Network Rail: a pull on the purse strings

In 2014, Network Rail promised a £38.5bn five year infrastructure spending plan. But only a year later, the programme is facing criticism due to a catalogue of “unacceptable problems”, including spiralling costs and missed targets.

As has been widely reported in Infrastructure Intelligence and across the industry, these are difficult times for Network Rail. Clearly Network Rail’s purse-strings are to be tightened, and this has been demonstrated by the Government’s recent “pause” on railway upgrades, including the planned electrification of the Midland Main Line and Trans-Pennine routes. To date, around £2bn worth of projects have been put on hold.

The underlying issues will have a knock-on effect across the industry, not just in relation to the “paused” projects and participants interested in these, but in relation to those projects which are live and during the delivery phase. In addition to railway users, Network Rail’s supply chain is likely to feel the pinch.

One view is that Network Rail will get more ruthless in the operation of their contracts. This does not necessarily mean acting outside the contractual framework but could mean following it more vigorously. The supply chain will need to be aware of this.

Those currently participating in live projects with Network Rail, or as part of their supply chain, must operate their contracts correctly. Do not leave the contract in the drawer! To avoid any arguments regarding payment entitlements, ensure that payment applications and notices are submitted on time, with appropriate detail and supporting documentation, pursuant to the contract terms. The latter is particularly important for time charge or target cost contracts. If payment is late, manage this accordingly. Was a pay less notice issued? If not, you can push for payment.

Variation provisions will need to be followed also – do not leave claims for additional time and money to the end of the project. Again comply with the
contract provisions, which should include, for example, complying with notice provisions in relation to additional time and money and not proceeding with the work where the contract requires you to provide notice and/or agree a revised fee beforehand.

Suppliers further down the contractual chain should look out for their clients operating “pay-when-paid” or “pay-when-certified”, which is prohibited under the Housing Grants, Construction and Regeneration Act 1996 (as amended). Such conduct is still widespread and commonplace where the purse-strings are tightened higher up in the contractual chain.

If contracts are renegotiated in order to redefine the scope or restructure any payment mechanism, ensure that this is appropriately documented in, say, a deed of variation, to create contractual certainty and reduce the chances of any dispute or indifference at a later date. Contract variations can be complex and will need to be considered carefully.

Network Rail’s supply chain will need to be more diligent in the operation of its contracts moving forward. Entitlements may not be as straightforward as before, resulting in further resource to administer and operate these contracts – more than had been anticipated and no doubt more than was priced. Nevertheless investment in proper and effective administration now will pay dividends in the long term.

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