

# Civil Engineering Contractors Association (CECA) Scotland submission of 12 June 2023

## PE1992/F: Dual the A9 and improve road safety

### **Introduction**

We welcome the opportunity to respond to Scottish Parliament's Citizen Participation and Public Petitions Committee to comment on petition PE1992: Dual the A9 and Improve Road Safety.

The Civil Engineering Contractors Association Scotland (CECA Scotland) is the representative body for companies who work day-to-day to deliver, upgrade, and maintain Scotland's transport and utility networks.

Our members include some of the largest construction firms working on large scale infrastructure projects as well as a range of small specialist and regional contractors delivering projects in their local communities. Across Scotland, we estimate our industry supports the employment of over 30,000 people with annual activity worth around £3 billion.

### **CECA Scotland Response to Petitioner's Question**

In our response CECA will address the first two bullet points of the petitioner's question.

Whilst the petitioner's question only refers to the dualling of the A9, it is CECA's contention that there is a much larger issue surrounding the process and contract favoured by Transport Scotland when procuring new road projects generally that could impact upon any stated timescale to dual the sections of the A9.

### **CECA's Relationship with Transport Scotland**

CECA has enjoyed a strong relationship with senior officials within Transport Scotland (TS) since 2008. We have 3 meetings each year.

At these meetings CECA provide TS with an industry overview that covers workload, forward orders, resource, and raw material pinch points. In turn, TS provide an update on their major transport

infrastructure projects programme and the Roads Directorate programme.

The senior TS officials that are involved in these meetings are very experienced, highly qualified Civil Engineers and Quantity Surveyors. They are very knowledgeable in procurement law and the relevant policies of the Scottish Government.

Our meetings are carried out in a professional and cordial manner and CECA values the information that TS officials feel that they can share with us. This information is shared with all CECA Scotland members to allow them to plan suitable resource around bidding and delivering potential future contracts.

### **Recent Contractor Experience of Delivering Major Transport Infrastructure Projects in Scotland**

The industry average profit margin for civil engineering contractors is a paltry 2%. Consequently, it doesn't take much to "go wrong" in a job for that margin to be wiped out and losses to be racked up.

Major transport infrastructure projects in Scotland in recent years have been a painful experience for the contractors involved. All the principal contractors involved in building major road projects in Scotland have lost money on the contract.

TS rely upon their bespoke contract when procuring road projects. This contract is identified by industry as being a fixed price, design and build contract where all the (financial) risk lies with the contractor. Examples of "Risk" are;

- Ground conditions
- Weather
- Utilities
- 3<sup>rd</sup> party consultations

The contractor has no control over the risk posed by the bulleted points above and consequently any financial loss or time penalty arising out "risks" must be borne solely by the contractor under the terms of the contract.

The bespoke TS contract used to procure road projects is regarded as a dated, unattractive anomaly by the market. As a result, TS is regarded

by CECA members across the UK as the worst client to work for in the UK.

The wider industry moved to using the “New Engineering Contract” – known as the 'NEC Contract' –in 1993. It was a radical departure from existing building and engineering contracts such as that still favoured by TS, as it was written in plain language and designed to stimulate, rather than frustrate, good management.

Across the UK it is estimated that several hundred billion of pounds of procurement has been facilitated by this standard contract and it is now regarded as the “industry norm”.

The NEC suite of contracts embed a more equitable sharing of risk between client and contractor and foster a collaborative delivery approach.

Too many recent TS road projects have become adversarial with claim and counter claim taking up time, money, and energy at the end of the contract. A change in culture by the client to move from the present behaviour of disengagement during the contract period to one of collaboration will result in better outcomes for all parties.

Transport Scotland’s desire to continue to specify their bespoke has resulted in fewer contractors viewing TS opportunities as being attractive to bid.

This is evidenced where TS has only attracted one bidder on two separate occasions for a major project; the A92/A96 Haudagain improvement in Aberdeen in 2019 and again for the Tomatin to Moy section of the A9 earlier this year.

They awarded Haudagain but rejected the sole bid for Tomatin to Moy.

It is the contracting industry’s strongly held belief that TS must totally abandon its existing bespoke contract and move over to using the NEC suite of contracts if it is to regain the interest of the wider UK contracting industry in delivering future Scottish road improvements and enhancements, such as the dualling of the A9.

### **Completing the Planned Dualling of the A9 by 2025**

The civil engineering sector in Scotland have known for many years that the promise to dual the A9 2025 would not be met.

The pace at which design and development work and subsequent road orders for each of the eleven sections has been carried out can be best described as being glacial. There is a suspicion amongst contractors that this slow pace has been deliberate as there has been insufficient budget allocated to allow these sections to be procured.

The current procurement process can take a year to identify and make an award to a successful contractor. Each section can take a further two or three years to build.

CECA outline below a few possible procurement options.

## **PFI**

This would allow the remaining sections of the A9 to be split into two or three “standalone” PFI projects that could be built concurrently.

This would mean that all remaining un-dualled sections of the A9 between Perth and Inverness would be being worked on at the same time. An estimate of five to six years from contract award is not unreasonable.

PFI allows the project to be completed using private sector finance. However, it is likely to be the most expensive proposition in the long-term.

## **Three Large Sections Financed from the Scottish Government Capital Budget**

As per the PFI section above but will be cheaper because the Government will not be paying the finance charges over a period of two or three decades of the PFI agreement.

## **A9 Dualling Framework**

A framework agreement is an agreement about the terms and conditions that would apply to any contract that would be awarded.

The client does not need to purchase from every or any contractor that wins a place on its framework agreement. Instead, the client could run

mini competitions among the suppliers on the framework agreement or make a “direct award” each time it has a requirement.

Bidding costs to gain access to a Framework are high. For a specific framework for the A9 to be successful, contractors would need to be confident that the framework contained guaranteed work. To encourage more of our indigenous Scottish contractors to bid to be on the framework there would have to be a range of sections of different size/values on offer for them to deliver as the principal contractor.

Crucial to the success of any A9 Framework is an absolute commitment by the Scottish Government to ensure that the funding was in place to ensure that work flowed through the Framework.

A ten-year Framework could see the A9 dualled.

### **A “Pay as You Can Afford” Approach**

This model would involve the remaining nine sections of the A9 dualling programme being subdivided in to smaller, more affordable sections for the Scottish Government’s capital budget.

For this approach to work there would have to be an iron clad guarantee that lower value sections would flow on a regular basis through the procurement process. It would have the benefit of sustaining and developing the road building capability within Scotland’s indigenous civil engineering contractors and their local supply-chains.

Whilst this approach is likely to be the most sustainable for the Scottish civil engineering contracting it will take longer to finish the project.

All the solutions above are predicated on sufficient financial resource being made available by the Scottish Government to allow the procurement and construction of the road to flow organically without the “stop start” consequence of political decision-making.

It is also imperative that there is a quick transition away from Transport Scotland’s bespoke contract to the NEC4 suite of contracts. This will ensure significant interest from contractors that will, in turn, generate competition and drive value for the taxpayer.