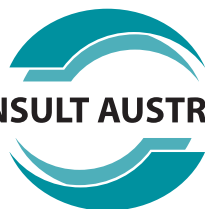


Partnership for Change

Model client



**AUSTRALIAN
CONSTRUCTORS
ASSOCIATION**



CONSULT AUSTRALIA

Partnership for Change

The Australian Constructors Association and Consult Australia have joined forces to bring forward sector-wide reform proposals through our Partnership for Change initiative. The initiative demonstrates a solutions-based approach to improve productivity and address challenges in the built environment.

The publication of a series of joint thought leadership papers will provide the basis for collaborative discussions between government, contractors and consultants to drive positive change.

Partnership for Change papers:

👉 Model client (this paper)

- 👉 Digital technology
- 👉 Multiple design reviews
- 👉 Reliance on information

Case for change

Government procurement has become increasingly complex and onerous for suppliers due to problematic procurement processes and difficult contracting terms. Engagement between stakeholders (including government clients, insurers, constructors, and designers) too often is marred by various forms of contractual dispute, rather than productive behaviour built on fair risk allocations. This is practice is having significant negative impacts on the insurance market that Consult Australia and Australian Constructors Association

members rely on to remain in business (including professional indemnity (PI) and public liability (PL) insurance).

Tendering practices requiring lowest price at the tender box are compounding adversarial behaviours, particularly when risks are not properly priced or catered for. Onerous and unnecessary contract terms and conditions further drive these negative behaviours. Adversarial contract terms are more likely to lead to disputation instead of collaborative problem solving. It cannot be overstated how much the private sector follows the example set by government.

By committing to the behaviours set out in this paper, government clients will not only improve their relationships with the supply chain, they will also drive positive change in the industry more broadly. Ultimately this will lead to an uplift in productivity for all parties and more accurate project costs for the client, as contractors and consultants will not be forced to price for disproportionate risk or spend significant sums on lawyers and experts as a result of claims.

Recommendation

Consult Australia and the Australian Constructors Association recommends that all government clients commit to the eight model client behaviours. The behaviours have been developed to drive productivity. The behaviours address many of the unnecessarily complex and lengthy procurement procedures and undesirable contracting behaviours which hinder Australia's economic growth. Our experience shows that too much time and money is spent across jurisdictions:

- seeking reasonable modifications to contract terms to allow parties to appropriately manage risk
- determining clear scopes of work and accurate briefings
- securing fair and timely payment conditions.

At the core, a government 'Model Client' acknowledges that it has the benefit of an inherent and substantial power imbalance and is committed to addressing that imbalance by operating in good faith and acting ethically, fairly, and honestly in all dealings without leveraging status, power, or authority to gain unfair benefit or advantage. That overarching obligation is demonstrated by the Model Client behaviours.

A model client:

1. understands the commercial risks, market conditions and different roles of the industry suppliers, using that knowledge to balance the risk exposure of all parties (for example, minimises the use of security deposits for contractors and sets reasonable insurance limits and limits of liability for consultants)
2. undertakes appropriate risk identification, assessment, mitigation, and management including by understanding the particular project risks
3. has clear, consistent and transparent tender processes, evaluation criteria and provides quality documentation including well-structured and accurate briefs, providing reasonable review and response times (the key benefit flowing from this is reduced cost of bidding)

4. always considers business and industry sustainability, by avoiding unnecessary pressure on parties. For example:
 - a. setting fair and reasonable assessment of stipe-ends to account for costs to consultants and contractors
 - b. always settling invoices on time and ensuring that contract negotiations are fair; not a 'take it or leave it' approach
 - c. provides fair assessments and timely payments for work undertaken particularly in relation to additional works and claims.
5. avoids use of non-standard or heavily amended contracts and prioritises collaborative contracting including appropriate liability frameworks, maintaining proportionate liability, balanced rights/obligations, and placing risks with the party best able to manage them
6. avoids the practice of multiple rounds of best and final offers
7. fosters a collaborative culture. This includes, through early engagement, supporting and driving innovation and maintaining open and constructive communication between all parties
8. plans and prioritises projects and avoids making assumptions about industry capacity. This includes having a genuine commitment to improved culture, mental health, and diversity, and observing industry closure times (for example Christmas tender blackout periods).

More details on the benefits of the model client behaviours and the issues they seek to remedy will be explored in an upcoming Refreshed Model Client Policy to be jointly developed by Consult Australia and the Australian Constructors Association.

Examples

The following examples demonstrate model client behaviours.

Model Client Example 1

Undertakes appropriate risk identification, assessment, mitigation, and management.

In this example project, the client and supplier spent considerable time establishing a jointly agreed position (a Geotechnical Baseline Report) on the anticipated sub-surface physical and behavioural conditions. These baseline conditions were then used during the project for re-measurement and compensation in terms of cost and time, considering certain criteria including quality of rock face, water ingress and geological hazards.

Model Client Example 2

Has clear, consistent and transparent tender processes, evaluation criteria and provides quality documentation including clear, well structured, accurate briefs, providing reasonable review and response times (the key benefit flowing from this is reduced cost of bidding).

In the last couple of years, we've noticed that some clients have improved their tender processes by introducing a genuine interactive process during the entire request for proposal phase. Through an honest and open collaborative approach, applied not only during the delivery phase, several goals were achieved including:

- better understanding of the client's needs through the interactive discussion on briefs and tender documentation
- more detailed and focused responses and proposals by contractors
- reduced review and response time by the client
- total visibility on evaluation criteria
- real value for money, through a tailor-made proposal from contractors.

Model Client Example 3

Always considers business and industry sustainability, by avoiding unnecessary pressure on parties.

Notable measures and legislation have been put in place to ensure subcontractors and the supply chain are properly and promptly paid by main contractors. However, contractors with sizable, complex claims are often left funding projects as clients chose not to, or are unable to, address genuine entitlements in a fair and reasonable timescale. Whilst there have been changes to contract models such as alliancing, ITC arrangements and risk sharing, these will not eradicate the occurrence of subsequent genuine claim entitlements that arise during the currency of a project.

