

# Avoiding Potholes



Avoiding potholes  
How to minimise risk when  
outsourcing highway liabilities

A presentation by:

Carl Dunckley



# Session Objectives

## Session Objectives

- Understanding issues

- Council's perspective
- Contractor's perspective

- Joint Protocol Working Party

- Highways Outsourcing: Guidance on Claims Handling Protocol
- Highways Outsourcing: Best Practice Activities Checklist



Avoiding potholes  
How to minimise risk when  
outsourcing highway liabilities

ment  
outsourcing  
e on a  
management

ment  
outsourcing  
ctive  
checklists

only verify requirements and  
act.

all practices activities  
the processes and profiles  
that return to producing the  
Highway assets.



# Why Do We Need This?

“The cost of pursuing this claim is likely to eat into the savings the council envisaged.”

“The relationship ... has become adversarial – a particular challenge when it comes to managing legacy claims.”

**“The contractor is only willing to settle lower value cases, worth up to £5,000.”**

“Although the contract includes provision for the recovery of paid claims ... the council has never pursued this.”

# Case Study: Gotham City Council

## So what are the issues?

Gotham City Council has let a 3 year contract for the maintenance, repair **AND** inspection of its highways. The contract has been awarded to Penguin Engineering Services.

Previously maintenance and repair was delivered by Joker Group plc. GCC where unhappy with service standards and the relationship with Joker has become adversarial.

New contract was let using standard engineering contract terms.

This is the first time GCC had outsourced its highway inspection function. This has involved TUPE transfer of highway inspectors.

# Key Findings

- Contractors need to understand their liability for civil claims and factor their cost into any bids they submit.
- Legacy claims handling is difficult if you change contractors as relationships can sour.
- Some authorities and contractors have claims handling protocols – this should become the norm to improve outcomes.

# Key Findings

- Contractors feel under pressure if a repair budget is reduced after a contract has started.
- Clients, contractors and insurers need to co-operate closely and develop a high level of trust.
- Procurement should give greater emphasis to the views of insurance managers and contract / claims managers.

# Key Findings

- When a budget is reduced during the life of a contract, the contractor may be unable to complete repairs in the agreed timeframe.
- Contractors are concerned about the practice of implementing temporary repairs that quickly fail and cause further claims.

# Key Success Factors – Council's

- Communicate clearly when letting the tender:
  - The full extent of the liabilities being transferred
  - How such liabilities might arise
  - The scale of potential financial implications
- Provide up-to-date information on the condition of any relevant asset.
- Take the views and experience of the council's insurance manager into account during the procurement exercise.



# Key Success Factors - Contractors

- Have a full understanding of the extent of the liabilities being transferred and factor the cost of those liabilities into the bid price.
- Ensure that a full survey of the highway network is provided by councils during the bidding process.
- Take the views and experience of the organisation's contract and claims managers into account during the procurement exercise.

# Key Success Factors – Both Partners

- Recognise the scale of cultural change and the importance of proactive management of the transition period at the start of a new contract.
- Ensure frequent communication between client and contractor.

# Key Success Factors – Both Partners

- Develop clear protocols as part of both parties' contractual obligations, to address in detail:
  - Third-party claims handling
  - Information sharing
  - Communication
  - Claim data ownership
  - Legacy arrangements
  - Dispute resolution activities
- Work together to decide how to address budget restrictions.

# Protocol Development Working Party



## Highway outsourcing Best practice activities checklists

Recommended best practice activities  
required to avoid the problems and pitfalls  
that can be experienced when transferring the  
risk and liability for highway claims.  
February 2015



in partnership with



## Highway outsourcing Guidance on a claims management protocol

For use when highway safety inspections and  
repair are outsourced.  
February 2015



in partnership with

