

The following paper was presented by our Managing Director - Michael Harrington, at various recent “ACA” functions held around Australia. The presentation received excellent feedback from many attendees’. A great insight in the Contractors’ world. Enjoy the read! ... Brian Holloway

Paper Titled -

“Contract Selection & Contract Types”

Now I probably need to prefix this presentation by telling you I am from the DARK SIDE.....that is I’m a contractor. That’s the little group that gets handed the project to actually carry out the works after everyone else has had an input, set unrealistic targets, normally failed to define the scope, paid a fortune in legal advice, come up with a specification which is neigh on impossible to deliver and prepared a document of which only 10% relates to the actual work to be done. The rest of the documents being CONDITIONS OF CONTRACT; Special Conditions of Contract; AMENDMENT TO CONTRACT; and amendments to special conditions of Contract.....and numerous other gems, never forgetting the necessary site facilities for the clients representative.....

The time available for submission of the tender feels like 10 minutes, bearing in mind all the information, pricing etc necessary to submit the tender. The client requires so much detail and paperwork that we have had to cut down numerous forests to supplied two copies of the tender forms and in some cases a CD. Then we find that the completion date for the works is about a week before we could possibility start. And all the time everyone involved except the Contractor is confident we will make millions on the job.

So this is a brief overview of options for selecting a contractor and the possible contact options for the works. Also as I’m not sure what experience most of you have in this area, please bare with me if you already know it....

For the rest of you.....TRUST ME I’m A CONTRACTOR...!!!!

So you have identified the need for certain works to be carried out and after preparing all of the copious documents required.....Well at least hopefully....unlike a recent experience.

So the story goes something like this.....the tender is publicly advertised, including the compulsory site meeting date, plus the send money for the documents clause. Now bearing in mind this was actually a prequalified tender and only 4 companies in the world can tender, you’d think the client would just ring or email the relevant companies. So we dutifully register our interest and send our money and receive acknowledgement, book the flights organize the pickups etc.....so now it gets interestingwe receive an email late on the Monday prior to the scheduled site meeting on the Wednesday cancelling the meeting and rescheduling it for 2 weeks later.....by the way too late to cancel or transfer the cheap flights which we’ve booked.....oh and by the way the email isn’t even from the client, but another agency we just happen to be registered with.....

Another area of concern is not knowing the value of works prior to going out to tender. This seems to happen on a fairly regular basis where the client has seriously underestimated the tender value.

The majority of contractors are only too happy to provide budget prices if asked. In one particular case in which a group of contractors had lined up to look at a particular project, covering numerous areas of a plant the client informed us that the budget for the area was \$300,000.....which managed to kill the whole meeting.....as one of those gathered pointed out that the first item we were looking at was the same as one just recently completed at a sister facility for \$1.5M....anyway the tender was withdrawn..... So back to finding a Contractor.....

There are obviously numerous ways to look for a contractor to tender for a project. These range from Mate of a Mate, referral from some other source, maybe a paint company or consultant, flicking thru the Yellow pages, the Internet, public advertisement, etc.....

In the end the client should be looking for a contractor who is best suited to carry out the works and in my experience the best option for this is to go to Selected Tender.....

The advantage of selected tender is that it establishes a pool of contractors or in some cases a single contractor who has all of the necessary criteria to carry out the works. By reducing the number of contractors to those who only meet the client requirements it saves time and thus money oh and in some cases heartache when the tender is called.

This process might be started by initially calling for Expression of Interest. This involves interested contractors submitting details of the abilities, resources and general other information prior to a tender being called. It does take time, but means you are only dealing with contractors who meet the bill at time of tender.

Another option moving on from EOI or as the next step from it is to establish a prequalification scheme which requires the contractor to supply extensive information and details, but in turn streamlines the tender system as the client already has the base company information for the contractors.

This system is used by numerous Governments, Semi Government and some private entities. It has the advantage of limiting the number of contractors a client has to deal with and in some cases also reduces the amount of submission material and analysis required in accessing a tender. The prequalification is normally given for a period of around two years or so. This doesn't preclude other contractors applying for the prequalification when it is called.

It also allows for better comparison of the tenders as the submissions are from contractors of similar abilities. One of the other tools used in prequalification over extended periods is the use of a points system in awarding tenders.....Basically the various components of a tender and the tenders history are given a point ratingbut more on this later.

Perhaps the ultimate method is what I've chosen to call the "Negotiated Tender".....This involves dealing with a single contractor and normally is the result of a long term relationship stemming from a prequalification or history of experience. This system has numerous advantages.....

Promotes a better working relationship, because people get to know people; Intimate knowledge of the Contractor by the Client and Visa versa.

Continuous improvement with input from both parties; reduced costs in tendering; opportunity for greater input by contract in such areas as planning and budgets; fewer inductions

As with any system there are possible disadvantages.....such as complacency and price comparisons (could someone else be doing the work cheaper?)

This can be partly countered by the use of KPI's (key performance indicators) which can be used to measure a range of performance criteria.....one word of caution is that they must be realistic and measurable.

In any event the final selection of a contractor should be based on an overall ability to deliver the project and let me tell you from my less than humble experience this does not necessarily revolve around the lowest price.....

Ability – can the contractor actually do the work? Do they have the experience; the personnel; the equipment; the training; to do what's needed?

OH&S – Does the contractor have an established OH&S system in place.....are there JSA's, Safety Management Plans, Hazard Assessments, detailed procedures, has the system been audited and is the company committed to it. Do they have an OH&S manager dedicated to the area? This is a particular area of risk to the client due to the duty of care and possible Workcover Issues and ultimately litigation.

Environmental – As for OH&S, this area has become more prevalent in recent times and to be fair more so in some states than others.

Quality – Is there a QA system in place and does it work. This should include a QA Manager, demonstrated records and procedures and third party certification. In particular we believe for Coating Contractors the PCCP is the best option in this area. This is an ISO9000 certified scheme run jointly by Industry and the Federal Government through the CSIRO. The big difference between this and a standard ISO system is that on top of the QA system it attaches a capability rating to the contractor dealing with both site and yard work and ranging through levels 1 to 5. Level 5 being for the removal of hazardous paints in particular red lead. This certification is a prerequisite for lead work for the RTA (NSW); Vic Roads; DEIR (Tasmania), Transport SA and numerous other authorities. But best of all it is done by someone else so as a client you know that the contractor has been audited.

Financial – Do they have the financial wherewithal to fund the project; Can they fund the security deposits; can they carry the retentions; Is there sufficient cash flow to fund the works between payments; and do they have all the necessary Insurance Coverage.....

The Price – What at times can seem like the bargain of a life time can quickly turn into a disaster if the project has been under priced. This can be a result of lack of experience; lack of knowledge; poor scope and specification; a mistake; or a combination of all of the above.

One item in particular can greatly add to the cost of a project - the cost of supervision and or third party inspection by the client, whilst this doesn't form part of the contractor's tender it should be a part of the client's budget. Once again the choice of a poor contractor can effectively blow this cost well above any amount budgeted.

So in summary it is really a combination of all of the above factors which should decide the best contractor for a project.

So now you have your Contractor.....

The choice of the type and format of the legal contract is normally made prior to going to tender. Probably the most common form of contract is AS4000...the Australian Standard General Conditions of Contract modified thru various annexure to fit the requirements of the project. There are numerous other types for minor works and to suit specific projects. Some government departments tend to have their own contract formats but in any case this document under pins the legal and commercial requirements of the works. It details (the list).....

It never fails to amaze me that this part of the tender documents (and later the final contract) normally accounts for 80% plus of the paperwork along with all the other non actual work related items. You know gems like the details for the Superintendents Reps on site accommodation, usually about 20 pages long.

I cannot emphasize enough the importance of a clear and concise specification and scope of works. These two items ultimately detail the work and how it is to be done. Not only are they critical to the final outcome, but as I've previously mentioned they are necessary for the accurate pricing of the works.

The specification should detail the types of materials, methods, and all steps necessary to carry out the works. Now as we are Painting Contractors my particular problem is with those engineers, without being unkind then usual, who manage to pull out some old specification from some obscure project and insert it into a tender, only to find it's not relevant or the paint type is no longer made. So I would suggest either approaching a good painting consultant (and yes there are bad ones) and or a paint supplier who will in fact supply a basic paint specification for free. The other advantage of this is that it puts part of the liability for the works back onto another party. This can be especially important in a failure and in a warranty situation.

Speaking of warranties – whilst initial they were viewed as a bit of a gimmick they can in fact be good for all parties concerned by clearly detailing the responsibilities & liabilities of all those involved. I would note however that I find it interesting that whilst the client, contractor and paint supplier all find themselves involved I have yet to see a third party inspector or coating consultant tied to the agreement. Especially when as mentioned before they can be responsible for the specification and signing off of the works. (Mention the spiral casing)

So then we come to the scope. This needs to detail exactly what works are required, and in some cases what is not. It needs to include such things as timing, induction requirements, sequencing, and clear identification of the items to be worked on. It really forms the backbone of the whole project.

If this portion of the document is not clear, you have a recipe for disaster...!!!!

Partnering seemed to be the buzz in the 80's & 90's and is not something we hear much of now a days. The initial get together and general attempts to develop a team spirit with all parties equal and supposedly working for the common good without needing to refer to the legal items only seemed to last until the first major issue when the contractor realizes that some parties are more equal than others....!!!!

The newest type of Contract we are involved in has been “Alliance Contracts” and in our experience these have worked very well. The initial selection of the Contractor is based almost solely on the ability to provide the specified services with the pricing of the work normally being a negotiated item. We are currently involved in six of these agreements where we have only submitted prices after award of the contract.

In any contract it is critical to establish good lines of communications. This might include regular site meetings, picking up the phone, sending emails, etc.....In any case you will find that by implementing a system from the start will make life easier for all concerned. In particular it allows you to address issues early and not after they might have got to the point of drama.

The use of open book contracts is also gaining favor, more so in the case of Alliance Contracts or Sole Contractor agreements to check on costs. This does still involve a degree of trust from all those involved but can be viewed as ensuring the cost of the works is fair and reasonable. One further point of note is that for the most case the profit margins are reduced in this type of arrangement because the risk to the contractor is greatly reduced.

So what I have been mostly getting at, and probably labouring, is that development of long term relationships will make tendering easier and more efficient. Ultimately it leads to a system of actually working together. It prompts a familiarity of the clients culture and systems. It limits the need to go to costly tenders and evaluations and it allows for the ongoing exchange of information. By way of example in two of our Alliance Contracts we sit on the facility maintenance committee and are involved in programming and forward planning of the works.

Another area of improvement we have been involved in has been “Wash Up” meetings. This involves all parties sitting down following completion of a project and running thru the various aspects of the contract. It lets all of the parties engage in a frank and open discussion with a view to over all improvements on other upcoming works.