

White Paper Conference.

Suzanne Hardie
Morton Fraser

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"Price stability: How do you handle rising costs and fluctuating prices in bids and contracts, including distressed supply chains and stakeholder concerns about going to market?" ●



Inflationary Pressures

- Brexit
- Covid
- War in Ukraine



= Increased costs of materials, goods and labour
+ Demand side remaining high

Inflationary Cycle



“Inflation is as violent as a mugger, as frightening as an armed robber and as deadly as a hit man”

Ronald Reagan

Bidder Approach to Fixed Pricing



Caution & Co Ltd

- Price the (Unknown) Risk
- Otherwise submit a High Scoring Bid

Cavalier Cowboys Ltd

- Gamble on Prices Falling
- Quality Score is Lower

Tumbleweed Trading Ltd

- Risk is too High
- Don't Submit a Bid

Impact on Contract Award

- **Cavalier Cowboys:**
 - Impact on Service Delivery: programme certainty, service levels, KPIs and Community Benefits all suffer
 - Squeeze on the supply chain
 - “Bed Blocking” Framework Agreements – nil return at call-off
 - Seek Contract Variations
- **Caution & Co:**
 - Risk has been overestimated: best value not achieved
- **Tumbleweed Trading:**
 - No bids
 - Reduced competition

Longer Term Impact

- Supplier Insolvency
- Knock on impact through the supply chain
- Bidders withdraw from public sector work as too unattractive



Future Contracts:

Understanding the market

- Fail to Prepare, and Prepare to Fail
- Preliminary Market Consultation
 - Understanding the market
 - Regulation 42: Appropriate measures to avoid distortion of competition
 - Impact on Procurement Timetable
 - Record measures in Procurement File
 - How not to do it: Consultant Connect 2022 EWHC 2037 (TCC)
- Benchmarking
 - Comparable “recent” projects to help set budgets
 - Wider sector input

Future Contracts: Preliminary Market Consultation

41.—(1) Before commencing a procurement, **a contracting authority may conduct market consultation** with a view to preparing the procurement and informing economic operators of the authority's procurement plans and requirements.

(2) For this purpose, a contracting authority may act as it considers appropriate, including **seeking or accepting advice from independent experts or authorities or from market participants**.

(3) Such advice may be used in the planning and conduct of the procurement procedure, provided that **it does not have the effect of distorting competition** and does not result in a violation of the principles of non-discrimination and transparency.

Future Contracts: Tender Documents

- **Tender Documents**
 - Estimated value of the Contract – at publication
 - All inclusive pricing – travel, subsistence and delivery
 - Tender Timetable – how long is the evaluation period?
 - How long should tenders remain open for acceptance?
- **Evaluation**
 - Consider how permitted price adjustments might affect the price evaluation.

Future Contracts:

Contract Terms and Conditions

- **Appropriate Risk Allocation**
 - Terms and Conditions of Contract
 - Period of the Contract or Framework
- **Pricing Mechanism**
 - Annual adjustments – fixed, indexed, decreases, risk sharing, caps
 - Provisional sums – addressing volatility in certain markets
 - Open book accounting
- **“Clear, Precise and Unequivocal Review Clause”**

Ongoing Procurements

- Before advising Preferred Bidder
 - Bid Clarification
 - Stick to timetable wherever possible
 - If evaluation is delayed, ask all bidders to re-confirm pricing
- After Preferred Bidder advised
 - Post-Tender Negotiations



Post Contract Award

- Collaborative Contract Management
- Permitted Modifications
 - Clear Precise and Unequivocal Review Clause
 - Cannot change the overall nature of the contract – change from fixed price to fluctuating might fall foul...Consultant Connect again
 - Force majeure, delay and compensation events
 - Other Safe Harbours:
 - De minimis
 - Unforeseen circumstances?
 - Non-substantial
 - Economic reasons?
 - Insolvency/Restructuring

THANK YOU.



Suzanne Hardie

Partner
Morton Fraser

0131 247 1325
Suzanne.Hardie@morton-fraser.com

Contact us.

EDINBURGH
0131 247 1000

GLASGOW
0141 274 1100

INFO@MORTON-FRASER.COM

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