

6 November 2019

Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Review of Best Practice Principles, Minimum Conditions & Ethical Supply Mandate

I write in response to the review of Best Practice Principles, Minimum Conditions & Ethical Supply Mandate.

Review of Best Practice Principles

What works well

We maintain our position that the Best Practice Principles (BPPs) are unnecessary red tape, adding to the cost of tendering without any benefit to the procurement process. Tenderers are providing information that is already reported elsewhere, which causes unnecessary duplication.

In our view, the BPPs unnecessarily and significantly increase the cost of these projects as well as undermining the Government's commitment to local suppliers - particularly with the introduction of Minimum Conditions for Best Practice Industrial Relations.

Clarifying/enhancing guidance

We are aware that individual projects – for example, 10 school projects where the total value of all 10 building contracts exceeds the \$100m threshold – are being rolled up as 'a program of works' and required to comply with the BPP. This is contrary to the intent of the BPP. This point should be reinforced in the guidance documentation/material.

BPP weightings

We support involving the IRG in setting the BPPs weighting. However, it's too early to determine whether this process adds any value. To make it effective, the IRG needs detailed information on the project being assessed, together with a list of all other weighting decisions as a reference (relating to construction/civil projects). Over time we believe this will be a useful process.

Information to head/prime contractors to enable application of BPPs to subcontractors

More detailed information should be provided about how Best Practice Industrial Relations could be inconsistent with the federal *Code for the Tendering and Performance of Building Work 2016*.

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Minimum Conditions

What benefits would result from the wider use of minimum conditions as an option on BPP projects generally?

We believe there is no benefit. We don't accept the Government's proposition that the Minimum Conditions is a tool to ensure quality, safe workplaces (by strengthening the current BPP implementation process to achieve the BPP policy intent). Imposing the Minimum Conditions on tenderers is inconsistent with the notion of best practice, the objects of the *Fair Work Act*, and the 2016 Federal Code.

The content of the Minimum Conditions has been lifted from two Brisbane CBD 'super projects' - Queens Wharf (\$3.2 billion) and Cross River Rail (\$5.3 billion). The wages, allowances and penalty rates contained within the Minimum Conditions were negotiated for these two projects.

The Minimum Conditions are being presented as a non-negotiable, acceptable outcome that will apply across Queensland, irrespective of the type of project and the prevailing labour market conditions.

Best practice industrial relations, by definition, entails identifying and negotiating project specific outcomes, relating to quality, productivity, efficiency, fairness etc.

The Minimum Conditions will escalate costs particularly in regional areas; undermine the Government's 'Buy Local' policy; and may cause federal code compliance issues for contractors.

What challenges would there be from a wider use of minimum conditions as an option on BPP projects generally?

The Minimum Conditions currently represent amongst the highest levels of pay in Queensland for the construction sector. To apply this approach to other procurement categories is problematic to say the least and would be unsustainable in the long term.

In what situations would it be appropriate to apply the minimum conditions?

Only where they represent a negotiated outcome for the specific project.

How can minimum conditions be applied across different categories of procurement?

With great difficulty – it would mean applying the highest possible pay rates for that sector right across the state, irrespective of prevailing labour market conditions.

Besides the minimum conditions, what alternatives are available to give suppliers and agencies greater clarity, and make it easier to address the BPP around industrial relations?

None that we can see.

Ethical Supply Mandate

We have already provided detailed comment on the guidance material. We are keen to discuss the Department's feedback on our comments.

What are the implications of expanding the mandate to other categories or government sectors?

Hugely disruptive if the ESM is expanded in its current form.

Should there be a different implementation approach for categories or government sectors? If so, what should be the principles underpinning the approach?

No, in the interest of fairness the Government needs to take a consistent approach to applying the ESM across all procurement categories. This could entail amending the ESM as it currently applies to the building and construction sector.

Yours sincerely

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