

Best Practice Principles for **Rail Construction** **Procurement**





Streamlining and providing nationally consistent of tendering processes for the construction of rail infrastructure projects would provide significant efficiency savings for both the client and the tenderer, to better support the post COVID-19 recovery.

This best practice guide for rail construction tendering summarises the principles that would help achieve improved outcomes for all. Informed by industry experts, the following recommendations would make rail construction procurement easier and get more “jobs'-creating” rail projects off the ground faster.

The powerful growth of the infrastructure markets in the last 20 years has brought with it a legacy of relatively high costs of infrastructure compared to many of Australia’s global peers. On simple metrics, the cost of building core infrastructure in Australia is expensive in world terms. Tendering costs in Australia are estimated to be around 1-2% of a project’s total cost, at least double the world benchmark of 0.5%.¹ Reducing these costs would deliver multiple benefits: more bidders would be likely to join the tender process, increasing competitiveness; cutting red tape would see tender processes completed faster; and resources and budget saved in the tender process could be focused on project delivery. Ultimately these costs are borne by taxpayers and infrastructure users.

The future of Australia’s rail construction sector hinges upon driving down the high costs of tendering, more consistent project planning on behalf of governments and greater industry collaboration.² A sustainable rail construction industry is vital to deliver the rail infrastructure pipeline and reboot Australia’s economy.

Given this period of uncertainty due to the global pandemic, tighter budgets, and government efforts to stimulate employment, increased clarity, collaboration and measures to address inefficiencies are vital. COVID-19 should be utilised as the catalyst for change.

It is estimated that \$155 billion of rail investment is planned in the next 15 years.³ This will require specialist skills in a time of skills shortages, particularly with regard to procurement processes, and means more productive and efficient approaches will be required. As a result, contractors may be more selective in which tenders they will bid on. Procurement practices that are resource intensive, expensive, high risk, or likely to be delayed are considered less attractive.

The following framework outlines practical changes state governments can make now to ensure a nationally consistent procurement approach. This includes key recommendations on a range of issues from pre-project engagement to compliance and documentation. These recommendations, informed by industry, would help reduce the cost of tendering and support faster decision making to move projects from planning to delivery sooner.

1 Rail Express, The Sustainability of Rail Contracting in Australia, 2012.

2 Rail Express, The Sustainability of Rail Contracting in Australia, 2012.

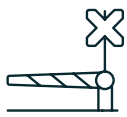
3 BIS Oxford Economics, 2020.



Market sounding and pre-project engagement

Pre-project industry engagement is good practice and widely supported by industry. Two-way information sharing that helps inform both the contractor's and purchaser's planning should be encouraged.

- ✓ Make submission requirements more targeted and less onerous to encourage more tenderers to take part, including tier 2 and 3 contractors
- ✓ Be open about the objectives of the project and the relative significance of the intended evaluation criteria. Be clear about the role price will play in purchasing decisions
- ✓ Provide genuine engagement at face-to-face meetings with purchasers' key decision makers



Pre-qualification

Simplifying the pre-qualification process can save time and money and put the focus on the project requirements.

- ✓ A national rail pre-qualification scheme that allows data to be provided once and for all tenders. When tendering, contractors are to confirm no material change has occurred since registration
- ✓ Pre-qualification should be set on meaningful accreditation to reduce paperwork and administrative process for both contractors and clients



Probity management

It is essential that both purchasers and contractors meet their obligations and act responsibly during the tender process. Simplified probity management will ensure this can occur, without the need for additional red tape.

- ✓ Confidentiality documents should be signed by authorised company officers on the company's behalf. This should be done once and cover the entire tender process
- ✓ Probity requirements should not restrict beneficial engagement with key stakeholders and suppliers during an ECI phase
- ✓ The probity process should start with a clear and published statement of the risks it intends to address
- ✓ Probity requirements should be risk-based and ensure the costs and impact of mitigations are proportionate to the risks involved



Early Contractor Involvement (ECI)

ECI can be valuable when there is a clearly defined scope for the project and the appropriate time and resources can be invested in the process.

- ✓ Purchasers should not initiate an ECI process without first ensuring the intended requirements are realistically researched and stable and that they are fully committed to the process
- ✓ Establish relationships of trust between client and contractor, and a project model that aligns to cultural considerations of client and contractor
- ✓ Alliance models have proved effective and should be considered where appropriate
- ✓ There should be a fair and reasonable variation process for significant scope changes or time extensions



Standardised terms and conditions

Standard T&Cs can save time and reduce administration costs during the tender process.

- ✓ Standard form contracts should not be heavily amended through special conditions which detract from the intent and benefits of using standard contracts



Contract models

Contract models can often dictate the success of a project

- ✓ Contract models need to support a collaborative partnership approach for the benefit of both parties
- ✓ Program alliances have shown efficiencies and provided certainty to build collaborative and effective teams with a clear pipeline of work. This model supports different scales of opportunities and encourages training and ongoing employment



Risk mitigation

Risk profiles and allocation are currently not flexible or equitable to suit evolving circumstances or encourage industry participation

- ✓ Risk needs to be defined and quantified
- ✓ Risk allocation needs to be fair and capped
- ✓ Risk and costs reduced by ensuring reliance on clients design
- ✓ Key risks which the purchaser should not ask industry to accept include:
 - Unknown contamination
 - Unidentified and non-contestable utilities
 - External planning approvals (including third parties)
 - Non-reliance on key information supplied by client
 - Change in law
 - Pandemic and its direct and indirect impact, both nationally and internationally on activities (not currently covered under force majeure)



Formatting of tender documentation

Standardised templates and editable forms could streamline tender processes, make it easier for contractors to manage large amounts of information and enable the submission of relevant information in a timely manner

- ✓ Standardised forms with minimal variations
- ✓ Provision of documentation in a consistent and editable format to enable information to be entered more efficiently
- ✓ DRM use should be limited to only justifiable cases and restricted to genuinely sensitive materials



Compliance management

Requirements that are not clearly articulated can make it harder to complete statements of compliance and track progress. A more effective approach is needed to help purchasers make the right selection.

- ✓ Contractors should be able to outline minor, non-material variations in statements of compliance through the creation of a 'Fully Comply but in the Stated Manner' category
- ✓ Clearly identify mandatory and non-mandatory compliance items
- ✓ Tender specifications and requirements should be issued in a consolidated table format that can be easily analysed and tracked during the tender process and the project implementation



Use of Management Plans

Management Plans are time consuming and costly, and the same information could be obtained through alternate means.

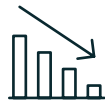
- ✓ Request management plans for shortlisted tenderers only
- ✓ Focus on plans where the information will have a meaningful impact on tender assessment



Managing performance

Key performance indicators (KPIs) need to be proportionate to the margin of the contract.

- ✓ Apply consistency in incentivisation through KPIs to ensure the cost does not outweigh the benefit
- ✓ Apply a balanced approach to reward good performance, not only penalties



Cost of procuring

The cost of procurement in Australia is more expensive than in other jurisdictions. To ensure a more competitive process, cost recovery mechanisms would support greater participation.

- ✓ Reasonable recompense should be provided to all tenderers to help recover costs associated with a competitive tender process through a claims process
- ✓ Consistent implementation of progressive cost reimbursement during tender process



Enable innovation

Technological progress is relatively stagnant and innovation uptake is slow.

- ✓ Ensure commercial model and tender processes do not limit productivity and project outcomes but support new technologies and processes
- ✓ Facilitate timely type approval processes that support procurement and contract timeframes



Project pipeline

An infrastructure investment pipeline would provide clarity and enable forward planning.

- ✓ Clients to undertake regular reviews of their infrastructure pipelines and report six monthly
- ✓ Publish a transparent pipeline of projects to allow contractors to invest, plan and train to prevent capability and capacity challenges
- ✓ Coordination of the project pipeline would better support industry's capacity to deliver

The ARA proposes that significant benefits could be realised if improvements were made to current rail infrastructure construction procurement practices. Substantial improvements can be achieved through more streamlined and consistent tendering processes across jurisdictions, for both the contractor and the client.

The ARA Rail Contractors Group (RCG) calls on government transport and infrastructure departments to adopt the 30 principles against the 12 key areas outlined for Best Practice Rail Construction Tendering.

The RCG acknowledges that some jurisdictions have made efforts to implement a number of these principles, however a collaborative approach and ongoing benchmarking and measurement is required to ensure a collective commitment and realisation of the benefits.

The ARA acknowledges the work of the Construction Industry Leadership Forum (CILF) and seeks to further support and progress procurement reform efforts for the construction of rail infrastructure.

The Australasian Railway Association (ARA) is the peak body for the rail sector in Australia and New Zealand.

We represent more than 150 member organisations including passenger and freight operators, track owners and managers, suppliers, manufacturers, contractors and consultants.

To support our members, we commission research and develop policy positions that strive to improve the environment for rail now and into the future. We unite our members through committees and working groups to workshop common challenges and create a platform for collective improvements.

The RCG represents the interests of companies who build new infrastructure for the Australian and New Zealand rail industry. These projects include track construction, tunnels, stations, signalling and electrification of railway networks. In addition to the domestic rail infrastructure construction, these companies successfully tender for and deliver work all around the globe.

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