.
- Time taken to consider tenders often goes beyond 90 days but contractors are expected to maintain a fixed price.
- Failure to publish a list of tenders received from lowest to highest. This results in a contractor not knowing whether to keep bidding or wait for the outcome.
- Not proceeding with the contract after public tenders have been called. This is another cost that has to be recouped from subsequent contracts.

Generally, the Evaluation Criteria was clearly shown and understood, however many contractors were cynical of the non-financial criteria (too subjective) and suggested that lowest price still remains the determinant factor in deciding tenders.

Many public authorities require all tenderers to submit further details, amended prices, etc despite the fact that they are highly unlikely to win the job. Contractors suggest that negotiations should only be undertaken with a "short list" of contractors. The current practice leads contractors to incurring additional and unnecessary expense which has to be recouped on the next contract.

Many contractors expressed concern that public authorities were reluctant to provide debriefing or feedback to unsuccessful tenderers. It was felt that frank feedback would assist the industry to fine tune its tenders and be more cost efficient.

Refer to Section 6.4 for the recommendation.

5.6 *Regulatory Performance of Local Government*

- a) Are there any practical examples where councils have introduced measures to reduce regulatory burdens and what has been the impact?
- b) Do local governments differ in their regulatory performance, and if so, what factors explain why some local government's regulatory activity imposes lower costs (including delays) on business?
- c) How could the State Government cost-effectively strengthen the capacity and incentives for local government to improve their administration of State and local regulations and to remove unnecessary local laws?

a) **Comment and Response**

The CCF is not aware of any examples.

b) **Comment and Response**

Our research indicates that the principal reasons for a difference in regulatory performance between local government units is due essentially to a variation of skills available, limited resources leading to inconsistencies and an entrenched culture that is resistive to change and contemporary processes.

This is discussed in more detail at Section 8.

c) **Comment and Response**

Incentives for local government to improve the administration of State and local regulations need to be based on a combination of the carrot and the stick approach. Additional untied grants could be provided for improved efficiency in administration of regulations based on a meaningful measure of performance. It is noted however that political drivers may come into play and under those circumstances some regulatory regime may need to be implemented.

6 **SPECIFIC ISSUES RELATING TO PROCUREMENT**

This Submission refers to a broad range of issues that relate to both the legislative and local requirements for procurement by Local Government.

We believe that there are a number of matters that need to be addressed and the implementation of some form of regulatory control may be needed if the local government sector does not respond to the incentives being offered.

In addition to those matters identified and discussed in Section 5 above, the CCF would like to draw the Commission's attention to the following matters.

6.1 Capital Works Programs Delivery

The CCF has undertaken research into the impact that the global financial crisis was having on the civil construction sector. The results of that research are summarized in Attachment 3 – *Findings of the Impact of the Global Financial Crisis on the Civil Construction Industry 2009*.

The particular issue of concern arising from the research is the considerable level of under-delivery of councils' capital works programs, in some instances up to 30%. As you would appreciate, this situation has serious implications not only for jobs in the civil construction industry but also in regard to meeting council's asset management requirements and the Government's state and regional development initiatives.

Based on an annual capital expenditure by Local Government of \$1,766 M and a state-wide carryover of 17%, the State economy is losing an estimated \$305 M per annum in lost economic activity and infrastructure creation. This scenario was recently confirmed by the Ombudsman at the Perfecting Procurement Conference held on 8 October 2009. This situation is even more concerning when considered against the background of the global financial crisis and the need to maintain and create jobs in the civil construction sector.

A matter often cited by Local Government officers is that works are held up due to planning bottlenecks and other regulatory matters. Whilst we appreciate that the planning process can be difficult, particularly where third party objections may be received, we believe that these matters can generally be anticipated and that appropriate lead times should be allowed for all major projects. Better forward planning combined with adequate resourcing will overcome many of these issues.

It is **recommended** that a Task Force consisting of the Municipal Association of Victoria, Institute of Public Works Engineering Australia and the Victorian Civil Construction Industry Alliance be convened to develop a framework for the efficient planning and delivery of capital works, making due allowance for the constraints of all relevant legislation.

6.2 Forward Capital Works Programs

The inability of most councils and some Government agencies to publish and implement rolling capital works programs is inhibiting the efficient delivery of infrastructure projects.

Capital works programs tailored to the councils annual budget cycle contribute to:

- multiple tenders being invited in clusters;
- inadequate scoping of projects;
- contract periods being unrealistic;
- construction being required to be undertaken in adverse weather conditions;
- lumpiness in cash flows; and
- little incentive to invest in skills formation, innovation and long-term planning.

Accordingly, political expediency must give way to the universal implementation of rolling programs across all councils and government agencies in the interest of increased competitiveness, lower costs, enhanced project delivery and investment in skills formation across the entire civil construction sector.

Under the *Local Government Act 1989* councils are required to prepare, seek comment and adopt a Council Plan, Strategic Resource Plan and a Budget. At the completion of each year, councils are required to prepare an Annual Report. Whilst all of these documents comply with current regulations, they do not supply the basic data on capital expenditure which is essential for forward planning by service providers and contractors. The CCF believes that councils should be required, by regulation, to publish detailed 3-year capital works programme at the very least, and to report annually on the level of expenditure achieved.

It is instructive to note that all of Victoria's water companies, in fact, publish their forward capital works programs on their website. We are using this information to inform civil contractors of upcoming works in the water sector.

It is **recommended** that all councils be required by Regulation to prepare and publish their detailed forward 3-year capital works programs on their website and to update the information by the 30 June of each year.

6.3 Responsiveness of Councils

Anecdotally, by and large contractors reported that the responsiveness by councils, water companies and Government agencies were reasonably acceptable during the era of Compulsory Competitive Tendering (CCT).

During the CCT days following council amalgamations in the nineties, the performance of councils was to a large degree monitored by the market. This was later replaced by the "Best Value" concept which, despite being a legislated requirement, is now largely ignored by Local Government. It is very hard to find any recent "Best Value" reports and the CCF believes that this is an area where regulation at the State level is required to ensure that the performance of councils is both monitored and reported upon.

In recent years however, and since the abolition of CCT, contractors have experienced a marked diminution of responsiveness by the aforementioned authorities to requests and tenders submitted by contractors.

Particular areas of concern include:

- Letters not being responded to in a reasonable period or at all.
- Telephone calls not returned.
- Responses to requests not addressing all issues raised.
- Need for regular follow-up of requests.
- Promises for supply of information/responses and further feedback not being honoured.
- Convoluted processes to secure access to the right person.
- Lack of courtesy.
- Prescribed timelines for processing of tenders not being honoured.
- Feedback not being provided to tenderers on the status of the evaluation of the tenders received.
- Inadequate advice to tenderers on the outcome of their tenders.

Lack of responsiveness in the aforementioned areas imposes additional costs on contractors and ultimately the consumer.

Whilst some councils and water companies have adopted a credible Customer Service Charter, most haven't and where they do exist, they are frequently not complied with.

We understand that there has only been limited roll-out within the State Government of the Small Business Service Charter that was developed by the Small Business Commissioner in 2005/06 and which is supported by the CCF.

It is **recommended** that it be regulated to require each council to:

- prepare common service standards in relation to the interaction between councils and their service providers, drawing on the work undertaken by the Small Business Commissioner in the development of the Small Business Service Charter; and
- report annually on their performance against the Service Charter in the council's Annual Report.

6.4 Standardisation

The *Achieving Civil Infrastructure Procurement Best Practice* Report prepared by Aurecon for the CCF (refer to Section 7) identified that there was a desire for standardisation of contractual forms in common use in civil construction contracts. Independent research, *Report on Subdivision and Infrastructure Development Costs*, January 2009, undertaken by CT Management Group for the CCF supports this position. Whilst the CCF has promoted this approach through various channels, eg the Victorian Civil Construction Industry Alliance and the CCF Infrastructure Maintenance Service Group, the implementation of standardisation has been slow.

The current work of the Growth Areas Authority, supported by the growth area councils and the Collaborative Procurement Program, in preparing the Infrastructure Engineering Standards Manual (including tools) is a step in the right direction. However, regulation may be required to ensure statewide take-up.

It is **recommended** that the Commission consider the need for regulation to achieve appropriate standardisation in the delivery of civil infrastructure, including:

1. adoption by **all** councils of the principles embodied in the MAV/IPWEA/CCF *Best Practice Guide for Tendering and Contract Management*;
2. adoption by **all** councils of AS4000 as the General Conditions of Contract for all infrastructure contracts;
3. development and adoption of a common tender evaluation tool;
4. development and adoption of a common electronic tendering platform;
5. reduction of the volume of material required to be submitted with tenders in the interest of meeting the Government environmental objectives;
6. resolution of contract disputes by mediation, where possible, rather than costly arbitration;
7. standardising all aspects of the processes for the approval and final "sign-off" of subdivisions including provision for private certification, where appropriate, similar to the administration of the building regulations ; and
8. **importantly**, ensure that the standardisation of technical specifications does not contribute to the considerable overdesign of some elements of infrastructure currently endemic throughout Local Government (i.e. pavements in residential streets that could accommodate 747's!), nor the capacity for councils to unilaterally prescribe higher standards of design and construction.

6.5 *Coordination of Services*

Contingent with the objective to achieve standardisation wherever practicable is the need for a more effective way of coordinating the location and installation of utility services on roads, e.g. water mains, sewers, drains, electricity, gas and telecommunications.

Years ago, local government engineers ensured that utility services were installed generally in accordance with the *Coordination of Streetworks Code of Practice – Victoria* which we have been given to understand by the former Coordinator-General, Infrastructure (Meredith Sussex) still has application within this State.

In more recent times, the *Management of Infrastructure in Road Reserves – Code of Practice*, made under the Road Management Act 2004 (operative from 6 October 2008), has endeavoured to provide practical guidelines for utilities and road authorities, including Local Government, that are required to work together within the road reserve. Whilst that Code lays down the guidelines for coordinated works planning, consent and notification, works management and the sharing of information, anecdotal information suggests that many of the objectives of the Code are not being achieved and issues such as lack of coordination (eg resealing a street and digging it up within the year to install an underground utility), is still occurring.

The CCF cannot put a cost to this matter, however the consumer, (ie the public) are ultimately paying through higher local taxes and utility charges.

Clearly, councils and utilities are not applying the Code.

It is **recommended** that a review of the content and application of the *Coordination of Streetworks Code of Practice – Victoria* and its interaction with the *Management of Infrastructure in Road Reserves – Code of Practice 2008* be undertaken with the view to achieving a standardised approach to the coordination of location and installation of utility services within road reserves.

6.6 *Dial Before You Dig*

Dial Before You dig is a service designed to prevent damage and disruption to essential underground infrastructure such as water, sewerage, gas, electricity and communications. It is supported by the asset owners and those with an interest in the infrastructure.

Given our concerns in relation to the issue raised under the previous section, it is disturbing to note that not all councils are members of Dial Before You Dig, the organisation that not only has the imprimatur of the State Government but also has contributed considerably to a reduction in damage to vital utility services.

We believe that to reduce inconvenience to consumers and reduce costs associated with the accidental digging up of underground assets, councils should be required by legislation to be members of Dial Before You Dig. The recent legislative changes to the *Electricity Supply Act 1995* in NSW gives a good lead on an appropriate approach.

It is **recommended** that it be regulated to make it mandatory for all Victorian councils to be a member and contributor to Dial Before You Dig.

6.7 Power Companies

With the privatisation of power companies, a number of issues have become apparent that impact upon contractors working near power assets which are generally located within road reserves under the control of Local Government.

Contractors working near power assets with powered mobile earthmoving equipment are required to comply with a number of separate pieces of legislation including:

- Occupational Health & Safety Act 2004
- Occupational Health and Safety Regulations 2007
- Electrical Safety Act 1998
- Electrical Safety (Network Assets) Regulations 1999.

In addition to the above, they are also required to comply with the *Road Management Act 2004*, the *Worksite Safety-Traffic Management Code of Practice* and the *Code of Practice for Managing Utility and Road Infrastructure in Road Reserves*, all of which are managed by Local Government.

Coordinating the approach of each council with the relevant power company within each municipality and across the State has proven difficult. In a recent submission to the Minister for Energy & Resources (attached in full as Attachment 4), the CCF identified a number of opportunities for improvement. These included:

- provision of more resources by the power companies to allow greater flexibility and shorter lead times for inspections;
- all contractors to improve their skills by undertaking appropriate training, including spotter awareness courses, that would lead to more and improved safety assessments by contractors' staff;
- information regarding the location of overhead power lines and earth lines to be available to contractors through Dial Before You Dig or possibly a GIS system for underground power lines;
- greater investment by power companies in undertaking works to lift low power lines up to the regulatory height;
- adoption of the proposed specific guide relating to mobile fixed arm equipment by the power companies relating to items of plant that are in common use by contractors across Victoria; and
- improved coordination between councils and power companies regarding permits to work.

The submission also identified that the implementation of these improvement opportunities has the potential of delivering substantial savings to the consumer.

It is **recommended** that the Commission support the findings of the *Submission to the Minister for Energy & Resources into the Responsiveness of Power Companies* Report- August 2009.

6.8 Benchmarking

The CCF applauds the recent announcement by The Premier that the Essential Services Commission will develop a new performance assessment and benchmarking regime for Local Government. The CCF have not been consulted to date on this matter.

It might come as a surprise to the Government sector that CCF Members support independently conducted benchmarking of key indicators. Indeed, at our cost, we have undertaken a benchmarking exercise involving a number of willing Members and Councils looking into matters such as OH&S, Staff Turnover, Workforce Age Profiles, and Salary Packages for three key positions.

It is **recommended** that the Essential Services Commission be asked to examine how the proposed benchmarking regime can be extended into the civil construction sector as a means of enhancing the planning and delivery of infrastructure.

6.9 Role of Local Government & Local Laws

Primarily councils can use their Statutory Planning provisions to protect and enhance their local environment with “Overlays” being the most common statutory tools used to protect the natural and built environments.

The *MAV Local Government Environment Survey 2008* clearly shows that councils are playing an increasing role in environmental management within Victoria. The survey shows that council priorities are reflected in their environmental activities which include:

- Sustainable water use – 54%
- Climate change – 47%
- Community support on environmental issues – 43%

As a consequence of the above, there has been a notable increase in the adoption of policies and strategies by councils with the five top areas for strategies being:

- Stormwater management – 88%
- Waste management – 85%
- Sustainable water use – 79%
- Litter management – 79%
- Native vegetation management – 76%

Whilst the need for councils to be involved in these issues is not challenged, it is most unfortunate that each council appears to have a different approach to management of native vegetation. In addition, there are inconsistent interpretations of officers of the Department of Sustainability and Environment (DSE), Department of Primary Industries (DPI) and other State agencies. This leads to our members needing to spend an exorbitant amount of time (and money) in meeting the requirements of Local Government and Government agencies.

Many councils are attempting to use their powers under the local law provisions of the Local Government Act 1989 to “lift the bar” on environmental requirements over those provided under the planning scheme provisions. Recent examples include the requirement for consent under a local law for the removal of topsoil and regrading of allotments, notwithstanding the relevant planning provisions.

The State Government has initiated a review of local laws as part of its “Councils Reforming Business” initiative. It is expected that the implementation of the recommendations in the resultant report will ameliorate many of our concerns.

To ensure that local laws are not being inappropriately used, it is **recommended** that:

1. as part of the process for making a local law, a Regulatory Impact Statement (RIS) be a requirement of the development phase in the same manner as required for changes to State legislation;
2. Local Government Victoria prepare a standard template for local laws to assist in achieving some standardisation across the State; and
3. performance measures be developed for the administration of local laws with the results published in the council's annual report.

6.10 Legislation and Duplication

Civil contractors are faced with a myriad of legislation that they are required to comply with. This legislation, in many instances, is administered by more than one authority. This leads to inconsistent interpretation, costly delays and additional compliance costs.

6.10.1 Environmental Legislation

A major issue confronting contractors is the large amount of legislation associated with environmental matters which they are subsequently required to comply with. The CCF has identified 43 separate pieces of current environmental regulations affecting contractors working in Victoria. A full list of current regulation is provided in Attachment 5.

For example, if a contractor wishes to secure a water supply for a major construction project in say the Bendigo area, as a minimum, compliance with the requirements of the following authorities listed in the table is required:

Authority	Consent/Compliance Required
Goulburn Murray Water	Extraction of Groundwater Harvesting of stormwater runoff Construction of Dams
North Central Catchment Management Authority	Consent for works on or near waterways
Coliban Water	Consent to use treated effluent on construction sites
Local Government	Planning requirements for dam construction, tree removal, access tracks etc.
Department of Sustainability and Environment	Impact of works on vegetation, flora and fauna, possible aboriginal artefacts etc.

It is acknowledged that the Commission has addressed this subject in a recent Inquiry and we look forward to the early implementation of the Commission's recommendations.

6.10.2 'One Stop Shop' Approvals Process

The current arrangements for new subdivisions are not efficient in so far as the separate approvals being required, including:

- planning scheme amendment;
- planning permit including referrals; and
- engineering development plan approval.

For the construction of a new residential subdivision with all services including water and sewerage, abutting an Arterial road, partly within a flood plain, involving works in a railcorridor and having sensitive vegetation and aboriginal heritage issues, the following permits or approvals authorities may apply:

- Planning permit
- VicRoads approval & compliance (for works adjoining the Arterial road)
- Aboriginal heritage (Federal and State legislation)
- Approval for vegetation removal or offsets
- Water company approval
- Catchment Management Authority approval
- Power companies consent (location, no go zones etc.)
- Communication companies consent
- Building Permit (for pump stations)
- Approval of engineering plans for civil works (roads, drains, landscaping etc.)
- WorkSafe compliance (trenches over 1.5m, traffic management, etc.)
- Approvals by Vic Track and the rail operator.

In the eighties, the then Labour Government investigated a 'one-stop shop' approvals process but the resulting recommendations did not eventuate. Clearly, there is merit for such a project to be resurrected.

It is **recommended** that consideration be given to pursuing a 'one-stop-shop' approval process for civil infrastructure works, wherever possible.

6.10.3 Consistency of Application of Regulatory Controls

Combined with the matters set out in Section 6.10.2 above is the lack of consistency in interpretation of the various acts and regulations associated with each and every activity listed above both within a defined region and across the State. This situation is further compounded by the application of Federal legislation which may not always align with State legislation or brings another layer of bureaucracy to the project.

For instance, inconsistency of approach across councils also applies to:

Legislation	Issue or Inconsistency
Road Management Act 2004	Requirement for and standard of Traffic Management Plans
EPA Act 1970	Control of dust and runoff during the construction of subdivisional works
Litter Act 1987	Cleanliness of construction sites and issues of blown litter.

It is **recommended** that Local Government Victoria develop guidelines for a consistent approach to the administration of legislation by Local Government in relation to the activities of the civil construction industry.

6.11 Resolving Contractual Disputes

The civil construction industry has a reputation for tough commercial behaviour, and a propensity to solve problems using formal dispute resolution. The global financial crisis has focused attention on the need to deliver better value for money by reducing the costs of contractual disputes. Indeed, recent research undertaken by the Co-operative Research Centre (CRC) has identified that disputes in the building and construction industry is costing Australia about \$7 billion per year.

To bring about such a change requires the active cooperation of all sectors in the industry including State agencies, Local Government and civil contractors. The CRC's *Guide to Leading Practice for Dispute Avoidance and Resolution* provides a practical approach to improving this situation. The CCF supports the approaches outlined in this Guide.

The resolution of contractual disputes is an area where existing legislation does not set out the requirements for contractual dispute resolution, but rather, relies entirely on the terms of individual contracts. General Conditions of Contract for Government and Local Government contracts invariably rely on expensive arbitration rather than the cheaper options such as mediation, facilitation, etc. Disputes referred to arbitration are conducted in accordance with the *Commercial Arbitration Act* and as such tend to follow the detailed procedures that would happen in court.

The CCF has recently received legal advice that suggests that for a contract dispute to be resolved through arbitration, the sum under dispute needs to be in excess of \$250,000 to warrant the legal costs involved.

Whilst legislation is not recommended as a solution to this problem, the CCF believes that Local Government should receive policy direction and training on the cheaper options available for resolving contractual disputes.

It is **recommended** that Local Government Victoria, in conjunction with the Victorian Civil Construction Industry Alliance, develop alternative options to arbitration for inclusion into standard contract documentation for Local Government.

7 ACHIEVING CIVIL INFRASTRUCTURE PROCUREMENT BEST PRACTICE

Background

In late 2008, the CCF Board began to address the problems being experienced by smaller to medium civil contractors in relation to the procurement practices of Governments in so far as being 'screwed' by multi-nationals (under Alliances) and Government agencies alike.

The Board agreed that the most appropriate way to address Members' concerns was to engage Aurecon to undertake a research project entitled *Achieving Civil Infrastructure Procurement Best Practice*, and funds were allocated from the Branch's accumulated surplus to meet the cost of this project.

In the meantime, arising from a Business Lunch with the Secretary, Department of Transport, Jim Betts, and VicRoads Chief Executive, Gary Liddle, a commitment was made for VicRoads to jointly fund the research project up to a maximum of \$25,000.

Subsequently, a meeting with the DSE's David Downie resulted in the DSE expressing an interest to participate in the research project with an indicative contribution of up to a maximum of \$25,000. For some time now, discussions have been underway with DSE officers aimed at determining the scope for the DSE's component of the project.

The SA CCF Branch had contributed \$5,000 towards the project.

Shortly after the commencement of the research project, the QLD CCF Branch had expressed an interest in participating in the project and following a discussion between the CEO, Aurecon and the writer, agreement was reached for QLD CCF to assist in the funding of the development of the recommended tools, guides, etc for civil contractors and to undertake work on the necessary training programs.

It has taken considerable time for Aurecon to secure the endorsement of the VicRoads officers for the contents of the report.

The resultant report is enclosed with this submission and it will be observed that Aurecon has recommended the development of a number of tools, guides, etc for use by:

- i. Government agencies to improve their procurement practices; and
- ii. civil contractors to assist them to respond to the procurement practices of Government agencies.

The SA CCF Branch has agreed to provide funding support of \$10,000 towards the development of the tools for civil contractors.

The report has relevance to the work being undertaken through the Office of the Federal Minister of Transport and Infrastructure in relation to alliancing and, therefore, the CCF National Board will be encouraged to use the report as a basis of its representations to the Minister.

Tools, guides, etc for Civil Contractors

It will be observed from the report that it has been recommended that the following tools, guides, etc, should be developed for use by civil contractors:

- Issue Resolution Guide for civil contractors based on the CRC Research Project – *Dispute Avoidance and Resolution*
- Risk Registers for use by civil contractors
- Benchmarking framework for CCF Members
- Guide to achieving collaboration between contractors, and between contractors and clients
- Code of Behaviour for contractors in contractual relationships
- Draft contractual clauses for both contractors and sub-contractors entering contractual relationships
- Models for contractors entering contractual relationships
- Training programs for contractors – “Getting the Best from Contractual Relationships between Contractors, and between contractors and Government agencies”.

The CCF Board has received a proposal from Aurecon with cost estimates, for the development of the aforementioned tools, guides, etc.

Proposed Next Steps

At its meeting on the 8th December, 2009 the Board will be asked to endorse the report and make it widely available to Members and stakeholders, including members of the Victorian Civil Construction Industry Alliance.

Given that the procurement practices of Government agencies are cause for concern by CCF members nationally, the report will be made available to all CCF Branches and National Office, and the National Board will be requested to endorse the report and to use it appropriately in its representations to the Federal Government in relation to procurement practices.

It is further proposed that the report accompanies a submission to relevant State Ministers and Departmental Heads, seeking their commitment to pursue the implementation of the recommendations made in the report.

It has been recommended to the CCF Board that funds be made available from the Branch's accumulated surplus to enable Aurecon to be engaged to undertake the development of the recommended tools, guides, etc for use by civil contractors.

It is **recommended** that where appropriate, the Commission support the implementation of the recommendations of the Aurecon Report – *Achieving Civil Infrastructure Procurement Best Practice*.

8 SKILLING THE INDUSTRY

Deficiencies in essential skills within the civil construction sector is one of the root causes for many of the concerns outlined in this Submission. Moreover, Local Government's capacity to build infrastructure will be stressed to breaking point within the next decade unless urgent action is taken by the civil construction sector to reverse the worsening skill shortage.

Therefore, the critical shortage of civil engineers and earthmoving plant operators poses a serious threat to Victoria's economic development and the ability of Local Government to deliver appropriate infrastructure programmes to ensure asset management best practice. Although substantial progress has been made by both State and Local Governments in recent years to address the States asset management needs, it is being seriously jeopardised by the shortage of civil construction skills.

Given the outcomes of both our own research projects and of the Ernst & Young *Local Government Procurement Strategy*, we are pleased to see that a training program for council personnel has been implemented under the Collaborative Procurement Program.

Given the focus on 'collaboration' under the Program, we have recommended to the Minister for Local Government that:

- the providers of the procurement training program be asked to engage with the civil construction sector to ensure that the content of their program addresses the concerns of civil contractors in relation to the role and practices of the council designers and superintendents;
- the training program be made available to practitioners in the civil construction sector generally;
- the training program not be a 'one-off' but rather an annual program; and

- support be provided for our position in relation to the implementation of the COAG decision relating to the skilling of the civil construction sector.

A copy of our letter to The Premier is set out in Attachment 7.

It is **recommended** that the Commission support our position in relation to the implementation of the COAG decision relating to the skilling of the civil construction sector.

9 CONSULTATION WITH THE CIVIL CONSTRUCTION SECTOR

The Research

The 2008 Local Government Procurement Strategy produced by Ernst & Young on behalf of the Department of Planning and Community Development and the Municipal Association of Victoria, identified that efficiencies of upwards of 15% (or \$80 million) could be achieved through better procurement practices for the delivery of infrastructure in Local Government.

Similar outcomes have emanated from our own independent research, including the recent project undertaken between VicRoads and the CCF by Aurecon - *Achieving Civil Infrastructure Procurement Best Practice*.

In both cases, some of the aforementioned efficiencies could be secured through enhanced communicative processes between the procurers of civil infrastructure and all of the components in the delivery supply chain. Indeed, the United Kingdom's successful *Early Contractor Involvement* initiative and a number of outstanding alliance projects (eg Coliban Water/Fulton Hogan Bendigo Pipeline Project) are but a few examples of what can be achieved through effective engagement between all components of the procurement supply chain.

Oversighting The Industry

It has been of concern to us for some time that there is no one department that has oversight of the civil construction sector which arguably rivals the vertical built sector in terms of level of investment and value to Victoria's economy. For instance, through its legislative requirements, the Building Commission has oversight of the vertical built sector.

In bygone years, VicRoads (and its predecessors), the MMBW and State Rivers and Water Supply Commission, played a major role in overseeing the civil construction sector. With the formation of the water companies, councils relinquishing responsibility for Main Roads, Local Government autonomy and a general fragmentation of the civil construction sector, the inefficiencies identified in the Ernst & Young and Aurecon Reports are not unexpected.

Good Models of Stakeholder Engagement

From our perspective, there are a number of excellent examples of stakeholder engagement with Government agencies, including:

- Victorian Transport Industry Council
- The Building Regulations Advisor Committee
- The WorkSafe Stakeholders Reference Groups (Unions and Employers).

These bodies (in which the CCF has active involvement) meet systematically, are well chaired and are serviced by Government agencies. The participants in the bodies appreciate their value in terms of stakeholder engagement and productive outcomes.

The Victorian Civil Construction Industry Alliance (Alliance)

Because of the void in stakeholder consultation in the civil construction sector, the Alliance was formed in February, 2005 with representation from about a dozen interest groups.

The Terms of Reference for the Alliance is attached (Attachment 9) and it will be observed that the Alliance has grown to a membership of 20, including 'observers'.

Because of its structure, *modus operandi* and effectiveness of bringing industry people together, the Alliance is well placed to facilitate engagement with the stakeholders involved in the delivery of civil infrastructure.

It is therefore **recommended** that the Commission examine the potential for the Victorian Civil Construction Industry Alliance to serve as the stakeholder reference group for the civil construction sector under the auspice of a Government Department.

10 CLIMATE CHANGE

Local Government is a critical partner in the response to climate change – and climate change is increasingly becoming a priority for Local Governments. With increased interest, and participation by Federal and State Governments, the impact of any future legislative arrangements will have to be carefully thought through to ensure that another bureaucratic bottleneck is not created. Obviously any future legislation will have a direct impact on the requirement for climate change to be considered in relation to development proposals.

Local Governments are best placed to address local climate change impacts and to build community capacity to respond and adapt to climate change. Working on behalf of – and in partnership with – Victorian communities, Local Government has been at the forefront of local climate change response for several years. Currently councils across Victoria are playing a major role in developing and facilitating local climate change initiatives, customising responses to suit local circumstances and engaging their communities in discussion about the potential local impacts of climate change.

Of particular interest to civil contractors is the requirement for reporting on energy and emissions. Larger contractors are currently asking their suppliers to report the energy and emissions utilised on their projects and templates are already being provided for this reporting. Streamlining these templates so that smaller contracting firms can rationalise reporting and keep associated costs to a minimum is critical.

It is **recommended** that the Commission support the development of the necessary tools and guides to ensure that the application of all recording and reporting requirements on energy and emissions across the three spheres of government (i.e. Federal, State and Local) are consistent.

11 IMPLEMENTING VCEC RECOMMENDATIONS

An important aspect of any Inquiry is the implementation of the recommendations made. Often, the outcomes of an Inquiry receive wide publicity but the implementation falters due to a lack of resources and accountability. To ensure that this is not the case with this Inquiry, the CCF submits that an "Implementation Strategy" should be developed that addresses the issues of resources and accountability in implementation.

Local Government, in particular, does not have surplus resources to implement many of the changes required and provision of additional resources and funding is essential if the necessary changes are to occur.

It is **recommended** that Local Government Victoria develop an Implementation Strategy that makes provision for additional targeted resources, an implementation timetable and performance evaluation criteria.

12 ATTACHMENTS

- 12.1 Attachment 1 - Victorian regulations administered by local government
- 12.2 Attachment 2 – Report on Subdivision and Infrastructure Development Costs
- 12.3 Attachment 3 – Global Financial Crisis – Report April 2009
- 12.4 Attachment 4 – Submission to the Minister for Energy & Resources
- 12.5 Attachment 5 – List of Environmental Legislation & Regulations
- 12.6 Attachment 6 – Achieving Civil Infrastructure Procurement Best Practice - Summary
- 12.7 Attachment 7 – Submission to Premier – Australian Apprentices Taskforce
- 12.8 Attachment 8 – VCEC Regional Inquiry Submission
- 12.9 Attachment 9 – Victorian Civil Construction Industry Alliance Terms of Reference
- 12.10 Enclosure - Report: Achieving Civil Infrastructure Procurement Best Practice



ATTACHMENTS

12.1 Attachment 1 - Victorian regulations administered by local government

Building Act 1993

The Act permits councils to make local laws that may have an impact on business. Municipal building surveyors have a significant role under the Act and their functions and responsibilities (such as approving building permits and inspecting building works).

Planning and Environment Act 1987

The Act establishes a framework for planning the use, development and protection of land. A council's role within this framework may include being a planning authority or responsible authority.

Public Health and Wellbeing Act 2008

Councils have specific functions under the Act, including registering certain businesses, investigating nuisances and preparing public health and wellbeing plans.

Environment Protection Act 1970

The Act creates a framework for environment protection and councils have a variety of roles under the Act.

Road Management Act 2004

Under the Act a municipal council is the responsible road authority for parts of arterial roads.

Food Act 1984

The Act regulates the sale of food. Councils have a significant role under the Act as proprietors of food businesses must register with the council in which their premises are located.

Liquor Control Reform Act 1998

The Act regulates the supply and consumption of liquor. Councils may object to the grant, variation or relocation of a licence.

Tobacco Act 1987

The Act discourages the smoking of tobacco and promotes health and illness prevention. Councils have enforcement powers under the Act.

Subdivision Act 1988

The Act sets out the procedure for the subdivision and consolidation of land. Plans must be certified by a council.

Cemeteries and Crematoria Act 2003

The Act provides for the management and operation of cemeteries and crematoria. Councils have management responsibilities in respect of public cemeteries.

Conservation, Forests and Lands Act 1987

The Act provides a framework for a land management system. A council can be a public authority and may be required to submit a work plan (for work taken for the protection of land, waters and wildlife).

Country Fire Authority Act 1958

Municipal council fire prevention officers and councils have a role in the control and prevention of fires in country areas.

Crown Lands (Reserves) Act 1978

The Act provides for the management of Reserved Crown Land. A council may be a part of a committee of management or be vested land on trust.

Cultural and Recreational Lands Act 1963

Councils determine the rates to be paid each year in respect of recreational lands.

Domestic Animals Act 1994

The Act promotes animal welfare and the responsible ownership of dogs and cats. Owners must register their animals with their council. Domestic animal businesses may apply to register premises with their council.

Emergency Management Act 1986

The Act provides for the organisation of emergency management and Councils must prepare and maintain a municipal emergency management plan.

Housing Act 1983

Councils have an enforcement role under the Act, such as ensuring compliance with the regulations made under the Act.

Impounding of Livestock Act 1994

The Act regulates the impounding of livestock and an authorised officer of a council has the power to impound livestock.

Marine Act 1988

The Act provides for the registration and efficient and safe operation of vessels, and implements certain international conventions. Under the Act councils are able to receive infringement notice payments into their municipal fund.

Metropolitan Fire Brigades Act 1958

Under the Act councils have a duty to prevent the occurrence of fires and minimise the danger of the spread of fires.

Nudity (Prescribed Areas) Act 1983

Councils have a consultative role when a proposed area is to be published as a prescribed area to which the Act will apply.

Prevention of Cruelty to Animals Act 1986

The Act promotes the prevention of cruelty to animals and councils have an enforcement role under certain parts of the Act.

Residential Tenancies Act 1997

Under the Act, councils have an enforcement role in relation to caravan park owners or residents. They may also act as a public statutory authority and engage in the provision of housing as a landlord.

Road Safety Act 1986

Councils have enforcement responsibilities and prosecution power under the Act. They may also enter agreements with land owners to provide parking services.

Transport Act 1983

Councils have a minimal role under the Act. In certain circumstances where an organiser of an event affecting public transport is asked to prepare a public transport plan, all affected councils must be consulted.

Valuation of Land Act 1960

Under the Act councils are able to appoint a person to make land valuations.

Victoria Grants Commission Act 1976

Under the Act, councils are required to supply prescribed information to the Commission and are allocated funds.

Water Act 1989

Under the Act, various persons are required to give notice or information to the relevant council on a variety of matters.

Water Industry Act 1994

Councils have a minimal role under the Act, including the requirement to keep copies of all records of the location and prescribed particulars of all principal works under its management and control.

12.2 Attachment 2 – Report on Subdivision and Infrastructure Development Costs

Executive Summary from Report dated February 2009

The CT Management Group was engaged by the Civil Contractors Federation (CCF) to undertake a research project aimed at assessing the impediments to the efficient delivery of subdivisions and road infrastructure.

The research project involved face-to-face interviews with 20 CCF members actively involved in the provision of subdivisions and road infrastructure.

The interviews were based on a number of issues that had previously been identified by CCF members including:

- over design;
- lack of standardisation of specifications and General Conditions of Contract;
- tendering processes;
- contract management practices;
- lack of understanding of risk sharing between client and contractor;
- roles and responsibilities for appropriate and effective supervision;
- supervision fee structure;
- inadequate forward capital works programming;
- packaging of projects to reduce contract tendering costs;
- lack of skills in supervisory staff;
- coordination of utilities; and
- delays in works in coordination, and lack of responsiveness by clients to requests.

Interviews were conducted over the period 8 September to 3 December 2008. The interview period coincided with a particularly heavy period for tendering and quoting work resulting in extended lead times in arranging interview dates.

As a result of these interviews, the following matters in order of importance as collectively rated have been identified as major impediments to the efficient delivery of public infrastructure in Victoria.

- i. **Skills Shortage within the Industry:** This was by far the major issue identified from the consultation. Many of the other issues identified could be traced back to this issue which was applicable across the industry and not confined to any particular sector or profession.
- ii. **Contract Management Practices:** The skills and experience of those people managing contracts on behalf of authorities was seen to be below the level required to effectively and efficiently manage the contract process. The major problems cited were lack of experience, slow decision making, lack of appropriate delegation to Superintendents Representatives and in some cases an over bureaucratic approach to the process.
- iii. **Tendering Process:** Whilst overall most contractors believed that the tendering process complied with normal probity requirements many elements of the process are causing concern. These include extending the tender period beyond 90 days, not publishing a hierarchy of tenders received, requesting additional or amended prices when the contractor is clearly not in the running and a lack of proper evaluation leading to price being the only criteria in nearly all cases.

- iv. **Overdesign and/or Overspecifying:** All contractors cited examples of this on contracts, however in most cases they accepted the Principal's right to specify what they wanted. Contractors put this down to the current "risk averse" approach of authorities or their consultants. Many believed that the use of other contract models such as "design and construct" would lead to savings but this approach has only limited support in the industry.
- v. **Co-ordination of Utilities:** The majority of contractors reported that this activity is normally handled by the Principal and that they do not have a direct involvement. However, those contractors working in areas with a high intensity of existing underground services indicated that location of services was a problem due to the slow response of Utility companies, particularly telecommunications and power. Where contracts required the relocation of services problems were experienced in getting quotes within the tender period and then the inability to hold Utilities to a fixed price for the works.
- vi. **Packaging & Forward Works Programming:** Whilst not identified as a critical issue most contractors believed that it would be helpful for authorities to publish forward 5 year programs to give an indication of possible workloads and assist with forward planning, e.g. plant and labour requirements. The response to packaging was much more varied with larger contractors suggesting that more projects or contracts could be packaged together whilst other contractors requiring contracts to be sized to match the full range of contractors available.
- vii. **Risk Sharing:** Most contractors believed that authorities have little understanding of the cost of risk and are more than happy to transfer as much risk as possible to the contractor irrespective of cost to the community.
- viii. **Standard Documentation:** Whilst most contractors believed that more standardisation of contract documents was desirable they did not believe that it would ever be achieved due to the diverse nature of the Authorities for which they work. Requirements for environmental compliance was cited as an example of where a consistent approach would lead to cost savings.

An integral part of this study was to determine from contractors the likely savings if the issues identified could be adequately addressed. The consultation has shown that the majority of contractors do not keep cost records relating to the matters identified and that any savings identified are purely anecdotal. However contractors with a close working knowledge of the issues identified have suggested that the overall savings to be achieved would be in the range of 10-20%.

It is therefore concluded that substantial savings can be achieved in the delivery of public infrastructure simply by applying the principles of Best Practice contract management combined with a structured and coordinated approach to overcoming the critical skills shortages, both public and private, within the civil construction industry.

The consultant recommends the following course of action to address the issues identified in this report:

- i. **Skills Shortage**

The State Government be requested to take a lead role, in conjunction with the construction industry, in the coordination of the development of appropriate training courses and traineeships that would lead to a defined career path in the construction industry for participants.

Through government civil construction contracts, provide a genuine incentive to contractors to provide training by making it mandatory to provide a provisional sum, (say 1%) for the sole purpose of providing training.

ii. Contract Management Practices

The CCF continue to promote the Best Practice Guide for Tendering and Contract Management and support practical training programs such as the current PW Training courses in Contract Management.

iii. Tendering Processes

All levels of government be required to put in place rigorous review processes to ensure that industry Best Practice for tendering is being adhered to throughout the tender process, including the universal introduction of electronic tendering.

iv. Overdesign

Authorities be encouraged to seek the practical views of contractors in the design process and the interchanging of staff between principal and contractor be facilitated to allow for the interchange of ideas and processes.

v. Coordination of Utilities

To ensure that utilities and authorities are responsive to contractors requests for information and the granting of approvals the CCF continue to support the preparation and mandating of a Small Business Service Charter for all government agencies including local government.

vi. Packaging

The CCF support the principle that contracts should be packaged in forms that allow for the most appropriate response that will deliver the best overall value to all of the parties.

vii. Forward Works Programs

Both State and Local Governments be required, as part of the annual budget process, to publish 5 year forward works programs to give guidance on the type and level of likely expenditure on infrastructure that will be competitively bid over the next 5 year period.

viii. Risk Sharing

The CCF continue to support the principle that “risk should be allocated to the party best able to manage that risk” and that it supports the principle of “Early Contractor Involvement” as a way of minimising risk to all parties to a contract.

ix. Standard Documentation

The CCF continue to support the principle of standardisation of contract documents within each industry sector e.g. water, road construction etc and that AS 4000 be adopted as the uniform General Conditions of Contract for civil engineering contracts.

x. Improved Procurement Processes

The CCF continue to play a leading role in bringing about real improvements in the procurement process for civil engineering infrastructure by taking an active part in programs such as the current Collaborative Procurement Processes projects with local government, the Victorian Civil Construction Industry Alliance and by promoting the Best Practice Guide for Tendering and Contract Management.

12.3 Attachment 3 – Global Financial Crisis – Report April 2009

What Did We Find?

1. All membership categories, except level 6, indicated having less work in hand than at the same time last year. The reduced work in hand was worst at the lowest level and at the highest level with both categories indicating that 70% of the membership had less work than at the same time last year.
2. Within levels 1,2&3 thirty three (33) contractors replied that they had less than 1 month of work in hand. Many have reported that they have already commenced laying off staff, that fewer tenders are coming out and that margins are being squeezed as competition for fewer jobs increases. Regional areas appear to be hardest hit.
3. Member responses indicate a reduction of 50 subdivision lots constructed would on average reduce staff by 1.5 persons per contractor. Reductions in staff numbers are likely to be greatest with the larger contractors, possibly as high as 30 persons per contractor.
4. Staff reductions resulting from a reduction in the value of work available i.e. reductions per \$1M of work available is averaged at 1.5 persons across the industry with the highest losses at levels 5&6. With 10,000 persons currently employed and a likely reduction in work available in 2009/2010 of approximately \$353M, job losses are predicted to be at least 500-550 persons over the next 12 months.
5. If an allowance is made for cost increases (assume 3.5% CPI) the reduction in work available is increased to \$365M with subsequent job losses of at least 550-600 persons over the next year with a similar or increased loss of jobs during 2010/11. This is a total loss of jobs in the order of 1,200-1,500 (15%) persons in 2 years.
6. The proposed expenditure by Local Government on roads is projected to decrease by \$42.4M (9.26%) during 2009-10 below the 2008-09 amounts. Of this amount only approximately 15% of the total expenditure is from the Federal Government. This is to be followed by a steady decline in funding until at least 2012 unless additional funding becomes available from the Federal Government.
7. The Community Infrastructure Program available to Local Government will only have a marginal impact on the civil construction industry with an estimated 20% of the total allocation (\$12M out of \$62M) being of a civil nature.
8. Melbourne Water is increasing its annual expenditure, however the major impact of the increases to not kick in until 2009-10 which will be too late to save contractors now fast running out of work.
9. Expenditure by water authorities on civil construction is projected to decline from 2009/10 to at least 2011/12 by at least 46% below 2008/09 levels. This will further exacerbate job losses within the industry.
10. Overall there has been a reduction in expenditure by the private sector and the slack has not to date been taken up by the public sector. The result of this is that as contractors start laying off staff experienced people may well be permanently lost to the civil construction industry further exacerbating the problems highlighted at the recent Skills Summit.

What Is The Future?

In summary the civil construction industry is faced with the following scenario at least over the next two years:

- A minimal amount of work will be available from the private sector.
- Reduced government spending at all levels on roads and infrastructure below 2008/2009 levels in the order of \$353M in 2009/2010.
- Infrastructure spending being redirected into other areas such as school buildings, desalination plant, telecommunications and railways.

- Governments expenditure at all levels restrained due to reduced revenues and tight economic times.
- A likely loss of jobs in the industry of at least 500 persons over the next year.
- A skills shortage exacerbated by job losses that will impede the ability of the industry to respond to any increase in government funding.

What Can We Do?

In order to address the trends and concerns set out above the following actions are urgently needed:

- Governments at all levels need to increase the funding available for civil construction across the full range and size of projects.
- Processes for allocating grants and allowing works to commence need to be streamlined to allow for quicker start up times.
- An increased amount of work should be tendered out, especially at the Local Government level, to ensure that the public is receiving value for money.
- All Government departments, statutory authorities and Local Government should be required by legislation to produce and publish detailed 5 year forward capital works programs.

In summary, urgent action by government is required to ensure that the civil construction industry remains viable, skills are retained in the industry and the provision of urgently needed infrastructure is provided for present and future generations.

12.4 Attachment 4 – Submission to the Minister for Energy & Resources



Submission to the Minister for Energy & Resources into Responsiveness of Power Companies

Working Near Power Lines

FINAL

Civil Contractors Federation
PO Box 6165
Hawthorn Vic 3122
Phone: (03) 9819 5170
Fax: (03) 9819 6098
Email: ccfvic@civilcontractors.com
Web: www.civilcontractors.com

Contents

1. Introduction	45
2. Authorities & Companies Involved	45
2.1. Energy Safe Victoria	45
2.2. WorkSafe Victoria	45
2.3. Power Companies	46
3. Legislation	46
4. Permit Application Process	46
4.1. Current Practice	46
4.2. Contractors Experience	47
4.3. Estimated Cost to Contractors	47
5. Opportunities for Improvement	48
6. Conclusions	49
7. Further Information	49

1. Introduction

This submission is presented by the Civil Contractors Federation (CCF) in response to concerns raised by members regarding the responsiveness (or lack of responsiveness) from power companies in regard to the granting of permits for work within “No Go Zones” (NGZ’s) near power lines.

This submission will highlight the current problems being experienced and impact of existing arrangements and processes on the Victorian community. These problems are being experienced by the membership of the CCF in providing the civil infrastructure upon which the economic viability and sustainability of the State depends.

2. Authorities & Companies Involved

At the present time within Victoria there are nine (9) authorities and companies involved in the application of NGZ’s in the vicinity of overhead and underground power lines, namely:

- Energy Safe Victoria
- WorkSafe Victoria
- CitiPower
- Connex Trains
- Jemena Electrical Networks
- Powercor Australia
- SP AusNet
- United Energy
- Yarra Trams

The involvement of the major players is detailed in the following sections.

2.1. Energy Safe Victoria

Energy Safe Victoria is Victoria’s regulatory body responsible for shaping the safety standards for the electricity industry in Victoria and monitoring the performance of industry members.

In response to electricity related deaths and accidents on worksites, Energy Safe Victoria took a lead role in establishing a “best practice” approach for mechanical plant and equipment such as mobile cranes, tipping trucks, concrete pumping machines and elevating working platforms being operated in the vicinity of overhead power lines. This initiative known as the “No Go Zone”, essentially involved the development, introduction and communication of a consistent set of rules for the construction industry when working near overhead power lines.

2.2. WorkSafe Victoria

WorkSafe Victoria is the manager of Victoria’s workplace safety system and is responsible for the enforcement of the states occupational health and safety laws.

WorkSafe is charged with the responsibility of ensuring that the Rules are being complied with.

The CCF is currently working with WorkSafe to clarify the provisions in the Guide for the operation of powered mobile earthmoving equipment working near overhead electrical assets. This work is nearing completion.

2.3. Power Companies

The power companies are required under their licence, to inspect, assess and if appropriate, issue a permit to work near power lines.

It is expected that before any work commences near overhead or underground powerlines the contractor must know a number of matters associated with the powerlines eg;

- The different voltages of the various powerlines on the poles.
- If the powerlines are insulated or not.
- What the height of the wire at the lowest point is.
- The potential for sag and sway due to the temperature and strength of wind.
- What underground earths are present from transformers either on the pole or located on the ground in underground power regions

No work may start within the red no go zone requiring a spotter without first obtaining a permit from the relevant power company.

Getting this inspection quickly and obtaining the complete information from the power company varies from very difficult and time consuming to satisfactory depending on the location within the state.

3. Legislation

Contractors working near power assets with powered mobile earthmoving equipment are required to comply with a number of separate pieces of legislation including:

- Occupational Health & Safety Act 2004
- Occupational Health and Safety Regulations 2007
- Electrical Safety Act 1998
- Electrical Safety (Network Assets) Regulations 1999.

4. Permit Application Process

4.1. Current Practice

In summary the process to determine if a permit is required is as follows:

- (i) Contractor to determine from the design envelope of the machine if the envelope encroaches into the spotter or no go zone. If so, plant will need to work within the zone requiring a spotter.
- (ii) Notify the power authority before commencing work. This must generally be done via email.
- (iii) Arrange an onsite inspection (date & time) and assessment by the power authority representative.
- (iv) Obtain written approval (permit) from the relevant power authority if the works are in the red no go zone. This will have all the details and conditions for working in the red zone.

- (v) Alternately if the works can be restricted to the yellow spotter zone outside the minimum clearances listed in table A of the field guide, have a Safe Work Method Statement (SWMS) approved by the inspector and commence work.

The process of arranging for an inspection, getting the inspection quickly, getting the complete information, and where necessary approving the control measures in the SWMS varies considerably and often has long lead times.

It is this process that is of concern to CCF members due to the extremely long lead times necessary for the inspection to take place, power suppression to occur, or other activities such as shutting down the power supply to be achieved. In many instances, shutting down the power for a short time is the most economical and safest alternative, however power companies are very reluctant to take this course of action.

4.2. Contractors Experience

The experience of CCF members with this process is that costly time delays can be incurred as a result of:

- the time required to arrange an appointment which in some cases can only be undertaken via email and takes a minimum time of 3 working days;
- not all contractors have safe systems of work acceptable to both the power companies and WorkSafe; (*the SWMS has to be acceptable to the power company*)
- it is not always clear at the start of the project that an inspection will be required, some jobs do not have long lead times eg. urgent works, maintenance etc so if subsequently needed the job will be delayed;
- The information required from an inspection is only available from an inspection, it cannot be obtained by other means such as Dial before You Dig or accessed through a GIS as can be done in the water industry; and
- if power has to be shut off or flagging placed on active lines, considerable delays (up to 2 weeks) and restrictive timelines are often incurred.

In addition to the above, problems can also be experienced with location of underground gas mains and telecommunication lines, impact of solar power generation from private properties on power suppression and earthing to metallic water mains.

The responsiveness of power companies, or their subcontractors, varies considerably from company to company and area to area. Where the relationship is good, eg Ballarat, contact can be made by phone and inspections arranged with 2 days.

Combined with the above is the lack of consistency in interpretation of the various acts and regulations associated with each and every activity listed above both within a defined region and across the State.

4.3. Estimated Cost to Contractors

An integral part of the research behind this submission was to determine from pipeline contractors the likely savings if the issues identified could be adequately addressed.

Delay costs vary from site to site but for a basic crew of 1 excavator, 1 loader and a foreman, delay costs are in the order of \$400/hour or at least \$3,500/day.

Example No. 1

A contractor laying pipes in proximity to power lines in outer western Melbourne has experienced actual delays as follows:

Activity	Date	Delay in Days
Email request for site visit	Friday 5 June 2009	
Email confirming site visit Wednesday 10 June 2009	Friday 5 June 2009	0 days
Phone contact that officer sick. Site visit rescheduled for Wednesday 17 June 2009	Tuesday 9 June 2009	2 days
Phone contact that officer still sick. Site visit rescheduled for Friday 19 June 2009	Tuesday 16 June 2009	5 days
Site visit and issue of permit	Friday 19 June 2009	2 weeks

On each occasion the contractor had the works scheduled for start on the day after the programmed inspection date.

Example No. 2

Contractor laying a 1200 mm diameter water main within a residential street in the northern suburbs of Melbourne. Normal progress where no power lines nearby was 26m/day. This was reduced to 13m/day when working in the vicinity of overhead power lines, many of which were old and below regulation height. Delay costs \$13,000/day.

Whilst the above two examples are quite different in nature, they do reinforce that delay costs can vary from approximately \$3,500/day to as much as \$13,000/day. Based on 200 contractors across the state that could be involved in such delays, the annual delay costs could be anywhere in the range of \$700,000 - \$1M to \$2.1M - \$65M per annum.

It is understood that in some cases the contracts that contractors are working to, are drawn up so that the client, i.e. water company, etc pays the delay costs. In other cases the contractor is responsible and hopefully has allowed for these costs in his tender. Irrespective of the contractual arrangements, the costs are ultimately passed onto the public.

5. Opportunities for Improvement

A number of opportunities for improvement are available and include:

- provision of more resources by the power companies to allow greater flexibility and shorter lead times for inspections;
- all contractors to improve their skills by undertaking appropriate training, including spotter awareness courses, that would lead to more and improved safety assessments by contractors' staff;
- information regarding the location of overhead power lines and earth lines to be available to contractors through Dial Before You Dig or possibly a GIS system for underground power lines;
- greater investment by power companies in undertaking works to lift low power lines up to the regulatory height; and

- adoption of the proposed specific guide relating to mobile fixed arm equipment by the power companies relating to items of plant that are in common use by contractors across Victoria.

Power companies cannot rely on existing operational staff to address any of these matters as they are currently fully committed and do not have the time to undertake the additional work required to bring about the necessary changes. This can only be overcome by the provision of adequate funding and common application of the licensing and regulation requirements by the power companies for implementation of best practice.

6. Conclusions

Whilst members are reporting that some improvements have been achieved in recent times, there still remains pockets across the state where the current arrangements are causing delays that are ultimately passed onto the client and then the consumer and public. A more flexible approach by the power companies would further improve this situation.

Adoption of the draft “Working Near Overhead Electrical Assets – Construction Industry Guide for Powered Mobile Earthmoving Equipment” will assist in overcoming some of the issues, but the Guide needs to be adopted as a matter of urgency.

Unless the issues set out in this submission are addressed as a matter of urgency by Energy Safe Victoria, WorkSafe Victoria and the power companies delays will continue with additional costs continuing to be passed onto the public.

7. Further Information

Representatives of the CCF would be pleased to meet with the Minister to expand upon the contents of this submission and to explore options to providing a sensible balance between the efficient delivery of infrastructure projects, workers safety and the protection of electrical assets.

Bob Seiffert
Chief Executive Officer (Victoria)
Civil Contractors Federation

12.5 Attachment 5 – List of Environmental Legislation & Regulations

Primary Legislation	Purpose
Biological Control Act 1986	Provides for the biological control of pests in Victoria.
Building Act 1993 (5-star energy efficiency requirements)	Aims, among other things, to facilitate the construction of environmentally and energy efficient buildings.
Catchment and Land Protection Act 1994	Establishes a framework for the integrated management and protection of catchments. Sets up a system of control for noxious weeds and pest animals.
Coastal Management Act 1995	Establishes the Victorian Coastal Council. Provides for the coordinated strategic planning and management of Victoria's coast.
Commissioner for Environmental Sustainability Act 2003	Establishes the Commissioner for Environmental Sustainability with objectives to advance ecological sustainability and report on the natural environment.
Conservation, Forests and Lands Act 1987	Sets up a framework for the conservation of the State's land, waters, flora and fauna.
Crown Land (Reserves) Act 1978	Provides for reservation of Crown lands for various purposes including conservation/protection of natural values.
Environment Effects Act 1978	Requires the environmental effects of major projects to be assessed prior to commencement.
Environment Protection Act 1970	Establishes the EPA and sets out an environmental protection framework.
Extractive Industries Development Act 1995	Provides a coordinated assessment and approvals process for extractive industries.
Fisheries Act 1995	Establishes a framework for the management of Victorian fisheries including aquatic habitats.
Flora and Fauna Guarantee Act 1988	Provides for the conservation of Victoria's native flora and fauna.
Forestry Rights Act 1996	Provides for the creation of forest property rights and carbon sequestration agreements.
Forests Act 1958	Provides for the management and protection of Victoria's State forests.
Geothermal Energy Resources Act 2005	Facilitates and regulates geothermal energy exploration and extraction in Victoria.
Heritage Rivers Act 1992	Preserves rivers and river catchment areas in Victoria which have significant nature conservation, recreation, scenic or cultural heritage attributes.
Kew and Heidelberg Lands Act 1933	Provides for management and administration of Yarra Bend Park.
Land Act 1958	Provides for management and administration of Crown land.
Land Conservation (Vehicle Control) Act 1972	Regulates vehicular traffic on public land to prevent soil erosion and damage to public land.
Marine Act 1988	Provides for the registration and safe and efficient operation of vessels on State waters, and implements certain international conventions.
Mineral Resources (Sustainable Development) Act 1990	Establishes a framework for the development of Victoria's mineral resources.
Murray-Darling Basin Act 1993	Provides for coordinated management of the Murray-Darling Basin.
National Environment Protection Council (Victoria) Act 1995	Establishes the National Environmental Protection Council.
National Parks Act 1975	Provides for the preservation and maintenance of national parks, State parks, marine national parks and marine sanctuaries.

Primary Legislation	Purpose
Parks Victoria Act 1998	Establishes Parks Victoria with functions to manage parks, reserves and other land under the control of the State.
Petroleum Act 1998	Ensures on-shore petroleum operations do not pose risks to the environment and public health and safety.
Petroleum (Submerged Lands) Act 1982	Ensures off-shore petroleum operations do not pose risks to the environment and public health and safety.
Pipelines Act 2005	Protects the public from environmental, health and safety risks from the construction and operation of pipelines. Ensures that pipelines are constructed and operated in a way that minimises adverse environmental impacts.
Planning and Environment Act 1987	Establishes a framework for planning the use, development and protection of land.
Pollution of Waters by Oil and Noxious Substances Act 1986	Protects the sea and certain waters from pollution by oil and other noxious substances and implements the International Convention for the Prevention of Pollution from Ships.
Reference Areas Act 1978	Provides for management of reference areas.
Royal Botanic Gardens Act 1991	Provides for the management of the Royal Botanic Gardens.
Sustainability Victoria Act 2005	Establishes Sustainability Victoria to promote environmental sustainability in resource use.
Sustainable Forests (Timber) Act 2004	Establishes a framework for sustainable forest management and sustainable timber harvesting of State forests.
Underseas Mineral Resources Act 1963	Extends the provisions of <i>Mineral Resources (Sustainable Development) Act 1990</i> to apply to the sea bed and its subsoil within the territorial limits of Victoria.
Victorian Conservation Trust Act 1972	Establishes the Victorian Conservation Trust to acquire, preserve and maintain areas within the State containing wildlife and native plants.
Victorian Energy Efficiency Target Act 2007*	Promotes the reduction of greenhouse gas emissions by establishing the Victorian Energy Efficiency Target scheme.
Victorian Environmental Assessment Council Act 2001	Establishes the Victorian Environmental Assessment Council to conduct investigations and provide advice on the protection and ecologically sustainable management of the environment and natural resources of public land.
Victorian Renewable Energy Act 2006	Encourages additional generation of electricity from renewable energy sources and reduction in greenhouse gas emissions.
Water Act 1989	Provides for the integrated management of the terrestrial phase of the water cycle, including providing formal means for protecting and enhancing environmental qualities of waterways.
Water Industry Act 1994	Establishes a framework for regulating Victoria's water industry, and provides for the conservation of water resources.
Wildlife Act 1975	Promotes the protection and conservation of wildlife.
Zoological Parks and Gardens Act 1995	Provides for the management and administration of zoological parks and gardens.

* Act will commence on 1 January 2009 if it has not been proclaimed earlier.

12.6 Attachment 6 – Achieving Civil Infrastructure Procurement – Best Practice

Key Findings

This interim report presents the findings of work undertaken with Civil Contractors Federation (CCF) members in Victoria and representatives of VicRoads. Its scope will be expanded over time to include additional commentary and inputs from other Government agencies and industry clients as well as industry participants from other Australian States.

The Report establishes that there is considerable interest by all parties in how procurement is carried out in the Civil Infrastructure sector within Victoria. Much has been achieved over the years yet there is clearly an appetite by all those involved to achieve further improvements.

Three primary methods of procurement have been identified as being in popular use. These are traditional lump sum, design and construct, and alliance methods. Alternative procurement models including managing contractor, early contractor involvement and public private partnerships are becoming increasingly more prevalent within Victoria.

The selection of an appropriate procurement method is frequently a complex process and, for any given project, is a 'horses for courses' decision. Past procurement selection methods have often utilised a large number of project attributes as selection criteria. This Report advocates the use of fewer, significant, selection criteria. This approach has been taken in order to place greater emphasis on the key Client-centred criteria associated with making a procurement choice.

A number of procurement issues were identified through the consultation process in the production of this Report. These include:

- Interest in the use of relational contracting models
- Discussion on the applicability of alternative procurement models and the methods for determining procurement routes
- A desire for robust pre-qualification systems that help to better evaluate contractor capability and to reduce the cost of tendering
- A desire for standardisation of the contractual forms in common use
- The need for more appropriate approaches to the identification and allocation of project risk
- The requirement to demonstrate value for money is being achieved, particularly in high value design and construct procurements and in alliance arrangements
- How innovation in bidding is to be assessed
- The need to improve project relationships and integrate the supply chain
- Skills development including in particular the ability of small and medium sized enterprises to participate in alliance arrangements and to bid for larger scale works
- Consideration of a project levy to fund training and development initiatives

- Approaches to dispute avoidance and proactive issue resolution

Through the use of case studies and research into international best practice, a number of recommendations have been made within the Report. These are intended to assist Clients and Industry participants to generate ideas for collaborative working, overcome existing constraints to progress, create efficiencies and consolidate best practice. The recommendations are made under a number of logical groupings and culminate in the identification of a number of 'tools' that would assist the civil contracting industry in Victoria to go forward. Of these, the top 10 procurement delivery support tools have been identified. These are described in the form of an 'agenda for change'. An outline of each tool is provided in the Report so that methodologies by which these tools might be put into operation can be established at a later time.

The recommended tools are:

1. Forward planning
2. Pre-qualification criteria
3. Guide to the selection of delivery systems and use of standardised contracts
4. Risk registers
5. Value for money checks
6. Use of local contractors and labour
7. Jointly established training programmes
8. Staged issue resolution processes
9. Project reviews
10. Collaboration agency (the establishment of)

Together these tools provide the civil contracting industry in Victoria and its Clients with a means to deliver efficiencies from integrating the whole of the civil infrastructure procurement improvement process. In this way, civil infrastructure procurement can be better matched to Victoria's current and emerging needs.

12.7 Attachment 7 – Submission to Premier – Australian Apprentices Taskforce

13th August, 2009

Hon John Brumby MP
Premier of Victoria
Parliament House
Spring Street
MELBOURNE VIC 3000

Dear Premier

Australian Apprentices Taskforce

Congratulations and thank you Premier for your support of the apprentices and trainee initiative at COAG as set out in the COAG Communiqué of 2 July 2009.

The agreement to secure at least 10 per cent of the total labour contracts to be “undertaken by apprentices and trainees and those seeking to up-skill” will help address the skills shortage that continues to plague Victorian industry.

The Civil Contractors Federation fully supports initiatives to stimulate industry training and has previously made submissions to the Victorian Government on this subject. We understand that the policy presented to COAG is based on the Queensland model which is shown to have increased the number of apprentices being trained.

We have previously submitted an alternative policy, the **Provisional Sum** (explained below), which while consistent with the 10% Policy would be cheaper to run by some 40%¹ and more effective than the Queensland approach.

The key advantage of the Provisional Sum is that it can be implemented and managed within existing contract management resources in departments and municipalities. This avoids the need to establish an additional regulatory regime as they have in Queensland, where the Building and Construction Industry Training Fund was established in 1999. This Fund derives its income from an additional levy of 0.1% on building and construction work in the State.

We tender that the full funding should be utilised directly in quantifiable industry training and further that the Provisional Sum will return some 10 fold return on the training investment to the State through efficiency enhancements.

The Provisional Sum

Under the Provisional Sum approach 1% of the total contract amount (equivalent to \$10,000 in a \$1.0m contract) is included in all government stimulus and infrastructure projects to provide for industry training.

¹ Using a direct labour cost comparison, the Queensland approach would equate to a Provisional Sum of 1.4% of contract amount.

-2-

The tender documents are written to require a training plan to be submitted as part of the tender response. The training plan identifies how the contractor plans to utilise the training amount and would become a schedule to the Contract.

As the training is undertaken, the contractor will claim payment from the contract manager under the Provisional Sum. When the Contract Manager is satisfied that training has been undertaken in accordance with the contractor's training plan payment will be authorised. Only the amounts claimed and certified by the Contract Manager will be paid, up to the total amount of the Provisional Sum.

The Provisional Sum achieves two things:

1. Only training actually identified in the plan and carried out in the industry is paid for.
2. It ensures that all contractors are on an equal footing when tendering for infrastructure work.

Why a Provisional Sum?

1. CCF research² identified the skills shortage as the main impediment to improving the delivery of public infrastructure and that saving of 10 to 20% of contract value could be achieved by addressing the skills shortage.
2. Poor State and Local Governments' procurement practices exacerbate the skills crisis. The lowest cost tender approach currently forces training costs into company overheads and inadvertently limits the amount of training that companies, particularly smaller ones, can undertake.
3. Whereas OH&S plans are a requirement in Government tendering, training is not supported.

The Minister for Local Government in September 2008 launched the *Local Government Procurement Strategy*³ wherein it states:

"Procurement should focus on more than lowest cost purchase; it must balance the needs of the community, the environment and internal service with financial responsibility. Whilst Local Government can outsource the production, and delivery of goods and services required to achieve their objectives, they cannot outsource the outcomes that councils are required to deliver."

The *Local Government Procurement Strategy* identified that Local Government procurement capability is "self assessed" at low/medium only. This partly accounts for complaints from industry regarding the poor communication and responsiveness of these officers and the resultant inefficiencies that occur in building Victoria's infrastructure.

It is in the interest of State and Local Governments and the industry to work together and share the responsibility for the skilling of the industry. Whilst historically this did occur, the outsourcing of construction contracts removed the situation whereby State agencies and Local Government were key industry participants and actively contributed trained personnel to the industry.

Whilst so far nothing has been done to overcome this shortfall, a relatively simple first step is available through the inclusion of a Provisional Sum of 1% in all infrastructure contracts. This will provide a level playing field for all companies in respect to training. This approach has the advantage of leaving the responsibility for the training with the companies while removing the cost disincentive of undertaking it currently imposed by the procurement system.

It is in the interest of State and Local Governments and the industry to work together and share the responsibility for the skilling of the civil construction sector.

² CT Management Group "Report on Subdivision and Infrastructure Development Costs for Civil Contractors Federation Victoria Division

³ Local Government Procurement Strategy, Department of Planning and Community Development, September 2008

-3-

The Provisional Sum will return a 10 fold return to Government and is a prudent investment in the State's future. Without it the State's plans to build Victoria's infrastructure will be impacted through delays and increased costs driven by the shortage of skills.

Industry Support

The civil construction industry held Skills Summits involving industry participants, Government and Local Government entities and the education sector in February 2006 and February 2009 to consider ways to address the pervasive shortage of skills across its spectrum of workers, engineers to skilled plant operators. Both Summits called for immediate action to address the crisis confronting the Australian economy.

The civil construction industry has taken a range of supply side measures within its scope to address the crisis. The Summits concluded that a more systemic measure such as the Provisional Sum was required to change the culture in the industry whereby training would be viewed as an industry enabler rather than as a project cost.

In implementing such a measure they maintained that Government procurement practices must change from awarding contracts on the basis of the unsustainable 'least cost' to a 'best value' approach that gives consideration to supporting the industry in vital areas such as skills acquisition.

The current procurement approach simply drives companies to slash costs including training costs. The indiscriminate approach leads to cherry picking of available skills whereby companies poach rather than grow skills. This simply drives project costs higher and builds in failure points for future infrastructure projects due to scarcity.

We continue to maintain that competition for contracts is vital to ensure equity and innovation. However the industry invites State and Local Government entities to participate in the industry in a cooperative way that discriminately supports vital common good areas such as training - as they already do in OH&S.

The CCF is currently undertaking many initiatives to support the industry including a free State Conference each year, free seminars and workshops and conducts a comprehensive low cost, value for money training calendar. Additionally, we have a full time Careers Officer who has developed a comprehensive range of promotional materials for schools, careers teachers, parents and students, attends over forty five Careers Expo's per annum, provides Taster Programs for secondary school students, arranges site visits and many school to work transition programs.

Implementation

The Provisional Sum is not a new concept and can be readily implemented in Victoria. It will require variation to contracts across the State and also targeted training.

We would be delighted to assist the State in the implementation of this new approach and offer our support in a practical way. We can assist with experience of the Provisional Sum approach as well as in the development of training packages on the implementation of the new approach for procurement officers and briefings of contract managers across the State.

We look forward to meeting with your people to discuss the contents of this submission.

Yours sincerely

Bob Seiffert
Chief Executive Officer

12.8 Attachment 8 – VCEC Regional Inquiry Submission

Summary of Submission dated September 2004

1. Civil construction activities undertaken by Members of the CCF play a crucial role in the civil construction supply chain.
2. Being at the end of the civil construction supply chain, civil contractors' margins are generally 'paper thin' and, therefore, any cost imposts as a consequence of new regulatory controls (both formal and informal) are invariably passed through to the consumer.
3. Unnecessary and poorly implemented regulatory controls have a negative impact upon the viability of the businesses of civil contractors, with the greatest impact on civil contractors located in regional Victoria.
4. There are a significant number of regulatory issues, both formal and informal, that are impacting adversely upon civil contractors, the consumer and economic development in regional Victoria.
5. Many of the issues identified by the CCF through this submission could be addressed through an adequate focus on and commitment to existing competition policy.
6. A comprehensive review of the tendering and contract management practices undertaken by Government agencies, Councils and Water Boards is necessary.
7. As an interim step to recommendation 6, Government agencies, Councils and Water Boards should be required to comply with the Department of Infrastructure's Code of Practice for the Building and Construction Industry.
8. If existing competition policy were to be strongly supported by appropriate and structured quality processes, many of the concerns outlined in this submission would be ameliorated.
9. The CCF stands ready to be engaged by Government agencies in regard to any proposed regulatory controls that are likely to adversely impact upon civil contractors.

FOREWORD

Victoria's civil construction and maintenance industry has a significant impact on the State's economy, on the provision of jobs, and on the development of vital infrastructure and commercial, civic and residential assets for all Victorians.

The civil construction and maintenance industry is committed to pursuing excellence in the construction and maintenance of Victoria's infrastructure, with a focus on innovation, the environment and the community's social objectives.

Essential to meeting this commitment, is the promotion of best practice in tendering and contract management, together with the establishment of the highest ethical principles.

The *Code of Practice for the Building and Construction Industry*, revised in 1999, had laid-out a strong foundation for improving the industry's standards and competitiveness. The Code had clearly set out the minimum standards to which the Victorian Government had subscribed and, in turn, required to be upheld by those seeking government business.

This Guide has been produced with the view to further enhancing the tendering and contract management practices in local governments and by civil contractors, as well as driving further efficiency improvements in project delivery. It is a collage of the best features of the 1999 Code of Practice for the Building and Construction Industry, similar Codes from other States, and recognised processes employed by councils, water companies and VicRoads. By and large, this Guide reflects the requirements of AS 4120 Code of tendering.

This Guide establishes high and significant benchmarks for best practice tendering and contract management within the civil construction and maintenance industry. All civil contractors and local governments are therefore encouraged to apply the principles outlined in this Guide.

The adoption and compliance with this Guide will contribute to a more competitive and efficient civil construction and maintenance industry to the benefit of Victorians, local government and contractors alike.

John Plumridge
President
Civil Contractors Federation

Maurice Stabb
President
Institute of Public
Works Engineering
Australia (Victoria
Division)

Rob Spence
Chief Executive Officer
Municipal Association of
Victoria

BEST PRACTICE GUIDE FOR TENDERING & CONTRACT MANAGEMENT

DEFINITIONS

The following are explanations of terms as they are used in this document.

Civil Construction Industry

The industry which undertakes:

- a. Preparatory site works including demolition, excavation and earthmoving for engineering and construction projects;
- b. Construction, alteration and maintenance, including excavation and earthmoving for:
 - water reticulation, sewerage, drainage and major arterial distribution networks such as transmission and pipeline projects;
 - major and minor roads, highways, railways and associated works, including bridges and drainage management, road surfacing, road foundations, tunnels, shafts, towers, parking areas and pavements;
 - dams, spillways, weirs, outfalls, tanks, reservoirs, storage areas, breakwaters, artificial harbours, marinas; and
 - sporting and recreational facilities;
- c. Quarrying, crushing and processing of road metal, gravel, screenings, stone aggregates, crushed rock and the application of plant mixed, concrete bituminous concrete, bitumen and asphalt.

Principal

Any project owner, or initiator, inviting or receiving proposals or tenders.

Consultant

A person who provides specialist advice and/or professional services.

Contractor

A person who provides building and construction works and services, and includes subcontractors and suppliers.

Industry

Defined as the Civil Construction Industry.

Intellectual property

Any patent, registered design, trademark, name or copyright and includes trade secrets, list of suppliers, customers and manufacturing methods.

Party

'Party' includes but is not limited to: Principals, contractors, subcontractors, suppliers, consultants, employees, employees.

Public construction

"Public construction" means civil construction undertaken by or on behalf of a public body and includes -

- a. design and construction practices;
- b. tendering processes;
- c. project delivery; and
- d. contract administration.

In the context of this definition, "public body" means –

- a. local government established under the *Local Government Act*, 1989;
- b. a public statutory corporation established by or under an Act for a public purpose other than a municipal council;
- c. a State business corporation within the meaning of the *State Owned Enterprises Act* 1992;
- d. a Department within the meaning of section 10 of the *Public Administration Act* 2004
- e. an office specified in section 16(1) of that Act; and
- f. a body, office or trust body:
 - i. established by or under an Act or enactment; or
 - ii. established by the Governor in Council or a Minister – and that is declared by the Minister, by notice published in the Government Gazette, to be a body or office.

Small Business Commissioner

The position of the Victorian Small Business Commissioner is a statutory body established under the *Small Business Commissioner Act* 2003, which commenced operation on 1 May 2003.

Superintendent

The Superintendent appointed under the General Conditions of Contract.

Tender

An offer in writing, which includes price, in response to an invitation to execute works, supply goods or associated services.

Tenderer

Any party submitting a tender, including contractors, subcontractors or suppliers.

1 INTRODUCTION

1.1. Guiding Principles

This Best Practice Guide ("The Guide") describes minimum standards of acceptable practice for public infrastructure construction and maintenance. Commitment to continuous improvement and best practice performance is expected of all those involved in the industry.

The Guide encourages high ethical standards in the industry in order to achieve better procurement practices, higher productivity, high-quality construction work, better working conditions and the avoidance of malpractice, with significant benefits to the entire community.

The provisions of the Guide should be observed by all parties involved in public infrastructure construction and maintenance. The tendering and contract management processes should be structured to minimise costs for all parties including the consumer, consistent with the standards of behaviour required by this Guide.

Victoria's civil construction and maintenance industry has a major impact on other industrial activities. Its cost competitiveness and efficiency influence the general cost of infrastructure, and even firms' decisions on location. The industry's best practice standards need to measure up to world best practice.

The Guide sets out specific principles and standards of behaviour that underpin best practice, and promotes a partnership approach to project/service delivery.

Although the Guide primarily addresses standard methods of procurement and delivery, it also seeks to actively encourage innovation and alternative delivery systems. The parties to this Guide recognise that high standard of performance can be achieved by encouraging innovation and co-operative practices which lead to better quality projects, lower costs over the life of infrastructure and better value for money.

Principals should encourage innovation and alternative solutions by using performance based specifications where appropriate, leading to:

- increased efficiency in design, tendering, project management and financial management;
- speedy resolution of complex design and production problems;
- less rework and a lower cost finished product; and
- improved delivery of projects in terms of higher quality outcomes, timely delivery and environmentally responsible buildings or infrastructure.

Principals should also encourage innovation by;

- allowing an appropriate period for tender response having regard to project complexity and the past experience of tenderers; and
- considering alternative approaches to delivery of projects.

Innovative approaches and delivery systems, such as joint ventures, alliance contracting, partnering, strategic alliances and the like, which are consistent with the standards of behaviour required by the Guide, should be pursued by the parties where measurable benefits are to be obtained.

This objective should form a necessary component in the evaluation of tenders.

Public bodies managing contracts should continue to use their capital investment programs to bring about positive change. They should give preference to service providers who display a commitment to and consistent application of the standards set out in this Guide. To ensure this, Principals should make compliance with the Guide a mandatory requirement in the tender.

A service provider who contracts with the client agency is responsible to the client agency for the standards of performance, behaviour and ethical conduct of all service providers down the contract chain.

This Guide equally applies to the relationship that principal contractors have with their sub-contractors.

The challenge for public body managers is to encourage members of the industry to become more competitive and responsive to the needs of Principals, and to recognise the rights of large and small participants. This challenge extends to also ensuring that procurement processes are streamlined and efficient and do not add unnecessary costs to industry. This will assist the industry to reach a performance level appropriate to its influential position in the State's economy.

1.2 Objectives

The objectives of the Guide are to:

- 1.2.1 encourage best practice within the industry in Victoria, ie:
 - promote improved efficiency, productivity and competitiveness within the Civil Construction Industry for the benefit of all parties;
 - further the Government's contribution to making the industry vibrant, efficient and internationally competitive; and
 - promote the highest standards in the industry by seeking a commitment to comply with the spirit and intent of all laws, regulations and codes that have an impact on the industry;
- 1.2.2 reduce costs and increase the value obtained from Victoria's capital assets by maximising opportunities for local industry participation on the basis of value for money;
- 1.2.3 improve the performance of all participants in the industry by:
 - setting the responsibilities and standards of behaviour expected of all parties undertaking procurement activities;
 - improving the standard of occupational health and safety across the industry;
 - recognising the importance of skills development and the maintenance of the industry workforce; and
 - encouraging professional development and industry training and foster growth in the level of training and skill development;

- 1.2.4 promote goodwill in the industry and minimise disputes through the observance of statutory and contractual requirements and obligations of employment;
- 1.2.5 improve the industry's quality of contract administration and tendering practices; and
- 1.2.6 support the principles of sustainable development.

In achieving these objectives, the public bodies:

- a. have set the responsibilities and standards of behaviour expected of the parties undertaking procurement activities as outlined in the Guide;
- b. will generally award contracts to those contractors and consultants that meet the requirements outlined in the Guide; and
- c. call on other industry stakeholders, such as employer associations, industry associations and unions to support and uphold this Guide.

The Guide will be reviewed from time to time to assess the adequacy of its provisions in clarifying the industry's reform objectives.

1.3 Application

1.3.1 Scope

The Guide applies to the parties that are signatories to this Guide and should be observed by such parties.

1.3.2 National Code of Practice for the Construction Industry

The National Code of Practice for the Construction Industry has been endorsed by the Victorian Government for Commonwealth Government funded projects.

1.4 Guide Responsibilities

Principals, tenderers, contractors and consultants:

Should comply with the Guide

Public Bodies:

Should implement the Guide, monitor and report on compliance

Industry associations:

Should:

- support the implementation of the Guide
- encourage their members to comply with the Guide
- develop and use rules to deal with breaches of the Guide

1.5 Standards of Behaviour

All parties will behave in accordance with the following standards at all times:

Honesty and fairness	Parties will conduct all procurement and business relationships with honesty and fairness and avoid any practice which gives one party an improper advantage over another.
Accountability and transparency	The process for awarding contracts will be open, clear and defensible and all parties must not engage in collusion, hidden commissions and other anti-competitive behaviour.
No conflict of interest	A party with a conflict of interest will declare and address that interest as soon as the conflict is known to that party.
Rule of law	Parties will comply with all legal obligations.
No anti-competitive practices	Parties shall not engage in practices that are anti-competitive.
Intention to proceed	Parties should not seek or submit tenders without a firm intention and capacity to proceed with a contract.
Co-operation	Parties will maintain business relationships based on open and effective communication, respect and trust, and adopt a non-adversarial approach to dispute resolution.

1.6 Pursuit of Best Practice

The parties should aim to achieve best practice in relation to:

- a. quality in all aspects of service and service delivery;
- b. ethical business practices;
- c. management of procurement risk, including credit management;
- d. tendering and contract management;
- e. achieving project requirements and supply chain management;
- f. planning and management of human, physical and financial resources;
- g. environmental management;
- h. cooperative relationship and non-adversarial dispute resolution;
- i. application of professional and technical expertise;
- j. innovation in design, construction, service provision, processes and use of technology;

- k. value for money;
- l. training and skills development;
- m. research and development;
- n. occupational health and safety and workplace injury management;
- o. industrial relations;
- p. equal opportunity;
- q. establishment and maintenance of clear and effective communication channels;
- r. clear processes for decision making;
- s. clearly defined contractual obligations of both parties; and
- t. compliance with all relevant Acts, Regulations, Standards and Codes;