

Price volatility in construction contracts: no topping out in sight



highest ever levels of tender prices. AECOM (Ireland Annual Review 2022) expects an average tender inflation price of 5 per cent for 2022, while Deloitte (Q2 Industry Review 2021) states that the uncertainty of costs is making it increasingly harder for the industry to forecast developments.

While the recent increases in the cost of materials have been “unprecedented”, managing price fluctuations in a contractual context is not a new concept. To mitigate these challenges in public works contracts, the Office of Government Procurement has recently published an interim suite of amendments, including:

- an indexation mechanism for PW-CF1 to PW-CF6; and
- amendments to the price variation clauses in PW-CF1 to PW-CF5 to reduce the Base Date from 30 to 24 months and to adjust the threshold for exceptional material price increases from 50 per cent to 15 per cent.

In the private sector, collaboration remains key.

Our key takeaways for projects already underway are for parties to maintain an open dialogue and to have a thorough understanding of your existing contract to proactively mitigate the impact of material price increases. We are seeing more negotiation in the industry around price volatility clauses and the building of long lead orders into the contract structure. In the pre-contract stage, parties should clarify how long and to what extent a contractor’s tender should be considered binding.

For further information or advice, please contact Matheson’s Construction and Engineering team: www.matheson.com/services/construction-and-engineering

As 2022 unfolds, there is cautious optimism in the construction industry that the resilience displayed over the last two years will manifest in a strong recovery, with output projected by AECOM to grow by 18.5 per cent this year, from €27 billion to €32 billion.

Despite falling to an eight-month low of 53.7 in December 2021, the Ulster Bank Construction PMI still indicates growth, albeit at a much slower rate. A more balanced increase this year is welcome, to prevent marginal projects from becoming unviable.

- the significant increase in the cost of materials;
- supply chain constraints;
- lack of skilled labour; and
- a fall in registrations for apprenticeships.

Optimism is tempered by increased demands on the industry to expand and deliver on the ambitious targets set out in the National Development Plan while battling the pre-pandemic pressure points exacerbated by Covid-19 and Brexit:

From 1 February 2022, new minimum rates of pay will come into force under SEO 703/2021 (Electrical Contracting Sector) and SEO 598/2021 (amending SEO 234/2019) (Construction Sector). Industry analysts have predicted that these factors will lead to some of the



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