CCA

Position Paper

Construction Contractors Association of Western Australia Inc

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

Topic: Unusually Low Bids

Objectives

An **Unusually Low Bid (ULB)** is a tender proposal or offer that is outside a reasonable range, indicating either an error or lack of appreciation for the scope, risks, schedule or quality of work required. As an industry, accepting unusually low bids is unsustainable as it promotes an adversarial culture that often claims and disputes and / or knock on effects in the subcontract supply chain.

Fair, reasonable and competitive pricing delivers value for money solutions for customers and an industry culture that promotes innovation and flow on effects in the supply chain. Where **ULBs** are accepted without an interrogation as to the likely reasons for that dramatically lower submission value, the opposite effect occurs. It is not necessary to rule out **ULBs** altogether, but it is prudent to pause, seek clarification that the bid is compliant and competent, then seek substantiation for the difference before accepting the bid.

The Queensland Government (and numerous others) have provided guidance on how to define an **ULB** and then outline a process of interrogation and validating them before acceptance. (Ref: Transport Infrastructure Project Delivery System Volume 2 – Tendering for Infrastructure Works April 2019)

Current Approach

Experience suggests that tender selection processes are dominated by price-based criteria. Some sources indicate that this probability could be as high as 80% or more, especially in Government procurement processes.

ULBs are unlikely to be eliminated from contention and more often than not are ultimately accepted irrespective of their statistical relationship to other bids.

Key Issues and Factors

In almost all bids for the same scope of work and specification, the variables include input costs (for labour, materials, plant and equipment, subcontractors, etc.), productivities (including more cost effective construction techniques and scheduling, innovation, etc.), indirect costs (for management and supervision and time based costs), profit and overhead and risk and contingency allowances.

In each of these cost and price categories the variance by definition can only be in the order of 10% and 20% different from the median tender price depending on complexity and scale of the project.

CCAWA Proposed Approach

It is the recommendation of CCAWA that procurement processes include a rigorous policy relating to assessment of **ULBs**, that enables rejection of that bid without reasonable substantiation from the submitting entity of its merit and competence.

We would endorse the adoption of the Queensland Government approach, which *is to:*

- *define an 'unusually low bid'*
- *define the percentage difference from the median price of 'adjusted' and conforming bids, for example projects from $5m to $10m having a variance of 15% from the median price*

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If an unusually low bid is detected, the Principal may:

- *Eliminate a bid that falls outside these bounds, unless the tenderer can provide a reasonable justification for the difference, or*
- *Appoint an independent third-party assessor who dissects the bid and determines where there may be a price advantage, and*
- *Seek clarification from the tenderer as to why the unusually low bid should be considered by addressing the following factors and how it gave them an advantage, creating the ULB:*
    - *Labour cost advantage*
    - *Material cost advantage*
    - *Process / technique cost advantage*
    - *Innovation advantage*
    - *Commercial advantage*

At all times throughout this process, no information relating other tenders is discussed and probity is maintained.

In addition to assessment of the ULB, the independent assessor also reports on additional costs that may occur, including project admin, claims and disputes, risk transfer and other costs that could occur to mitigate the unusually low bid. The assessor makes a recommendation with a validation as to whether or not to further consider the bid.

If excluded, the tender does not form part of any further metrics for evaluation. This arrangement is included as an annexure in the conditions of tendering.

Outcomes

This approach benefits both clients, contractors, subcontractors and suppliers and include sustainable outcomes for all:

- Better value for money for clients in delivery by avoiding additional costs related to administration of distressed and unprofitable contracts.
- A sustainable industry that increases competition while enabling healthy businesses of all sizes to succeed in tendering and executing projects;
- There is less pressure on the supply chain as due to more sustainable contract award values.
- Owners will achieve a more collaborative project outcome without the angst that comes from unprofitable contracts; and
- De-risking clients and contractors of the potential for an error or omission, which can readily occur under the time pressure of tender periods.

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