

## Association for Consultancy and Engineering response to CICV Forum 'Blueprint for our Industry' consultation – June 2020

### Conduct

- Need to focus on collaborative working and mutual respect post-covid, rather than a return to an overly defensive/competitive approach, particularly if/when cost ends up being the biggest driver.
- There is an opportunity for a 'reset' referencing back to the work by Letham/Egan back in the 90s. Over the past 10 to 15 years there has been a gradual move away (with the exception of a few notable examples) from the concepts of collaboration, working together, etc. This has led to an increase in the transfer of risk to designers and contractors, increase in confrontation between parties and polarisation of positions. This has a number of impacts including, but not limited to, the increase in claims (or increase in commercial tension), loss of opportunities to genuinely innovate, creation of difficulties in retaining talent within the industry and consequential impacts such as the Insurance Market hardening against Construction.
- The approaches have led to downward pressure on margins which impact on firms entering administration on the back of one or two bad jobs and a difficulty in investing in people and resources to enhance innovation. An example is the current move to BIM which offers significant client benefits but in many cases is now requiring significant investment in software, the cost of which is not being (or allowed to be) reflected in fees earned, etc.
- Can avoid surprises by building trust through better bidding practices. For example, those bidding for work doing so on a better-defined scope, and pricing on what is asked, rather than providing extensive exclusions and hitting a client with a variation claim on day one. This would also help to get the *right* people for the job, rather than the cheapest.
- This would be further helped by having better informed technical teams helping client procurement teams, rather than relying too heavily on cost and project managers.
- There needs to be a fair and reasonable assessment of any financial implications associated with Covid-19.
- Would be helpful to introduce more regular risk management workshops to assess ongoing implications of the pandemic, including impacts on access to staff and/or access to materials (particularly relevant if products are being manufactured overseas).

- Looking at design and services, there is a lack of appreciation and over expectation of what Reasonable Skill and Care constitutes. This is leading to an over conservative/cautious approach having to be taken with many design activities with the resulting increase in cost of projects and missed opportunity for aspects such as embedded carbon reduction.

## Contracts

- There is potential to continue the work of the CICV Forum (or a slightly modified version) to create a platform for industry leaders and clients to discuss issues affecting the industry and agree best practice approach to be adopted.
- Embed ongoing risk management process and a collaborative approach to working in response to Covid-19 within all contracts (similar to NEC approach).
- There is a need to better educate consultants around what they are potentially signing up to with some of the contract terms (e.g. unlimited liability clauses).
- Stop lawyers and non-technical procurement teams from dictating to clients the terms that they should be enforcing, particularly when they are not realistic to the scale of fee (e.g. unlimited liability for a £10k design fee). Contracts should work for both parties – we are seeing more and more clients demanding 'each and every' liability clauses, which is essentially unlimited liability.
- Regarding standard forms of contract being amended, this is now standard practice with a resulting imbalance in liabilities, risks and returns. This includes removal of reliance provisions, excessive requirements for indemnity and liability, overarching terms for main contract knowledge and breach provisions within subcontracts, refusal of Net Contribution provision, etc.
- Minimising provision sums and larger quantity of CPD packages is a direct reflection of consultant fees and programme being reduced to unrealistic levels, therefore scope needing to be reduced to make it work. There is also an argument that because of this, some of the newer, less experienced consultants do not actually know what a 'normal' scope looks like.
- The issues related to clients including contractors (i.e. contractors asking supply chains to sign up to terms which they themselves would not be willing to or are not appropriate in relation to the scale and fees for work being undertaken).
- The Scottish Government as a positive are openly taking about ethical procurement and reasonable/fair terms and payments. This is not (at least yet) being fed down through projects and supply chains and contracts become more onerous.

## Workload

- Government intervention is likely to see an increase in investment or changing in funding rules for 'shovel ready' projects across roads, rail and infrastructure (electricity, high speed fibre, etc). There may have to be some legislative relaxation for aspects of this (e.g. to simplify rules for accessing roads, private land, etc). It needs to be spread as wide as possible to support as many sectors, companies and jobs as possible.
- There needs to be clarity on the investment pipeline for projects, and bringing forward/ring-fencing funding to give greater confidence in the marketplace.
- There is a need to facilitate early consultant design team and contractor collaboration where possible to ensure potential construction risks are considered and factored into the design. This would also include considerations associated with Covid-19 (e.g. availability of specialised labour or materials).
- Reduce bidding wastage, with better and more effective pre-qualification and an incentive to bid over realistic timescales. Given the market conditions at present, there are significant numbers of teams bidding on PCS projects (recent example was 12no. multidisciplinary teams for a £30M project) where losing bids recoup little or no bid expenditure. Longer term this could stop companies from bidding on projects and clients getting forced into selecting lower quality bidders. Consider larger projects being done in competition manner, with honorarium for expended effort.
- Minimising provision sums and larger quantity of CPD packages is a direct reflection of consultant fees and programme being reduced to unrealistic levels, therefore the scope needs to be reduced to make it work. There is also an argument that because of this, some of the newer, less experienced consultants do not actually know what a 'normal' scope looks like.
- The current procurement models of weighted cost/quality tend to skew towards lowest cost and therefore instil cut-price performance. Mean price scoring would be a step in the right direction.
- Some consideration is needed around solely using bidder's reputation and experience, which can lead to clients picking a company with a track record, rather than the technical team that can best deliver the project. Projects are largely successful because of the people involved and the ability to work together.
- With regards to the pipeline, what matters is not just an overall values and broad programmes, but a specific/clear pipeline which the supply chain can align to.
- Reference is made to alternative price assessment. This is to be encouraged, however the current requirement for 'lowest economically advantageous' selection leads to the

potential for challenge when such provisions are implemented. Legislation should reflect a move away from simply lowest price.

### Payments

- There is a need for the timely issue of POs from clients and commitment to pay within agreed timescales (no greater than 30 days for consultants)
- Implement an automatic trigger of interest for late payment - generally interest payments end up getting waived due to concern over ruining relationships, although legally entitled.
- A lot of challenges or queries around invoices tend to happen a day or so before payment is due, which can be used as a delaying tactic when there is not actually an issue. Consideration to mandatory review of invoice after 7 days, with 'promise to pay' issued within contracted terms.
- Consideration should be given to more regular valuations on projects and reductions in retention % values would also help ease financial risk on contractors and consultants alike.”

### Programmes

- Government should consider a significant immediate investment in social housing (including potentially purchasing sites previously identified for private homes). This will lead to investment in multi-sector construction for housing, on site infrastructure development and also in serving the development (water, electricity, etc). Aside from the pipeline benefit there is a massive benefit in obtaining an increase in affordable housing. A decision will be required on how these are progressed (e.g. local authorities, housing associations, etc).
- Commercial projects will be hard to progress in the short term as the market will be re-assessing the post-covid impact on shopping, restaurants/bars and office needs with the likelihood that all will be smaller. Investment business cases will therefore be harder to justify.
- The key thing to getting work out in Q3 and Q4 is to release a significant amount of small scale, quick work projects in Social Infrastructure (Schools, Nursing Homes and Healthcare) that can be implemented quickly.
- Set reasonable tender periods to allow sufficient time for a fully considered response commensurate with the scale / complexity of the developments.

- There is a need for greater implementation of technical advisor teams with a knowledge of what is being asked of project teams, to help set realistic deadlines rather than them being set by project managers or clients who are not fully informed.
- Earlier engagement around project procurement, with timeous appointment to de-risk programme.

## Quality

- The condition of infrastructure is shocking for a developed nation like Scotland. Due to the low lending interest rates that currently exist, if the UK and Scottish governments could prompt investment in strategically important built environment infrastructure as well as digital communications it would possibly lead to initial benefits for the supply chain and in the long term improve the prospects of the nation in attracting inward investment when we get through the current crisis and the pending economic downturn.
- The issue of quality and operational performance gaps in new build public sector buildings is now well documented in Scotland. It is accepted that the way to address both is to ensure that the key designers are fully engaged at an early stage, right through the design and construction phases of the projects and then during a period for post occupancy evaluation.

ACE Members who provide Energy and Environmental services as well as MEP are required to work very closely with the Architects from the earliest design stages to ensure that the energy performance gaps are addressed. The advice required for taking decisions on form, orientation and fabric using iterative building physics techniques will invariably result in a requirement for greater detailing by the professional team, thus more quality during construction.

It is now a matter of urgency that the value of these professional businesses (Engineers and Architects) is appreciated and that scale fees are reintroduced to get away from lowest bidder and least service outcomes.

- There is also an opportunity for this to include investment not just in new build, but in significant refurbishment, repurposing and improvement of existing assets. This would also give ample opportunity for Scotland to drive real change around low carbon commitment at a time where it would be all too easy to revert to type. As an example, undertaking a strategic overview of existing local authority buildings focusing on existing use, expected lifecycle and energy use would help identify buildings that could be disposed of to free up land for development and funds for reinvestment. It may also highlight buildings that have greater flexibility that could be repurposed for greater community benefit, such as schools or third sector charities supporting delivery of services for disabled children; an area that local authorities continue to

need significant support with due to under provision of authority facilities and staffing.

- To improve quality, there needs to be an increased level of checks on site and/or the re-introduction of the clerk of works role.
- There is support for an enforced audit process involving professional body of others within the industry.
- There needs to be less reliance on a D&B, contractor-led model, which inevitably ends up being cost driven.
- Much more collaboration is required on projects if we are to see higher quality outcomes, and for as long as projects are cost driven (particularly with clients with unrealistic expectations of what investment can actually buy), then quality will generally be the factor that will be squeezed.

### **Disputes**

- Adopt an early warning approach/hands on management of risk to address issues at the earliest opportunity.
- Overlapping with conduct, there needs to be a significant focus on primarily avoiding disputes, and then as described on parties working together to resolve without escalation.
- This aligns with risk positions within contracts where the majority of current issues relate to differences of opinion as to who holds risks. Clarity on this within the contract itself would help ease dispute areas.

### **Legislation**

- Implement a classification system for roads approvals relative to complexity, similar to delegated powers planning decisions. Simple sites could get an easier ride, to enable earlier starts. This would free-up authorities time for processing larger or more complex sites in detail.
- Extending planning permissions, building warrants and all statutory consents should be done automatically. The costs are likely to be minimal and it would display an understanding by national and local government of how the industry operates, the challenges that exist and how they can help mitigate them.
- Consider greater use of self-certification (similar to existing SER for structures) for other services, but limited to low complexity projects. This would help unburden local

authority building control and allow them to focus on larger commercial projects rather than house extensions and reduce the current length waiting time for warrant approval. For more complex projects, such as hospitals, consider independent review teams using private sector knowledge and/or authorising engineers (such as those used in healthcare sector).

- Scottish Water are implementing a policy where there is a presumption against the connection of surface water to their combined sewer network. This means many brownfield sites cannot be developed economically. A fund should be created to enable Scottish Water (or developers) to lay new surface water systems to remove surface water from the combined network.

### Covid-19

- There is some thought needed around lockdown, social distancing, how to safely accelerate the lifting of some of the restrictions and overcoming the remainder. Debate remains around the difference of 2m vs 1m social distancing on transmission rate, but it is clear that social distancing has a hugely adverse effect on operating capacity and, therefore, business model. We know some University clients are forecasting 10 to 30% capacity, and schools are planned to be down to a 2 day week or around 30 to 40% capacity, which also has a knock on effect on productivity of parents with younger families working from home.
- As a country, we need to see both UK and devolved Governments opening up all aspects of society, markets and industry to mobilise confidence, spending, demand and use. Whilst it is clear safety is a priority, there is a danger of slowly and nervously inching our way out of lockdown that risks a deeper and more damaging recession than the 2008 banking crisis. With this comes potential negative impacts on the physical and mental wellbeing of the population, with high rate of unemployment, particularly amongst the young and impoverished, which may be as damaging in the long term as Covid has been in the short term.