
Housing Forum Working Group 1: The Future of Partnering and Procurement



April 2010

The future of procurement and partnering – how to deliver real cost savings and efficiencies

Research and reports submitted by Working Group members

Members of the Working Group investigated various aspects of the future of procurement and partnering, and of techniques to deliver real cost savings and efficiencies. They undertook extensive research that is documented on the Housing Forum website.

The papers and reports submitted by Working Group members are as follows:

- 1 Partnering – Is it a success story?
- 2 Frameworks – Do they deliver better value?
- 3 Lowest price – Is it a good or bad thing?
- 4 Single stage tendering or early contractor procurement?
- 5 RSL and developer experience and expectations
- 6 Delivering skills/employment through procurement
- 7 Procurement and sustainability
- 8 Funding and legislative issues
- 9 Integrating new client structures with procurement
- 10 Procurement and the 2012 Construction Commitments
- 11 Residents Voice on Procurement
- 12 Options appraisals in context

While the Working Party has reviewed these papers and reports in detail, the views express in them are those of the authors and not necessarily those of the Housing Forum or the Working Party as a whole.

1 PARTNERING – IS IT A SUCCESS STORY?

(Dr David Mosey, Trowers & Hamlins LLP and Kerry Fleming, EC Harris)

1.1 Partnering achievements

The term "*partnering*" has been used as a watch word for best practice on building projects over a period of some ten years. The 1998 Egan Report "*Rethinking Construction*" in 1998 identified numerous examples of successful private sector partnering and positively promoted this as the right approach for public sector projects. Since then, partnering has increasingly become a major plank of government construction policy, promoted for example in the Office of Government Commerce "*Achieving Excellence in Construction*" guidance in 2007 whose recommendations included "*introduce partnering into all property and construction projects*".

Analysis of the benefits of partnering has been undertaken in some detail in the National Audit Office 2005 report "*Improving public services through better construction*", with numerous case studies to support its findings. The Housing Forum has offered a wealth of demonstration projects to illustrate the means by which social landlords can use partnering to improve project outcomes.

1.2 But what is partnering?

The underlying problem remains what the term "*partnering*" actually means, with a particular focus on personal commitment as a basis to build up relationships that look beyond the short term commercial interests of each individual team member. Yet individuals who owe their primary loyalty to their employer, and the risk remains that the commitment required for partnering may be abandoned or compromised when the going gets tough – for example, when an economic downturn invites a more short-term approach or when problems encountered in the delivery of a project can be blamed on another party.

A hazy description of partnering can lead:

- at one extreme to everyone assuming they are doing it anyway; and
- at the other extreme to it sounding too risky and too difficult to be adopted for "*normal*" projects where personal commitment at a senior level is not possible or where time constraints suggest that a more formulaic or arms length approach is the safer option.

1.3 Partnering processes

Reports in the press over the last two years suggest that partnering is unlikely to survive in an economic downturn as a viable procurement option. To allow this to happen would be a waste of ten years good practice, and the Working Party has considered aspects of partnering that should form part of an options appraisal for procurement of any project or programme being undertaken by a social landlord.

For this purpose, the Working Party recommends that partnering is considered primarily as a set of procurement and project management "*processes*" that need to be spelled out in tender documents, contract terms and mutually agreed timetables of activities so that team

members can identify exactly what they are committed to, when they make these commitments, and for what purposes.

Separating out the issue of long-term partnering under frameworks and alliances (for which see section 3), the first question to ask is how to create a reliable definition of partnering? The clearest answer comes from the National Audit Office 2005 report which describes partnering as "*a structured management approach designed to promote collaborative working between contracting parties*" and goes on to suggest specifically that organisations adopting a partnering approach should:

- *"Work in a positive no blame whole team environment*
- *Provide early warning to each other of any matters that could affect the achievement of the project objectives*
- *Use common information systems and work on an open-book basis including showing the elements of contingency and risk allowances added to costs, prices and timing of all future work*
- *Have incentives for delivery based around pain/gain share arrangements."*

The first two recommendations are features of a well-structured communications strategy and the latter two are features of a well-structured pricing model, but all four depend on clear contracts between the client and its consultants and main contractor during both the preconstruction and construction phases of each project.

1.4 **Partnering benefits**

The benefits of partnering identified by the National Audit Office in 2005 on the basis of the projects that they analysed include:

- Value for money gains
- Streamlined improvement
- Improved productivity
- Reduced construction costs
- Improved whole-life value
- Reduced legal claims
- Improved health and safety

It is the view of the Working Party that these benefits cannot be obtained only by declarations of commitment to partnering relationships and that excessive reliance on the hazy personal approach to partnering is vulnerable to uncertainty.

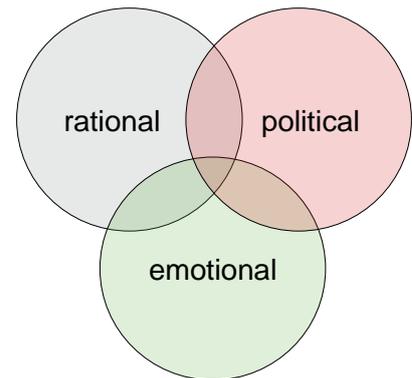
The integration of partnering with a systematic approach to procurement and project management through "*early contractor procurement*" allows clients, consultants, contractors, subcontractors and suppliers to understand what is expected of them in a

partnering approach and to measure their commercial commitments in terms that are not dependent on a "leap of faith", but are directly relevant to aligning their own commercial interests with those of other parties in order to achieve successful projects outcomes.

1.5 Partnering and behaviour

It is accepted that commercial cooperation through partnering still requires behavioural change to overcome the innate conservatism in human nature and our preference to operate within a comfort zone of more familiar practices. A review of relevant behaviours suggests the following:

- All people are driven by a blend of three behaviours and this also applies to organisational structure. Procurement invariably involves a number of different people organisations that will contract as well as a number of other stakeholders and influences.
- When identifying an approach to dealing with stakeholders it is important that an understanding of where the drivers are and the solutions then created to satisfy this.
- **Rational behaviour** will focus on the facts and figures to establish how phasing, planning, finance, cost and value interact.
- **Political** drivers will be important for all key stakeholders and within all organisations. At a personal level this could include someone behaving in a certain way to have an impact within their own organisation that seemingly has nothing to do with the job in hand. At organisational level this could involve organisations trail-blazing or acting in a highly conservative way.
- **Emotional** behaviour is driven by internal and external influences, from the individual's own belief system to external influences such as local residents and the media.



In light of the above possibly conflicting influences, it is important that the parties can depend on clear technical apparatus through contractual processes to guide them at each stage in the development of their partnering relationships on any project.

1.6 Partnering contracts and early contractor procurement

The instinctive aversion to using contractual structures as a basis for working relationships needs to be overcome through training and support for what the Construction Industry Council described in 2000 as an effective partnering contract that should:

- "support the full partnering team and aim to deliver an integrated project process";
- help "define the goals and how to achieve them"; and

- state *"the agreed mechanism for managing the risks and rewards"*.

The Housing Forum when surveying organisations involved in partnering in 2000 found that *"In some cases, there was a lack of understanding of the partnering arrangement by some partners and, more often, by those not included in it. This lack of understanding could cause confusion between partnering arrangements and negotiated contracts. It also led to a lack of involvement of suppliers and users"*.

Social landlords and their consultants, contractors, suppliers and subcontractors continue to face the same challenges despite a wealth of empirical evidence to support the benefits of a partnering approach. Our view is that the only robust means of tackling and breaking through this potential obstacle to best practice lies in the adoption of a new and properly recognised procurement option termed as *"early contractor procurement"*.

2 FRAMEWORKS – DO THEY DELIVER BETTER VALUE?

(Dr David Mosey, Trowers & Hamlins LLP)

2.1 Social landlords and frameworks

Social landlords have moved rapidly from the use of approved lists and informal long-term working relationships to the adoption of EU compliant frameworks in the light of two recent phenomena:

- The acceptance in 2004 that the EU procurement regime applies to all social landlords including RSLs
- The introduction of the Public Contracts Regulations 2006 establishing rules governing the procurement and framework arrangements.

Not surprisingly, the formal implementation of the first round of EU-compliant frameworks has had mixed success, with some clients adopting these frameworks purely to satisfy EU procurement regulations and not gaining the full potential benefits that long-term structured arrangements can offer.

2.2 Getting better value from frameworks

The Working Party has received reports that include instances of consultants and contractors striving to be included on frameworks and then not having an opportunity to implement specific projects because clients have continued to use only those framework consultants and contractors whom they already know and trust from previous experience. This leads the Working Party to make the following recommendations:

- EU procurement regulations govern not only the creation of frameworks, but also the basis for calling off individual projects. Specialist advice should be sought by clients procuring new frameworks in view of the tightening of EU procurement rules, recent cases in the European Courts of Justice and the additional measures that can now be taken by dissatisfied consultants or contractors under the Remedies Directive.
- Social landlords and their consultants and contractors should not consider framework arrangements to be a regulatory burden when they can offer a strong foundation for obtaining cost savings and improved efficiencies.
- Long-term arrangements under framework agreements are the most robust form of partnering as they help the parties to invest in new ways of working that can stimulate innovation at all levels of the supply chain, efficient practices on site and social benefits such as employment and training initiatives.
- A framework agreement is not a guarantee of good practice unless it sets out the targets and measures of achievement that are expected by all parties, and the consequences of exceeding or falling short on those targets and measures.

2.3 **Framework agreements**

None of the currently published forms of framework agreement (the JCT 2007 Framework Agreement and the NEC3 Framework Contract) offer a structure that links the life of the framework agreement to measured performance or that incentivises that performance. The successful future of procurement using framework agreements will depend on adoption of a standardised approach and there is scope for the creation of a new standard form framework agreement for adoption by social landlords with their consultants and contractors. Such a framework agreement should be linked to rather than in substitution for a clearly defined approach to early contractor procurement.

3 **LOWEST PRICE – IS IT A GOOD OR BAD THING?**

3.1 **Lowest price and new build projects**

(Kevin Murray, Southern Housing Group)

3.1.1 **Introduction**

The term 'best value and not lowest price' is increasingly being used in many tender exercises for construction projects (particularly those publicly funded). The term seems to imply that 'lowest price' does not represent best value and the first part of this draft paper considers whether 'best value' and 'lowest price' are mutually exclusive.

The second part of the draft then considers the use of 'mini-competitions' as a means of selection under Framework Agreements.

3.1.2 **Best Value and lowest price**

There are many factors that influence the price paid for construction works, including the:

- Project Brief
- Method of team selection and procurement
- Design response to the brief;
- Location and site conditions;
- Project type and size;
- Market conditions;
- Regulatory requirements; and
- Timetable

For many construction projects, how the final price for the build is derived is a complex process given the almost infinite number of variable inputs that are available to implement the required output i.e. the constructed project. For any given output there will generally be a range of options considered that have particular advantages and disadvantages. The final option chosen for implementation will be determined by the option that delivers the best fit to meet the Project Brief. For the Client the selected option could be said to have been decided on the basis of 'best value'.

Conceivably the primary objective for the Client may be the lowest price or the quickest timetable. For others it may be design quality irrespective of budget.

Thus 'lowest price' may be a perfectly legitimate primary objective for a Client that reflects their view of 'best value' regardless of what their advisors and industry lobbyists may say to the contrary that 'lowest price' is not a legitimate method of selection.

Even in those instances where there is more of a 'balanced scorecard' approach to what represents best value for a Client, the sourcing of resources of a given quality for the

lowest possible price is surely not an unreasonable objective? Thus an absolute rejection of 'lowest price' as a selection criterion needs to be treated with some caution.

The anathema of 'lowest price' selection in construction is generally in stark contrast to spending decisions in other sectors and in everyday life. In everyday life, the growth of consumer spending from on-line retailers has been fuelled, in part, by lower prices for goods than may be found on the high street (or out of town retail parks). For many consumers 'lowest price' equates to 'best value' when purchasing goods. That is not to say that quality judgments are not made on the basis of brand loyalty and the desire of possessing/enjoying perceived better quality at a lower price or nearer to 'own brand' price.

Elsewhere, retailers such as Tesco, Sainsbury and Asda all strive to convince consumers that they offer quality products for the lowest prices, either on an individual product basis or on certain baskets of goods.

In other industries, such as manufacturing, sourcing the required quantity of components at the right time, to the required quality and the lowest possible price all serve to deliver market advantage.

Surely the procurement of given quality resources at the lowest price is something that should be expected for construction projects as well?

Maybe in reality it is something that those involved strive for but the perceived stigma of 'lowest price' means that is not overtly spoken about. Indeed, what message would it send for the needed efficiency improvements in the industry if 'lowest price' for given levels of quality was not a pre-requisite?

Consultants and Contractors alike sell their Value Management and Value Engineering expertise as core parts of added value services, but going one stage further and actively seeking 'lowest price' for commodities is maybe not always pursued.

Even in the prevailing market conditions many in the construction industry (contractors, sub-contractors and consultants alike) are bemoaning a focus on lowest price.

To put this into some context between Q3 1997 and Q3 2007, the Tender Price Index rose by 77%, whereas the Building Cost index over the same period rose by 57% and the Retail Price Index rose by just over 31%. While there has been a much needed correction in prices over recent months it is still against a backdrop of previously significant rises in tender prices. It is not clear whether the magnitude of the price rises for housing projects would have been sustainable without the rapid rise in house price inflation. However, there should be no apparent co-relation between rises/falls in prices for homes and attendant rises/falls in the cost of constructing them.

In addition the recent fines imposed by the OFT for anti-competitive behaviour does not sit easily with protests about 'lowest price' selection criteria.

So in concluding this first part of the draft, selection on the basis of 'lowest price' may be a legitimate selection criterion for whole projects or for elements of projects.

A possibly more emotive issue with regard to selection of consultants on the basis of lowest price is dealt with under mini-competitions that follows.

3.1.3 Mini Competitions – Construction Works

Since 2004, many public sector clients have entered into Framework Agreements with Contractors and Consultants, largely on the basis that it provided compliance with procurement legislation and provided a quicker and more efficient route to market than undertaking individual procurement exercises for each project. Some may have also followed this procurement method as a way of working with a limited number of suppliers that met specified standards.

Many Framework Agreements incorporated a provision for 'mini-competitions' between members of the Framework as a means of selection. From experience, at the start of the Frameworks many clients simply appointed a supplier to a project. Selection was generally on the basis of: an equitable allocation of work amongst members of the Framework; by rotation, or; the specific skills of a supplier were suited to a particular project. The selection method was sometimes regardless of how compliant it was with procurement legislation.

More recently, mini-competitions are being increasingly used as the method of supplier selection. Many suppliers are unhappy at what is perceived of a further round of competition that follows a time consuming and expensive process for appointment to the Framework, while others welcome the opportunity of securing work in poor market conditions.

While the discontent is understandable, again it needs to be seen in context.

From experience, having used both single supplier negotiation and mini-competitions for housing projects better results for the Client in terms of price and value have materialised using mini-competitions in the housing sector. On previously negotiated single supplier round of tendering nearly every scheme was 'over budget' despite the Contractor being part of the team from very early in the project stage and despite the scheme budget being more than adequate. On those negotiated schemes within budget, the budgets again were more than adequate. The schemes that were over budget were re-tendered through mini-competition (no more than four contractors tendered) and without exception every tender was below budget.

In addition, I have used mini-competitions at the very early stages of a project and in addition to tenders being within budget, the client has benefited from the creation of extra homes within the originally designed footprints, and/or improved finishes and fittings, and/or reduced energy consumption for the homes. This materialised from competing early and working with the successful contractor in developing the design.

In the majority of the mini-competitions, the lowest price equated to best value as all Contractors were known to the client and had a similar track record and competence to undertake the projects.

On two of the schemes, the second lowest tender was accepted because the income from the creation of additional homes exceeded the additional construction costs and therefore equated to 'best value' for the client.

3.1.4 Mini Competitions – Consultancy

Moving onto a more emotive subject, many clients have also procured consultants on the basis of Frameworks.

Taking the Employers Agent role as an example, all Consultants appointed will have reached a required standard of competence but will often have tendered different fee percentages.

From experience the tendered fees can often vary by as much as 70%. It also does not always follow that the lowest fees are tendered by those consultants at the lower end of the acceptable competency range. On recent tender exercises, those consultants who have offered the most competitive fees have provided the most consistently high levels of service.

Even if service levels were broadly similar it is difficult to imagine why a client would want to pay, for example, in excess of 2.2% for an Employers Agent when an equally good one can provide the same service for less than 1.4%.

3.2 **Lowest price and refurbishment projects**

(John Kiely, Savills Commercial Ltd)

3.2.1 **Best value and lowest price**

This paper looks at the use of Best Value and Lowest Price in respect of delivering Decent Homes type refurbishment work and the use of mini competitions.

Virtually all work under the Decent Homes agenda is carried out whilst homes remain in occupation with a high proportion of elderly residents and hence requires a degree of care that is higher than many typical building contracts. The use of a Best Value approach in selecting contractors gives the procuring client an opportunity to incorporate its own qualitative requirements and objectives in the tender in order to emphasise this care requirement and subsequent evaluation processes. Additionally, the Best Value approach is a general requirement of the public sector and the Audit Commission.

For this reason the majority of Decent Homes procurement over the last ten years has utilized a Best Value quality:price evaluation matrix with the client highlighting the importance of the qualitative aspects to suit individual objectives. In Savills' experience these ratios have ranged from as wide as 80:20 (quality:price) to 20:80 although the middle ground tends to be the most common.

The qualitative evaluation tends to concentrate on the fundamentals of project delivery and method statements for working in residents' homes, tenant liaison, project processes and set up, supply chain etc. By their very nature, these qualitative criteria are somewhat subjective and in recent years, the majority of contractors operating in this sector have developed considerable expertise in project delivery as well as in writing tender submissions. As a consequence, it can be quite difficult to differentiate between the tender submissions and hence the top performing contractors frequently tend to score quite highly.

Further complications have arisen through the recent need to stipulate in any OJEU tender documents all evaluation sub criteria which effectively makes it even more difficult to differentiate between tender submissions.

The pricing frameworks adopted in Decent Homes contracts varies considerably between projects. Early partnering contracts often required tenderers to bid purely on an overhead and profit basis with all other works items costed through subsequent mini tenders or open book. Other cost models utilize a basket rate approach for works with separate preliminaries, overhead and profit. Many partnering contracts have adopted a full open book cost model although this does not permit the client to easily assess costs at tender stage.

The use of a best value evaluation model enables a client to determine the key factors that matter most.

Bearing in mind comments above in respect of recent tender submissions and the relative difficulties of differentiating between the qualitative tender bids, we find that price is now becoming the deciding factor in tenders. Whilst the assessment of quality remains vitally important, the majority of large contractors bidding for multi million pound annual

programmes can adequately demonstrate their abilities to deliver and therefore by default, price tends to be reflected in the pecking order.

The key issue then arising is the project management of the contracts and ensuring that the tender prices translate into outturn costs and that contractors actually perform in accordance with their qualitative submissions.

3.2.2 The use of mini-competitions

Mini competitions are used in a number of situations:

- Where main contractors are appointed through an OJEU tender on overhead and profit only and all trade/sub contractors appointed through mini competitions organized by the main partnering contractor
- Where a framework of contractors is established through a tender process and the call off arrangements for the framework are through a mini competition on a project by project basis. Appointment to the framework initially is often determined purely by a quality submission and a simple pricing schedule
- Where a client wishes to develop a supply chain in conjunction with main contractors and mini competitions are held to jointly select the supply chain.
- Where a partnering contract has a market testing facility to demonstrate ongoing value for money and a mini competition may be used for this situation.

Mini competitions effectively work on the basis that the framework of contractors have been pre-selected using some sort of qualitative criteria and hence the mini competition can focus almost exclusively on price. The mini competition will therefore be influenced by the state of the construction industry enabling clients to take advantage of competitive conditions at the current time but potentially facing price challenges in more buoyant times.

There are however many disadvantages to mini competitions, particularly the fact that these are very time consuming on both the part of the commissioning client and the contractors; there is no guarantee of work for any of the framework contractors unless they are successful in a mini competition and, therefore, there is no guarantee of any continuity of work. As the majority of social housing clients also have some form of sustainability and legacy agenda through creation of employment and training opportunities, it is difficult to successfully impose any requirements or expectations on contractors in respect of training unless continuity of work can be offered enabling that training to be delivered or other avenues exist through say a DLO.

The lack of work continuity prevents a contractor undertaking proper works planning and programming and therefore misses the opportunity to create efficiencies and to develop a continuous improvement regime.

Whilst the use of mini competitions does have some advantages and can achieve low prices (in a poor market) I believe that these are outweighed by the disadvantages in the context of a best value model.

In respect of mini competitions for consultancy services, when establishing a consultancy framework the appointment of consultants onto that framework is usually undertaken on a cost:quality best value approach. Consultants therefore have to meet the pre-determined quality criteria to get on the framework. Many frameworks allow a direct call-off for the top scoring consultant in addition to the use of mini competitions.

Where the service being offered is fairly standard across the sector such as CDM-C or typical employers agent services then there is no reason why a client should not accept lowest price on the assumption that all consultants on the framework met the quality criteria and a direct call-off was not considered appropriate. However, where the scope of service required is more complex, perhaps requires innovative thinking, cannot be easily specified or where a combination of services or skills can only be provided by a small number of consultants, then the appointment of the consultant should reflect the client requirements and the consultant's capabilities and approach to the project rather than lowest price.

4 SINGLE STAGE TENDERING OR EARLY CONTRACTOR PROCUREMENT?

(Dr David Mosey, Trowers & Hamlins LLP)

The case studies annexed to this section are taken, with kind permission of the publishers, from "*Early Contractor Involvement in Building Procurement: Contracts, Partnering and Project Management*" (Mosey, Wiley-Blackwell, 2009).

4.1 Single stage tendering and lowest price

Clients continue to assume that achievement of the lowest price is synonymous with single stage tendering. The two are completely different issues.

Systematic processes for achieving lowest price are a natural and legitimate aspiration of housing clients and should also be an aspiration of their appointed contractors and other supply chain members.

Single stage tendering is one means to seek lowest price and is the traditional fallback position in the procurement of housing construction projects. However, it is by no means correct to assume that it is the most effective way of achieving lowest price, and social housing clients needs the benefit of options that explore this in greater detail.

4.2 Attractions of single stage tendering

Clients remain attracted to single stage procurement and contracting whereby design consultants provide detailed designs by reference to which:

- Cost consultants prepare detailed pricing documents
- On the understanding that to invite tenders against these documents will obtain competitive fixed price bids from prospective main contractors upon which the client can rely.

This allows design consultants the freedom to develop their ideas to a greater level of detail and creates for clients the attraction of the prospect of cost certainty created by fixed price bids.

This approach provides freedom for design consultants to work closely with the client, but places considerable dependence on the accuracy and completeness of detailed designs and the accuracy of cost estimates that accompany them. Problems arise if for any reason contractor single stage bids:

- Are in response to an incomplete or inaccurate client brief or consultant designs, in which case bids will be inaccurate and any shortfall will be made up by later claims
- Are expected to include proposals for sustainability and/or training and employment, which can be edited out in the interests of winning the project on the lower price
- Come in at prices higher than the cost consultant's estimate, in which case there will be delays pending renegotiation and/or redesign and repricing

- Expect contractor or subcontractor/supplier contributions to design, buildability, affordability, programming and risk management, in which case there will be delays while these processes are undertaken following contractor selection and prior to start on site
- If bidders are expected to obtain contributions from their subcontractors and suppliers, which it will be difficult to achieve within a single stage bid process where the main contractor instructing those subcontractors and suppliers has not yet been appointed itself.

4.3 **Accuracy and completeness of client briefs**

Clients and their design consultants naturally believe that their design briefs are more or less bulletproof, whether these are developed on a prescriptive basis or on a performance basis converted into a design and build relationship with a main contractor. However, in either case if bidding main contractors do not have an opportunity to question or contribute to those briefs, then the risk of any error or omission is significant.

Cost consultants, of course, provide the most accurate information they can, but cannot develop detailed pricing documents unless they are able to rely on equally detailed client and consultant briefs. Where these are developed on a performance basis for the purpose of a design and build relationship, the lack of cost detail can create problems in relation to the accurate analysis of later changes or later claims for extension of time.

4.4 **Risk pricing under single stage tendering**

Contractors asked to price significant risks transferred under single stage tendering, without the opportunity for joint risk management that might reduce those risks, will be expected to price risk contingencies. If those contingencies are excessive, then the client is paying an unnecessary amount of money, whereas if those contingencies are insufficient, then the contractor will go into Loss unless it can recover the position through changes and claims.

Single stage bidding during an economic downturn is bound to attract low prices from contractors desperate to maintain a position in the market. This will create significant problems of profitability that will be exacerbated if underlying prices start to rise again and the contractor cannot pass down its risk to equally desperate subcontractors and suppliers.

Time constraints often dictate a single stage approach on the assumption that risks can be transferred to the contractor and its supply chain. But this may be a false economy if time is not taken to assess whether another procurement option can deliver the same results in a shorter period. Equally, clients may be tempted to provide less detailed briefs in order to save money and apparently keep their options open, but where this is combined with the expectation of a fixed price, there is likely to be significant scope for misunderstanding and dispute.

Social housing clients may feel that maintaining a competitive position between contractors until the last minute is the best way to keep them on their toes and to get the best prices. However, a competitive process undertaken on a single stage basis keeps the contractor at arms length until just prior to start on site, and therefore makes it difficult for the client and its consultants to have a detailed insight into how the contractor's bid is

put together and what relationships it has developed with its subcontractors and suppliers and what knowledge it has developed of the site conditions and risk issues.

4.5 **Failings of single stage tendering**

Commentators such as Bennett and Pearce conclude that single stage tendering has failed as a procurement system "*because it provided no overall direction, reducing everyone involved to defending their interest*". They also noted that the attraction of clients to "*the simplicity of inviting competitive bids*" under single stage tendering was encouraged by "*professionals with a vested interest in old ways of working*", but found that these clients are often "*sadly disappointed as they discover that claims, delays, defects and disputes make this an expensive and ineffective approach*".

While single stage tendering is intuitively attractive to clients and may well remain the preferred option in relation to certain projects, the availability of a flexible approach to early contractor procurement that retains client controls and does not require 100% partnering in all cases must logically demand more frequent consideration by social landlords.

It has been argued that the economic downturn will encourage clients to return to single stage tendering in order to take advantage of reduced costs, but this is a high risk strategy. As Sir Michael Latham observed "*returning to the old ways of adversarial behaviour will lead to more conflict between client and contractor, with variations and claims working up the original tender price, as contractors look to make money that was not in the original tender*".

4.6 **Importance of early contractor procurement**

The Working Party has examined the extent to which social housing clients are able to consider alternatives to single stage tendering, and the consequences of them doing so. We have looked at the causes of claims and cost/time overruns and our recommendation is that a more flexible procurement model described as "*early contractor procurement*" needs to be developed and documented in a way that is more accessible to social housing clients and their consultants, contractors, subcontractors and suppliers.

The predominant causes of claims have been established to comprise inaccurate or inadequate design information, inadequate site investigation, slow client responses, poor communications, unrealistic time targets, inadequate contract administration, uncontrollable external events, incomplete tender information/unclear risk allocation (Kumaraswamy, 1997).

It is arguable that all of the above (except inadequate contract administration/uncontrollable external events) derive from preconstruction phase activities and in part from the absence of full contractor/subcontractor/supplier contributions to those activities;

Questions arise as to the viability in two-stage procurement of using a separate preconstruction phase agreement and construction phase building contract (JCT and NEC approach) in terms of risk for the contractor (i.e. if the client changes horses at the start of the construction phase) and the risk of EU non-compliance with procurement (i.e. two separate procurements so the client has to go back to market for construction phase). In contrast, the two-stage conditional/unconditional approach of using a single contract for the preconstruction and construction phases of the project (the PPC2000 approach) establishes a single appointment, but maintains client control, with greater confidence for

the contractor that it will secure the construction phase appointment if it meets preconstruction phase conditions.

Early contractor involvement (under any contractual approach whether for individual projects under two-stage building contracts or in relation to multiple projects under frameworks) can provide a continuous set of processes through procurement, contract formation, conditional appointment preconstruction and unconditional appointment for construction that adds a more scientific line of activities than the relational aspects of partnering.

The relational aspects of partnering can be "earned" through efficient working under agreed processes and through demonstration of good faith, open communication and honest pricing as well as proactive change and risk management.

4.7 **An accessible and flexible option**

If partnering is vulnerable to misunderstanding, confusion and reluctance to make the required personal investments, then there should be available to social landlords and their project teams a more accessible and flexible procurement model that permits appointment of team members at pre-agreed times and for pre-agreed purposes. The Working Party concluded that the approach known as "*early contractor procurement*" can achieve this objective and should be developed and supported by the Housing Forum in conjunction with its membership as a means of applying and sustaining best practice.

In a time of limited public sector funding and changing market conditions, it may surprise Housing Forum members to receive a recommendation that more competitive prices are not always best obtained through single stage tendering, but instead can be achieved more effectively through early contractor procurement. However, whatever the balance of power between clients and contractors in the economic cycle, early contractor procurement allows a deeper client examination of underlying costs and related value through a two stage procurement process. If the brief and project risks have been thoroughly reviewed and accepted by all team members, including the contractor and its subcontractors and suppliers will build the project, then this should provide a solid foundation for:

- Reliance on the costs
- Motivation of the contractor to reduce those costs if possible (see also section 10)
- Accurate assessment of cost calculation in respect of any changes or grounds for extension of time
- Removal of artificial risk contingencies based on a lack of detailed project information at the time of bidding.

4.8 **Early contract procurement processes**

To summarise the recommended two stage approach under early contractor procurement:

- The client and its consultants set out and agree those contributions that a contractor and its subcontractors/suppliers can make to the project by way of buildability, sustainability, affordability and other practical contributions

- The client and its consultants map out a preconstruction phase timetable identifying the timing of those contributions as part of a series of activities leading to start on site
- Selection of the main contractor is undertaken through a competitive process (or by an appropriate call-off mechanism under a framework agreement) sufficiently early in the design stage to allow the agreed contributions to be made in a way that will not delay the progress of the project
- The costs quoted by bidding contractors include their profit and central office overheads, their costing of perceived projects risks, their approach to preliminaries costs (including appropriate schedules of rates) and their costing of known costs emanating from supply chain members relevant to the type of project
- Selection of the appropriate main contractor also takes into account the contractor's technical knowledge and skills relevant to the particular project, their relevant management skills and internal organisation, their direct resources and available supply chain and their financial resources and track record of successful projects completed without disputes
- The contractor is appointed only on a conditional basis to complete its contributions to the preconstruction activities (with or without financial reward for this work) and against a commitment to achieve a price within pre-stated budget devised by the client and its consultants
- The selected contractor works with the client and its consultants to complete each component of the required price, undertaking further competitive processes to select its subcontractors and suppliers and obtaining their added value proposals as part of this competitive process (based on the greater motivation of a subcontractor or supplier bidding to a pre-appointed contractor)
- Only if the selected main contractor working with the client and its consultants achieves a price within budget and a set of proposals in line with the client's brief will the conditional appointment be converted into a unconditional appointment for the project to proceed on site
- If this is not achieved, the client is free to use the preparatory work undertaken by all team members to select an alternative contractor.

Examples of two successful housing projects using early contractor procurement are set out in project case studies 1 and 2 annexed together with a further example in project case study 3 of where early contractor procurement was less successful. A fourth example in project case study 4 illustrates what early contractor procurement can achieve when undertaken as part of a housing framework.

4.9 **Key Factors**

The recommended key success factors in the adoption of early contractor procurement include:

- Use of binding timetables governing the activities of the client, its consultants and its appointed main contractor during the preconstruction phase of the project and the construction phase of the project

- The agreement of a communications strategy with authority for individuals who can meet and review positive proposals as well as resolution of potential problems
- A conditional contractual appointment of the main contractor and the consultants that only converts to an unconditional appointment when all information is available and agreed as a basis for the construction phase to proceed
- An assessment of project risks at the point of main contractor selection and creation of a risk register with agreed actions and deadlines for each team member so that risks and their costs have either been eliminated or reduced or finally costed and agreed prior to approval of start on site
- Systematic costing of works packages at the point of main contractor selection or through subsequent appointment of subcontractors and suppliers, so as to avoid broad brush target pricing that leaves all cost information only in the hands of the main contractor
- Pre-agreement of the full cost and time effect of changes, including the full implications of value engineering proposals
- Exclusion of profit and overhead resulting from claims for extension of time so as to neutralise the attraction of claims/disputes plus systems such as mediation or conciliation to encourage non-adversarial dispute resolution
- Financial incentives for team members to achieve reduced costs or other improved efficiencies (for which see also section 10).

It is recognised that the above features appear in the PPC2000 form of contract, although any other form of contract can be adapted to include such features. The Arup Report for the Office of Government Commerce observed in 2008 that *"The processes that incrementally develop the scope of the project provide for early involvement of the contractor and encourage dialogue in open-book reporting of information. In doing so, the PPC contract seeks to provide clarity and certainty of the details of the project and the responsibility of the parties in order to reduce the matters that could give rise to dispute"*. The Working Party recommends that, whatever the form of contract adopted, these processes are of value as a basis to drive real cost savings and efficiencies.

4.10 Time

The 2007 Nicholls Report on the use of early contractor procurement by the Highways Agency found that early contractor procurement can reduce the duration of the preconstruction phase by 30-40%. This figure may be surprising for clients who are likely to assume that a single stage arms-length approach will be quicker and simpler. By contrast to this assumption:

- Design development can continue during the period of early contractor selection, therefore not slowing down the design process;
- Appointment of a contractor to work alongside design consultants can speed up the finalisation of designs in readiness for construction, as there is direct access to the contractor, its subcontractors and suppliers to test the feasibility of design solutions;

- If a contractor is selected under a single stage approach, but the price exceeds the budget, then reduction of that price requires negotiation and delay to start on site – whereas under a two stage approach, the contractor is appointed to finalise a price within a pre-determined budget and against a pre-agreed profit (potentially with motivation to achieve cost savings, for which see section 10). On this basis, the finalisation of costs is governed by an agreed and timetabled process, rather than last minute negotiation.

The timing of selection of the main contractor, subcontractors and suppliers will vary according to the relevant project and the nature of the contributions they can offer. However, it is the recommendation of the Working Party that this approach to procurement is adopted as a clearly defined and well-structured model so as to make it accessible to clients and their project team members and so as to ensure that it is considered seriously as an option in relation to every project or programme.

Case study 1

Bewick Court, Newcastle-Upon-Tyne – Refurbishment of high-rise residential block

£3.5m refurbishment of landmark tower block in Newcastle-Upon-Tyne, including major specialist recladding package.

Client:	NBH, part of Places for People Group
Main Contractor:	Kendal Cross Holdings Limited
Project Manager:	Elliott Associates
Architect:	Red Box Design Group
Engineers:	Gilwood Engineering Services/BES Consulting Engineers/WSP

Summary

Early appointment of main contractor – joint selection of cladding subcontractor and early appointment to contribute to design solutions – insolvency of cladding subcontractor – early warning and core group review – agreed actions to minimise delay and additional cost – client suspension of work – early warning and core group review – agreed actions to minimise additional cost.

Key issues and events

On a £3.5m tower block refurbishment in the north east of England, the housing association client with its project manager selected and appointed a team comprising an architect, a structural engineer, a mechanical and electrical engineer and main contractor under a two stage procurement approach. They signed a preconstruction phase agreement in the form of a PPC2000 Project Partnering Agreement pursuant to which they undertook design development, risk management and build-up of supply chain and cost information. This included the joint selection of a cladding specialist subcontractor whose package accounted for a significant element of the project (£1.5m).

After start on site in late 2001, the cladding specialist (Allscott) went into administrative receivership. As a domestic subcontractor, the specialist's replacement was not the client's or consultants' contractual responsibility, and the main contractor could have been left simply to find a replacement at its own cost with full liability for any delay. However the project manager was aware, from the original joint client/main contractor tender undertaken to select the cladding specialist, that there were no comparable cladding specialists available within a wide geographical radius, and by serving an "early warning" notice under PPC2000, invited the main contractor to put forward any alternative proposals at a "core group" meeting of key individuals representing all team members.

The main contractor confirmed that engagement of an alternative cladding specialist would give rise to twelve (12) weeks delay and would cost the main contractor £175,000 - wiping out its profit and thereby its motivation to deliver a successful project. The main contractor's proposed solution was to take on direct liability for cladding, recruiting some of the insolvent specialist's workforce and buying the required materials cheap from the administrative receiver. This solution would involve a four (4) week delay and additional costs of £7,352. It was approved by the client.

The client had been reluctant to attend the required core group meetings, but was reminded that it was important to attend such meetings because PPC2000 provided that in the client's absence (or that of any other core group member) a binding decision could still be made by unanimous

agreement of all core group members present. It was acknowledged that the agreed solution would be very unlikely to have been achieved if, for example, a JCT contract had been used, because:

- a JCT contract lacks a forum equivalent to the core group with an obligation to attend meetings and clear terms of reference for reviewing problems and looking for constructive solutions; and
- under a single stage approach to procurement leading to creation of a construction phase JCT contract the client would be unlikely to have full open information regarding pricing of the original specialist package distinct from the main contractor's profit and overheads.

The project team agreed that an important feature in overcoming this significant crisis was the role of the core group, who understood their functions under the partnering contract and who used consultation based on open-book price information to agree a compromise of strict legal entitlements that offered a major benefit to the project.

Later in the project, when three mobile phone companies delayed shutting down their aerials on the roof of the building, the project manager gave early warning of the need for suspension of work and requested the main contractor to propose a solution to the core group. The main contractor agreed to identify savings elsewhere in the project that could fund the costs of suspension (and those of its subcontractors) if any compensation received from the mobile phone companies was spent on the project. The client recovered £40,000 of compensation and spent it on an improved window-cleaning system.

Contribution of preconstruction phase agreement

The success of the project team in dealing with the above problems is attributable to:

- The early appointment of the team, including the main contractor, under a preconstruction phase agreement supported by a key dates schedule setting deadlines for all preconstruction phase activities;
- The involvement of the client and its project manager with the main contractor in the early selection and appointment of the cladding specialist, as a result of which they had clear cost information (separate from the main contractor's profit and overhead) with which to analyse the cost consequences of replacing that specialist;
- The early establishment of a communications strategy, as a result of which in response to early warning the client (albeit reluctantly) agreed to participate with other partnering team members in meetings to consider solutions that went beyond strict application of the contract, and thereby enabled the team to react collectively to unforeseeable events;
- A clearly established role for the client and the project manager, as a result of which the client acknowledged that it should participate in core group activities and the project manager had the confidence to lead the client and other team members towards core group solutions;
- Creation by the above means of an opportunity for the main contractor to put forward an imaginative solution to a serious problem on site, with the confidence to take a commercial risk in assuming responsibility for the cladding specialist package, thereby effectively managing the risk arising from the subcontractor insolvency and avoiding the prospect of a loss-making project and the likelihood of claims and cross-claims including those arising from the later suspension of work.

To quote David Pearson of Elliott Associates, project manager of the Bewick Court project:

"We could have seen contractual claims against both the client and the contractor and worst of all a project not yet concluded, resulting in another cold winter for Bewick Court residents.

Instead, the project finished on time and within its maximum price and the team remains firmly on speaking terms".¹

Sources

- Review of contract and related documents and project correspondence;
- Reports and presentations prepared by Elliott Associates.

¹ Email to the author dated 31 October 2006.

Case study 2

Nightingale Estate, Hackney – Housing refurbishment

£13m refurbishment of Rogate House, Nightingale Estate, Hackney including specialist concrete works and the cut-through of an existing building to form two separate buildings.

Client:	London Borough of Hackney
Main Contractor:	Wates Construction Limited
Project Manager:	London Borough of Hackney/Leonard Stace
Design Consultants:	Abbey Holford Rowe (Architect), Babbie Allott (Structural Engineer), Lomax Consulting Engineers (Services Engineer)

Summary

Early appointment of main contractor – joint design development – specialist subcontractor contributions to specifications and to methodology for concrete repairs and major structural alterations – joint risk management including resident consultation and relocation – agreement of complex contractual construction phase programme including work to occupied properties.

Key issues and events

London Borough of Hackney had previously refurbished Alma House on the same estate in 1997 utilising a single stage procurement model, but had under-estimated the amount of asbestos in the building and the extent of deterioration of the concrete frame. These factors and lack of resident cooperation led to substantial delays and cost overruns. Also, defects discovered after completion led to ongoing problems with residents.

London Borough of Hackney wished to explore an alternative procurement approach that recognised the complexities of a major refurbishment project and enabled it to achieve time and cost certainty. For this purpose, it commissioned a bespoke two stage partnering contract (which was an early prototype for PPC2000) and negotiated conclusion of this contract with its main contractor, project manager and design consultants.

The project team entered into a bespoke preconstruction phase agreement which established the joint basis for development of designs and risk management, with early appointment of specialist subcontractors including concrete specialists to analyse design solutions, methods of working and programmes.

The preconstruction phase ran from April to September 2000 and was followed by a ninety (90) week construction phase.

Prior to commencement of construction, comprehensive surveys were undertaken by the concrete and asbestos specialists. In addition, the entire team agreed the construction phase timetable in advance so that this could be the basis of consultation with residents and the establishment of a decanting programme.

Multi-skilled specialists were selected for internal works, in preference to traditional trades, so as to speed up the project and require fewer visits to each flat. This was instrumental in obtaining support from residents that was not evident on the earlier Alma House project.

All project team members were involved in detailed tenant consultations including tenant choice. This led, for example, to an agreement to refurbish rather than replace the roof, with consequent savings spent on improved quality kitchens and aluminium/timber windows plus ground level porches. All these variations were achieved within the project budget and agreed construction phase programme.

The collaborative approach to design also allowed agreement of aesthetic improvements such as external metal balconies which were designed and installed in collaboration with the balcony supplier for a cost less than that incurred at Alma House.

Another example of design collaboration involved the main contractor recommending metal refuse chutes as a cheaper and simpler alternative to the Alma House precast concrete chutes.

A major challenge for the project was the cut-through in the middle of Rogate House to create two separate blocks. Some residents refused to move because of problems in offering temporary accommodation, leading to a twenty (20) week delay to the project that was reduced to six (6) weeks through agreement by the project team to resequence other activities. It was acknowledged by the main contractor that under single stage procurement this risk event would have been exploited by them as a major time/cost claim, whereas the consultative team-based culture established on Rogate House, through two stage procurement and the medium of the core group, led to the joint agreement of changes so as to minimise their delay and cost effects.

Other examples of collaborative working included:-

- Designing and programming the works so that residents' water supplies were cut off only once for a few hours;
- The main contractor integrating its work with the requirement of the gas supplier to renew its equipment in each flat, so that only one visit was required to each flat for this purpose.

Completion of the works at Alma House had taken 115 weeks to refurbish 108 flats whereas at Rogate House it took 90 weeks to refurbish 192 flats. The Rogate House team had worked at approximately double the speed.

The original budget of Alma House was exceeded by 18% whereas the original budget at Rogate House was exceeded by less than 6%.

London Borough of Hackney has since used the same procurement approach as the basis for appointing groups of main contractors to deliver Phases 1 and 2 of its Decent Homes housing refurbishment programme, covering works of a value in excess of £250m.

Contribution of preconstruction phase agreement

The use of a preconstruction phase agreement assisted London Borough of Hackney and its project team to achieve:-

- Joint investigation and planning of complex refurbishment works so as to achieve an accurate and integrated construction phase timetable;
- Consultation with residents as end users so as to establish their needs and priorities and enlist their cooperation;

- Involvement of the main contractor and its specialist subcontractors in design improvements, value engineering and specialist designs, working in cooperation with design consultants;
- Agreement of open-book prices so as to provide cost information necessary to manage change and risk without dispute;
- Joint risk management so as to minimise cost and time effects.

To quote Noel Foley, client project manager on the Nightingale Estate project: "*The preconstruction phase agreement must be part of the business case review or gateway management process as projects proceed to site. This could then act as a check on rushing to site*"².

Leonard Stace, Cost Consultant on the project, observed "*We needed concrete specialists on board early in case we had to rejig the programme: they would know whether these changes were achievable. A close-knit team with a common objective....was the only way this approach could work*"³.

Sources

- Review of contract and related documents and project correspondence;
- Review of Housing Forum Demonstration Project report;
- Correspondence and discussions with London Borough of Hackney and Wates Construction.

² Email to the author dated 9 August 2006.

³ Building Magazine, 10 May 2002.

Case study 3

Project X – Newbuild housing scheme with modular units

£8m newbuild housing scheme in Central London utilising modular kitchen and bathroom pods.

**Client/main contractor/project manager and architect/structural engineer/cost consultant
(Details confidential)**

Summary

Design conceived by specialist manufacturer – architect, engineer and main contractor all joined team later – creation of preconstruction phase agreement – primary focus of team on design issues – architect also project manager – problems during construction phase – underground obstructions – design details or variations – lack of client leadership - late notification of escalating claims for additional time/money – use of core group to negotiate solutions.

Key Issues and Events

The scheme was conceived by the specialist kitchen/bathroom pod manufacturer and its construction company parent, and the housing association client brought in an independent architect and structural engineer to complete the team. The architect was appointed as lead designer and was also appointed as project manager. All team members agreed to utilise a two stage project partnering approach under the PPC2000 form of partnering contract. A preconstruction phase agreement was entered into and the team members proceeded with design development and the pricing of works packages.

It became clear that the main contractor parent of the modular supplier (being based in the north east of England) was unable to obtain competitive prices for other work packages from supply chain members in London, and it was agreed that the main contractor role would be retendered while preserving the appointment of the modular supplier.

The substitute main contractor therefore joined a team that was already well-established, working with designs that were well advanced and that centred around the concept previously put forward by the modular specialist supplier.

The senior representatives of each organisation named as core group members failed to meet on a regular basis or to build up efficient working relationships that could have assisted them in agreeing solutions when problems arose. In addition, contrary to the terms of the preconstruction phase agreement, the team failed in their construction phase key dates schedule to set out clearly the required stages for release of design information and the procedures governing the firming up of provisional sums. This left considerable scope for argument as to what information was required from the architect, from the engineer, from the main contractor and from the specialist modular supplier at various stages during the construction phase.

After an initial workshop, there was no further training or detailed consultation regarding the bespoke contract terms until problems started to arise during the construction phase.

Problems included discovery of a large drainage pipe crossing the site which had not been evident on survey. In addition, the site was constrained by its proximity to a busy railway line and a main road classified as a red route, giving rise to access and mobility problems only partly alleviated by the choice of modular units to minimise work on site.

The architect issued over 130 "*architect's instructions*" (not a recognised term under the agreed form of contract) and did not (as required by the form of contract) state whether or not these constituted changes. In turn, the main contractor did not (as required by the form of contract) provide advance submissions identifying the time and cost consequences of those instructions that it considered to be changes before implementing them on site. In addition, the client and its cost consultant took a passive role, attending meetings but not noticing or not questioning the other parties' failure to adhere to contract procedures – notwithstanding that elsewhere in London the same client was using the same form of contract with another team on another project.

When the main contractor submitted its accumulated claims, they amounted to over £1.5m and the client started to consider its position under the contract. Core group meetings were called, facilitated by the "*partnering adviser*" appointed under the form of contract. Agreed representatives of all partnering team members were contractually obliged to attend core group meetings and the contract provided that core group decisions required to solve the problems could be made by consensus of those core group members present at each meeting.

Over a series of meetings, including one to which the main contractor brought a notice of adjudication (which it did not serve), the core group members step by step acknowledged the parties' respective contributions to the problems and ultimately agreed a compromise. This involved deductions from the architect's and engineer's fees, and a partial payment of the main contractor's claim met by additional client funding.

The team used the core group to settle their differences and the completed project was recognised as a success. However, the previous adoption of behaviour and practices that ignored the contractual preconstruction phase processes caused a major distraction.

Reasons for problems encountered

Despite the use of a preconstruction phase agreement, the problems on this scheme derived from:

- Failure of team members to understand the preconstruction phase agreement and the significance of the preconstruction phase activities;
- Failure of the core group members to establish efficient working relationships and build up mutual confidence;
- Failure during the preconstruction phase to agree a properly structured construction phase key dates schedule;
- Conflict of interest on the part of the architect, who as project manager was required to assess delays caused by its own late issue of design information;
- Failure of the architect as project manager to apply the contract procedures regarding instructions and changes;
- Failure by the main contractor to apply contract provisions requiring early warning of problems and advance evaluation of the time and cost consequences of changes;
- Failure by the client and cost consultant to take an active role as core group members.

To quote the Chief QS of the construction company involved:

"Two stage tendering is now commonplace in design and build, but we still see projects with no structured approach to the preconstruction activities.....Experience has taught us either:

- *the notional preconstruction period quoted is often significantly exceeded, leading to unrecoverable staff costs; or*
- *a bespoke agreement is introduced later, when we are already committed and it is difficult to withdraw".*

"Without [a detailed and properly structured preconstruction phase agreement]:

- *unnecessary delays may occur in the preconstruction activities;*
- *consultants continue to hold the contractor at arm's length over the design;*
- *the contractor is often appointed too late to influence the design;*
- *parties manage risks in isolation, rather than as a team."*

"As to where [preconstruction phase agreements] are inappropriate single stage tenders and/or where the criterion for winning the work is the lowest cost. In the latter case, we would not want to use a pre-commencement agreement because it removes risk and therefore the opportunity to exploit changes and delays to improve the commercial return"⁴.

Sources

- Review of contract and related documents and project correspondence;
- Correspondence and discussions with project team members.

⁴ Email to the author dated 12 October 2005.

5 **RSL AND DEVELOPER EXPERIENCES AND EXPECTATIONS**

(Rupert Cook, Architecture PLB; Neil Watts, Breyer Group and Kevin Murray, Southern Housing Group)

The organisations interviewed were as follows:

Developers: Westbury, Telford Homes and Explore Living
 Housing Associations: East Thames, CityWest Homes, A2 Dominion and Circle Anglia

Ref	Question	Developer Response	Housing Association Response
1	From identification of a scheme, at what stage do you try and identify a contractor?	All of the Developers that I spoke to had their own contracting division that were involved almost from inception to provide construction cost advice and also advise on the efficiency and practicality of designs. Some of the larger developer/builders have different units that they would liaise with depending on whether it was low/medium rise or high rise. So at the earliest stages of projects developers are engaging with their in house divisions. They all almost exclusively use their in house contracting division to construct the works, obviously using many sub-contractors as they employ limited direct labour resources – most construction staff being managerial.	There were generally frameworks in place. The frameworks were organized into separate disciplines and value bands. In terms of suppliers/supply chain, a number use procurement clubs (LAPN/LHC) or pre-approved buying organizations (I.E. Exor/Constructionline) Contractors from Frameworks are generally ‘called off’ to negotiate or selected through mini-competition.
2	Where do you think contractors can add value from early involvement?	See above, repeated for ease of reference – ‘construction cost advice and also advise on the efficiency and practicality of designs’	The general view was that value was added by early contractor procurement by filling ‘skills gaps’ in client organizations and from their general experience in ‘buildability’, pricing, programme and work scheduling expertise. It was agreed that early contractor procurement is of great benefit to enhance project pricing methods and design development. However, it was also recognised that early involvement did not always translate into lower prices for which contractual leverage was necessary.

Ref	Question	Developer Response	Housing Association Response
3	What do you and your designers need to provide to enable this?	<p>I will answer this from a different angle. Because of the in-house construction resources this question was not really applicable so I asked if they had in house designers or appointed external consultancies. While carrying some internal expertise in design evaluation, all used external consultancies. The way in which they engaged them was very different to HA use of Architects. The Developers generally provided a detailed project brief to two/three practices and ask them to submit scheme proposals and fees from which selection is made. Some had always used this method, others have changed to this method over the last eighteen months as the market has turned – more Architects are willing to undertake scheme proposals as part of a fee bid and the Developer may also benefit from more competitive fees. This is interesting given protests from D&B contractors about the cost of tendering!</p> <p>In terms of selection of Architects, there were generally some form of approved list, the length of which was determined by the geographical spread of developer organizations and any specialist subsidiaries (e.g. a development arm that concentrates predominantly on affordable or high value city centre locations or suburban exec homes for example. In addition, evidence of good relationships with the local planning authority was one of the key reasons for selection of an Architect.</p>	All agreed that a clear, precise design brief and employer's requirements were essential. Failure to provide the above tended to introduce inefficiency through having to keep revisiting and revising design.
4	What are your current procurement processes (depending on value and work	<p>This is largely covered in item 1 above in terms of the 'main contractor'</p> <p>With regard to sub-contractors, all had standing lists of preferred sub-contractors. The numbers</p>	<p>A2 Dominion – OJEU process to establish a partnering framework with multiple contractors.</p> <p>East Thames – Partnering Frameworks for different work types and value bands.</p>

Ref	Question	Developer Response	Housing Association Response
	type)	held on each list varied, mainly due to the reasons noted in 3 above. Actual numbers were largely determined by the geographical spread of developer organizations and any specialist subsidiaries. However, most reported that they had pruned the number of sub-contractors and suppliers during the poor economic conditions.	City West – As East Thames Circle Anglia – For project above £10k up to the OJEU threshold they use a single stage tender process. Above OJEU they have Framework Agreements or Term contracts.
5	What is your current selection process when deciding on a suitable contractor?	Selection of Architects is covered above. As noted sub-contractors are generally chosen from approved lists that stem from past experience, competitive rates or particular expertise.	Generally contractor experience of similar schemes/recent client experience with the contractor. Framework selection is through mini-tenders or call off. Call off is sometimes based on KPIs or contractor input into early design. On non-framework appointments and/or during the establishment of a framework a weighted assessment is based on a number of key requirements including: <ul style="list-style-type: none"> • Design capabilities • Costs • Experience • Quality (from references, interviews and site visits)
6	What lead in time do you allow for a typical scheme?	Some preferred a longer lead in so that full due diligence was undertaken and consequently as few surprises as possible when construction starts. In addition design can be honed to be as efficient as possible and the market scoured for products. Sufficient lead was particularly important to those developers that tend use standard components so that regularity of structural grid etc can be optimized and the number of standard components, design and house types can be leveraged for cost and time efficiency and to improve quality.	There was no consensus due to too many variables – particularly for new build schemes. Land banks (or lack of) and funding windows were key drivers and the reliance on the above hampered better management of processes and timetables.
7	What are the main considerations when formulating a project	There was a very consistent view on this one from all of the developers. They all provide a detailed and precise brief to their Architects as regard the	This was consistently answered and included: <ul style="list-style-type: none"> • Viability • Demand

Ref	Question	Developer Response	Housing Association Response
	brief?	<p>required:</p> <ul style="list-style-type: none"> • mix • type • size • numbers • density • low or high rise • HCA/RSL requirements for affordable • likely planning process • Grant position • proposed construction method is also sometimes noted <p>The brief follows extensive research on the nature of the land, planning issues, what will sell, the nature of any affordable requirements</p>	<ul style="list-style-type: none"> • Risk • VFM • Objectives • Deliverability • Political and community constraints • Realistic timetables and project milestones • Client skills gaps to be filled by contractors
8	What are the five top risks that you need to address on a project and how do you expect your Team/supply chain to help?	<p>These proved to be very different from those noted by the RSLs and included:</p> <ul style="list-style-type: none"> • Sales market conditions • Down valuations by mortgage lenders and lack of available funds and large arrangement fees • Lack of confidence • Obtaining debt finance • The weak pound impact on import prices • Price volatility in the sub-contract market • Uncertainty over grant funding • Increase burden of regulation • Lack of ready supply of land • Local authority approvals • Labour shortages 	<p>There were a variety of responses with the following key themes:</p> <ul style="list-style-type: none"> • Financial viability • Planning • Programme • Political and community acceptability • Contractor selection • Robust project management • Efficiency and innovation • Health and safety • Relationships and communications <p>All considered safe and affordable delivery was key and use of gateways to manage, eliminate and/or mitigate risks was essential.</p>
9	Often a threat to the swift progress of a scheme are the plethora of standards	<p>The general view was that this had a greater impact on smaller organizations for which it was more difficult to employ in-house specialists. The larger developers have in house expertise and it is</p>	<p>Some efforts had already commenced with the publication of the London Housing Design Guide. Creation of Design briefs and ERs can also help. There is a danger that streamlining will lead to the</p>

Ref	Question	Developer Response	Housing Association Response
	for housing that need to be met while responding to the unique location of the site and local authority. How could there be more alignment?	crucial that this resource ensures that the Architect translates the brief correctly to include all regulatory requirements. The cost of ensuring that the design is undertaken in accordance with the regulations is obviously minimal in comparison with the execution of the works needed.	lowest common denominator being selected and are should be taken that guidelines do not become maximum standards. It was felt that suppliers should be responsible for ensuring that clients have clear and understandable standards. In particular the team should aim to challenge and enhance proposed design standards for weaker clients.
10	Do you think that current market conditions will undermine partnering or encourage early engagement of teams/supply chain?	In terms of early engagement with teams/ supply chain, the general view was that the market conditions had not affected this too much. The Developers were generally using their preferred lists but had shortened them due to lower workload. Most supply chain members had revised prices downward even without any reminder of market pressures. All agreed that long tender lists should be avoided when obtaining sub-contract quotes. Some had reviewed specifications in the light of the downturn to be more competitive without any impact on quality.	Generally felt that market pressures were mitigated by clients sticking to what 'they know best' with the available in house skills. The use of single stage D&B was considered to have advantages in both 'boom' and 'bust' conditions – in boom times it is simple and quick and minimize client time requirements, while in 'bust' times contractors can leverage prices. However current market may lead to cost focus that may hinder innovation and continuous improvement. The use of Competitive Dialogues was thought to be a possibly good route for more price testing and future proofing designs by its more intrusive approach. Frameworks have helped to streamline processes and reduce costs, but clients need to ensure that there are arrangements in place to ensure fair competition. However if done correctly it can bring great efficiencies.
11	Do you see benefits in early involvement with suppliers of sustainable materials/renewables	There was general agreement that early engagement was beneficial. For larger developers this was often co-ordinated by the resource note in 9 above. Some of the developers had their own research projects and they generally provided updates to staff through in house publications. Correct briefing of Architect was considered crucial	Not asked
12	Ditto in preparing site waste management	Largely as noted above. Some had developed standard components for construction and the use	Not asked

Ref	Question	Developer Response	Housing Association Response
	plans	of off-site manufacturer for bathroom pods for example was assisting to reduce site waste.	
13	Do you think that current market conditions will undermine partnering or encourage early engagement of RSL?	<p>All of the Developers aimed to have early engagement with RSLs and to select the RSL partner as soon as possible. There was a mix of approaches from limited tendering to RSLs to selection of the preferred RSL partner from the outset. There was general agreement that the increasing percentage of affordable homes in developments was the main reason for closer working. A number said that reciprocal business opportunities would be likely to increase the incidence of closer working.</p> <p>David, any views on the barriers to this last point (the recent guidance from the OGC seems to confirm that an approach by RSLs to select developers to construct homes on RSL land on a jv basis would need to follow the procurement directives. I understand their views on s106 will be available next year)</p>	Not asked

(Maggie Gjessing, Leeds City Council)

Employment and training needs of a regeneration project and potential under different procurement options

Support for the local labour markets is been an important objective of client Local Authorities and RSLs and the Homes and Communities Agency have made clear that the employment gain is a key aim and hence a condition of funding under current programmes. The Corporate Social Responsibility agenda challenges all organisations to consider issues of sustainability and the potential for positively impacting on communities and customers.

EU law prohibiting discrimination has made public bodies wary of using local labour clauses in public procurement. Regulation 39 of the Public Contracts 2006 regulations however expressly allows for the inclusion of social and environmental conditions provided they are set out in the OJEU notice and comply generally with rules of European law. The notice can include a requirement that the contractor actively participates in the achievement of social policy objectives such as specifying a number of employment opportunities including for a target group (eg unemployed) although this cannot be with reference to a locality or specific local firms.

In terms of procurement processes:

Under single stage method local labour requirements are often included as “best endeavours” type clauses (or through a two envelope approach requiring a separate agreement or method statement with the tender). The single stage method provides for only a limited opportunity to develop shared objectives and understand local risks associated with the labour supply. It is probably based on limited knowledge of local labour market and supporting players hence will be priced accordingly. Also provides a limited opportunity to interface with contractor’s supply chain in turn limiting opportunity for local labour gains.

Whereas, the more collaborative two stage tendering can result in the client not just seeking the absolute least cost bid. It allows for the development of understanding and building of a relationship and can for example see the client involved in selection of subcontractors, or at least have a dialogue with them to explain local context, networks and resources (eg Construction Leeds – see below).

Partnering provides a framework to involve all partners (including customers/ tenants) at the outset in setting and determining the objectives, agreeing targets and key performance indicators to achieve the intended level of service delivery. It can include community benefits within the contract specification. In terms of employment and local labour initiatives specifically, partnering provides the potential for a long term relationship with contractors and suppliers which therefore provides an opportunity to maximise the potential for training and local employment. The quality of training offered can be enhanced since partnering can allow for greater continuity of work. Where relevant, training providers can be engaged early and form part of the team.

As regards PFI, training and employment outcomes are not part of the core PFI funding, however in Leeds, the City Council expects training and employment agreements to form

a key element of the regeneration outcomes of a number of PFI projects. In Leeds, bidders are asked to provide details via a Training and Employment Strategy of how their approach to the commissioning and sub-contracting of services and sourcing of materials would maximise benefits to the wider Leeds economy. Bidders are asked to demonstrate how they would maximise the engagement of local people in construction training and employment and in the onward delivery of facilities management, property, environmental maintenance and other project services. They should demonstrate how recruitment, training and employment will achieve an inclusive demographic profile.

Some example approaches:

East and South East Leeds regeneration project (EASEL)

Utilising the Well Being powers available to local authorities, Leeds City Council issued an OJEU notice for partners to assist in developing a holistic approach to the regeneration of east Leeds. This was on the basis of a brief which draws out both the land development and commercial opportunities available in east Leeds in addition to setting out the context of deprivation and lack of investment which the Council is seeking to address. Social and economic regeneration are therefore a core purpose of the brief. From this, a 2 stage procurement took place and contracts signed with a preferred bidder (Bellway Homes) in 2007.

EASEL is essentially a land based project which utilises two forms of delivery – a development agreement which is a standard land deal for an initial tranche of sites. This features a detailed local labour requirement within the contract with agreed targets for direct delivery of apprentices and a best endeavours requirement in respect of sub-contractors

The second is the establishment of a Joint Venture company through which the partners (LCC and Bellways) agree on a site by site basis the capacity for local labour and training across the programme. The company objectives include the securing of the economic, social and environmental well-being of the area such that the partners are required to maximise the regeneration gain of its activities in a broad sense.

Beyond the housebuilding programme, the partnership is a tool for lobbying and drawing down discretionary funding. An example includes using Local Enterprise Growth Initiative funding through we have developed a construction training facility managed by Leeds College of Building adjacent to the first phase sites

Yorbuild

YORbuild is a series of construction frameworks for procuring contractors to carry out new build and refurbishment works. It pulls together 22 Local Authorities in Yorkshire and Humberside and other regionally based Public Sector Bodies, including universities, colleges and health trusts. Skills development is integral to the framework and the framework contract and tendering contractors are required to complete an indicative Employment and Skills plan (including method statement) relevant to a series of sample contracts (or lots) that they are tendering for. Benchmarks are provided, but contractors are to use their own judgement as to what outputs they consider are achievable on the particular sample project. It is recognised as regional representative of national skills academy for construction and monitoring of outputs is provided by Construction

Skills.

www.yorbuild.com

Construction Leeds

Outside of contractual agreements there are a range of voluntary models (eg local labour charters) which contractors can be encouraged to engage with. One such is Construction Leeds which offers a brokerage service working across a range of contract types. It engages with the whole supply chain on construction projects. CL pulls together public, private and third sector organisations and was specifically established to address employment and training needs in deprived communities in the city. It acts as a single point of contact for employers and job seekers, liaising with Job Centre Plus and the College of Building. It is funded via LCC and the private sector via subscriptions. The agency has a client focus which arranges training packages, secures funding and provides post employment support.

CL have also recently been exploring the Fusion 21 model wherein contracts include a mandatory clause for the contractor to pay a 1% levy on the annual contract investment to fund added value activity including employment and training.

www.construction-leeds.org.uk

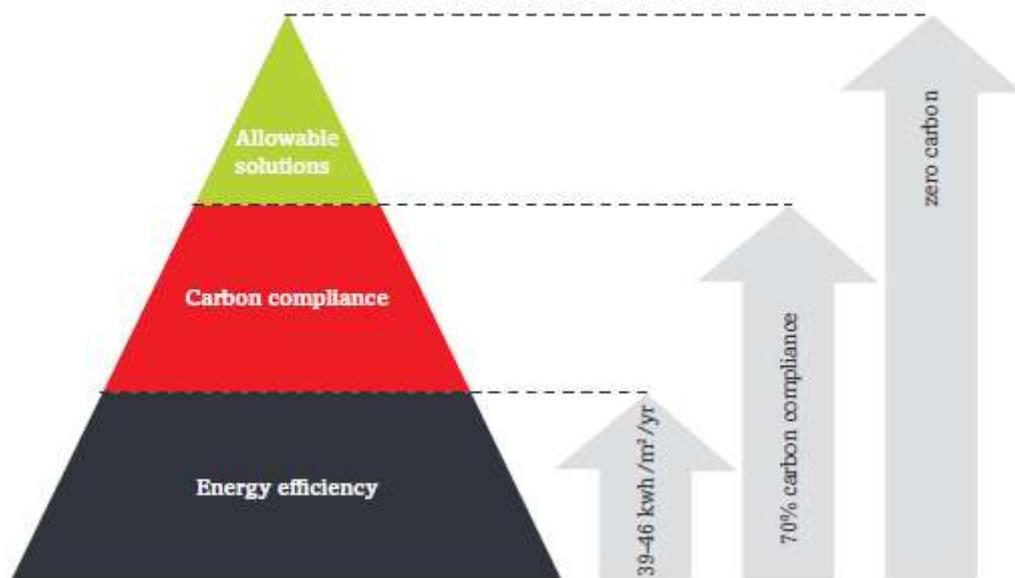
Development of opportunities for apprenticeships and other skills and employment initiatives is now a priority of central and local government working with CITB ConstructionSkills through the availability of standardised procurement guidance. This proposes templates for the creation and implementation of an employment and skills strategy by clients matched by an employment and skills plan and method statement to be agreed with contractors and developers. The Homes and Communities Agency is implementing equivalent guidance for RSLs and ALMOs and for its developer/contractor partners, supported by benchmarks establishing the range of employment and skills initiatives that are appropriate and proportionate to particular types and sizes of project.

(Kerry Fleming, EC Harris and John Hannah, Aggregate Industries)

[The following pages are from either individual papers or simply extracts lifted from other parts of the evidence documents]

Concerns have been expressed by contractor members of the Working Party that funding constraints are likely to reduce the potential for projects to incorporate sustainable designs, supplies and working methods. This sits along side the Governments commitment to Zero Carbon. On 24 November 2009 Housing Minister John Healey re-confirmed that all new homes built in the UK from 2016 will be zero carbon. His announcement also starts to set the boundaries for the Government’s ‘zero carbon triangle’ which will ultimately define the 2016 zero carbon requirements. The triangle’s three components are - Energy Efficiency; Carbon Compliance; and Allowable Solutions.

Figure 1. Zero carbon hierarchy



Recent announcements have fixed levels for the first two components and this allows us to reassess the cost and practical implications of achieving zero carbon in the future. It would be a disaster for the client and all team members if they do not have access to a procurement model that enables them to challenge the assumption that sustainability proposals are an optional extra that always involves additional cost.

The Working Party recommend that early contractor procurement under a two stage approach offers a significant step forward towards ensuring that sustainability proposals are analysed in greater detail during the conditional preconstruction phase of the project, with the benefit of input from main contractors and their specialist subcontractors and suppliers.

Practically, delivering to these energy efficiency standards on site will be a challenge. The increased and demanding air-tightness and thermal bridging requirements in particular are

going to require a level of detail and understanding not currently delivered by the main-stream supply chain. Naturally suitable products will therefore initially come at a cost premium.

Those designing schemes which will fall under the 2010 Part L update or seeking funding from HCA in the next round would be wise to consider these design standards now. Equally the standard house types and specifications from major house builders should start to be developed to meet these requirements.

Back in July 2009 the Housing Minister announced that the 'Carbon Compliance' level would be set at 70% of regulated CO₂ emissions following the zero carbon consultation. The now announced minimum fabric efficiencies will produce a 25-30% reduction leaving a 45-50% requirement for on-site renewables.

This represents a challenging level but somewhat less challenging than the 120% level of renewables that would be required within Code Level 6. In effect what has now been created is a Code Level 4 ½, which bridges the huge gap between the Code Level 4 and 5 targets.

The remaining emissions (between 70% and full zero carbon) are expected to be dealt with as 'Allowable Solutions' which will require a local and highly defined 'offset' payment to be made for dealing with remaining carbon emissions off-site. Further details will be announced by the Government on this element in the near future. This off-site solution does not feature at all in the current Code 6.

The revised cost of complying with the new zero carbon definition will depend on the value attributed to the 'Allowable Solution' and also the renewable strategy adopted to deliver the 45-50% renewables.

However, the fabric efficiencies have been reported as adding between £2,000 -£6,500 per unit and the renewables requirement is likely to add around £15,000 per unit. This results in an additional build cost of £20,000 per unit but represents half the previous £40,000 estimate to deliver the full Code Level 6 definition.

Astute house builders will therefore see opportunity in the new definition, with commercial advantage gained by selecting sites and design solutions which allow on site renewable costs to be minimised either through connection with district heating or large scale wind coupled with the use of an ESCO. Renewable availability of a site must now be considered in land acquisition and existing land banks reviewed.

It is expected that the Code will be revised to embrace this revised definition. In the meantime those currently reviewing an ambition to reach Code Levels 5 and 6 would be prudent to design to the 39 / 46 kilowatt-hours per square metre per year requirements with 70% carbon compliance and await the detail.

The need to maximise energy efficiency and to reduce waste demands that clients have the benefit of ideas developed not only by their consultants, but also by other project team members at every level in the supply chain. Access to these ideas depends on a procurement model that allows a period of dialogue and constructive contribution in advance of commencement on site and whereby contractors are selected early enough to contribute their expertise in respect of:

- proposals as to the most buildable and least wasteful interpretation of the consultants' designs
- proposals in respect of training and employment
- proposals in respect of reduced waste and increased recycling
- proposals as to the efficient use of energy on site, including modern methods of construction such as off-site fabrication
- proposals as to efficient use of energy by reduced maintenance and repair in the operation of the built facility
- creation of an acceptable Site Waste Management Plan.

While it is possible to seek sustainability proposals under a single stage selection process, this approach leaves bidders with the following dilemmas:

- their ideas will be developed on a speculative basis during a limited tender period and therefore may not be wholly convincing;
- their proposals will be developed in isolation from the client and its consultants by virtue of the competitive process, and therefore may fail to be fully integrated with the client's requirements;
- their proposals will be balanced against of the lowest possible fixed price quote, and therefore may be edited out of the bid in the interests of price competition;
- their prospective subcontractors and suppliers will have even less opportunity to put forward sustainability proposals and will themselves be "*bidding to a bidder*" and therefore will be unable to apply significant time and effort in formulating and researching the most convincing approach.

If good sustainability proposals are withheld or compromised during a single stage bid process, it will be very difficult to introduce them at a later date without significant additional cost and time effects.

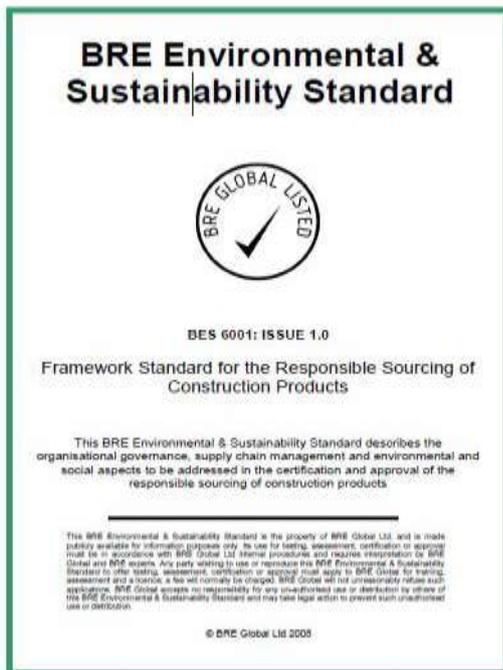
The Construction Industry Research and Information Association concluded in 1998 that one of the means by which main contractors can add value, if appointed early in the project process, is "*in better care of the environment – less waste and damage, better public perceptions*". The Working Party recommends that clients consider seriously the benefits of early contractor procurement on single projects and under frameworks as a means to ensure that sustainability initiatives are considered in full detail and have the maximum chance of being established on an affordable basis.

Suggested Statement of Sustainability commitment regarding materials to be used in Social Housing contracts:- organisations should only use responsibly sourced building materials as part of their sustainability strategy and ethical trading policy

Contractors can be rated and KPIs set on %ages of certificated building materials they use in all their contract and in particular contracts.

The Building Research Establishment (BRE) introduced their standard for Responsibly Sourced Materials in October 2008 and the first companies started to be certificated by third parties in February 2009.

BES 6001.



Work on a full British Standard commenced in 2008 and when finished and agreed will merge with BES 6001.

BES 6001 allows all suppliers to prove their products are responsibly sourced to a number of tier levels. These levels of compliance allow credits to be gained which translate into points/credits in BREEAM schemes and The Code for Sustainable Homes. Previously the only recognised scheme was the Timber FSC award which gains a high tier rating in BES 6001. But FSC scheme is subordinate/subsumed.

The social sector is using the 'Code' for new build and could/should be using 'Eco-homes XB' for refurbishment, decent homes programs etc. Eco-homes XB is part of BREEAM but unlike the Code which is mandatory (for the social sector) in terms of the minimum code level we can build social homes set to a programmed timetable, BREEAM schemes have different targets. It would surely be correct for the sector to specify BREEAM 'Very Good' or 'Excellent' for all refurbishment projects.

The biggest concern over building products is the use of unlicensed timber and all timber, (100%), used in the social sector should be provided with the FSC approval stamp, or rejected.

All construction materials we use in the social sector should therefore provide us with at least the minimum entry level criteria for Tier 4 (entry tier) of BES 6001 which is at its simplest, ISO 14001.

Tier Level	4	3	2	1
Points available per building element	1	1.5	2	3
Code for Sustainable Homes / BREEAM Requirements including Eco-homes XB	ISO 14001 or EMAS or BS8555 at process stage	ISO 14001 or EMAS or BS8555 at extraction & process stages. Timber: MTCC, Verified, SGS, TFT	BES 6001	BES 6001 FSC, Reused materials,

Contractors tendering for OJEU contracts can be differentiated on their knowledge of responsible sourcing and should be able to provide reports of their own % use of responsibly sourced materials as a company, the previous year, currently and proposed for the actual contract under tender. This should form part of their annual sustainability reporting as a KPI. It can also be set as a KPI for all social clients across their total purchase of building materials (and non building materials for that matter!)

If bidding contractors are unable to be separated under the current scrutiny criteria, then this could/would be a good way of differentiating the real 'Eco-warriors' from their 'Green-washed' counterparts.

8 FUNDING AND LEGISLATIVE ISSUES

(Dr David Mosey, Trowers & Hamlins LLP)

The Working Party's findings suggest widespread recognition among clients, consultants, contractors, suppliers and subcontractors that there is more to be gained in the procurement of most housing projects than is likely to be produced from arm's length, single stage tendering. There is also a large body of evidence and clear support for clarifying and embedding a procurement model described as "*early contractor procurement*" (as set out in section 6), using a sliding scale of relevant factors to determine who should be appointed when and for what purpose. This procurement model should be tailored to the circumstances of each project rather than representing an "*all or nothing*" decision between a traditional or a partnering approach.

So what are the barriers that stand in the way of this initiative going forward in 2010 and beyond?

8.1 Funding influences on procurement

Where the funding of a project is dependent on a private sector land deal for external private sector finance, there is considerable pressure on the client and its developer/contractor to balance the books according to specific funder requirements or anticipated development returns. This can distract attention from the added value that can be obtained through early contractor procurement.

For example, housing PFI projects involve extensive preconstruction phase processes which are closely connected to negotiation and financial closer of the PFI deal. However, none of these preparatory processes are contracted under standard PFI contract forms, but instead are undertaken at risk by the PFI contractor and its supply chain in isolation from the client.

It will be important for housing clients and their PFI contractors to focus on thorough preconstruction processes that not only ensure a robust financial model, but also allow the exploration of the means by which supply chain members can offer appropriate contributions to buildability, sustainability and community initiatives.

The findings of the Working Party's enquiries with developers indicated their understanding of the merits of early contractor procurement and their own businesslike approach to the ways of obtaining best value from their own supply chains. There remains, however, a tension where developers do not wish to share in detail the means by which they obtain improved value, as they consider this to be the basis for their competitive advantage and do not see why their social landlord clients need an in-depth understanding or why they should adopt joint working methods. In this respect, there remains a divide between public and private sector means of obtaining best value that is not entirely attributable to the constraints of EU procurement or public sector governance arrangements.

8.2 Legislative influences on procurement

8.2.1 EU procurement

The strong recommendations in favour of early contractor procurement and framework arrangements from the Office of Government Commerce and the National Audit Office provide comfort to public sector clients that there is no inherent EU procurement risk in adopting these approaches. However, EU procurement law is rapidly changing and it is fair to note that social landlords need to take advice when implementing any procurement option so as to ensure that EU procurement law is not breached.

As to the choice of contract, the Working Party notes that a single two stage form of project contract (of which PPC2000 is the only current example) is necessary to ensure that early contractor procurement on a conditional preconstruction phase basis can be procured simultaneously with the intended unconditional construction phase appointment and remains subject to appropriate client controls. Advice should be taken by clients as to the adaptation of the JCT and NEC forms of contract to achieve the same result.

8.2.2 Leaseholder consultation

Where social landlords undertake projects in properties occupied by leaseholders, the requirements for consultation under section 20 of the Landlord and Tenant Act 1985 (as amended by section 151 of the Commonhold and Leasehold Reform Act 2002) have become an important consideration. Social landlords will benefit from specialist advice to support their own staff in achieving compliance with the requirements of leaseholder consultation, whatever procurement option they adopt.

Where social landlords are setting up frameworks or other long-term arrangements, the creation under the section 20 legislation of "*qualifying long-term agreements*" is a particularly delicate area where appropriate forms of contract and appropriate pricing structures are critical. Decisions of the Leasehold Valuation Tribunal have successfully challenged framework arrangements that lack sufficient detail. The Working Party is satisfied that properly structured arrangements for early contractor procurement and framework arrangements can steer a path successfully through the requirements of leaseholder consultation and are not an obstacle to social landlords achieving improved value for their leaseholders and other residents (see also section 13 regarding constraints on consortium arrangements by reason of leaseholder consultation).

INTEGRATING NEW CLIENT STRUCTURES WITH PROCUREMENT

(Paul White, Town & Country Housing Group; William Stacey, Lewisham Homes, Kim Newman, PML Group and Dr David Mosey, Trowers & Hamblins LLP)

Social housing clients are exploring a number of new means to achieve more efficient and more cost-effective procurement of their works, services and supplies. These include:

- Client consortia;
- Insourcing of professional services to support direct labour organisations;
- Client/contractor joint ventures.

9.1 Client consortia

A number of different client consortia have been developed, either as straightforward joint purchasing vehicles or for more wide-ranging joint working arrangements.

Procurement for All, the London Housing Consortium and Fusion 21 are examples of joint purchasing arrangements, and the 14 National Change Agent consortia are the most prominent examples of more elaborate joint working.

There are annexed summaries of the Procurement for All, London Housing Consortium and Fusion 21 purchasing consortia. There is also annexed a summary of the NCA consortia and their achievements to date.

The rationale behind all of the consortia described is:

- To secure better deals through the greater purchasing power of clients acting jointly
- To establish consistent specifications to support that joint purchasing power
- To undertake work smoothing of relevant works programmes for member organisations so as to provide clear and consistent demands to the supply market and avoid unnecessary peaks and troughs
- To provide certainty of demand to selected businesses, enabling them to grow and maximise efficiencies
- To manage the supply chain more efficiently through partnering
- To enable collective support of labour and training initiatives.

The successes of procurement consortia can be impressive in terms of cost savings and social benefits by way of training, employment and community projects. Challenges have been faced in terms of the willingness of clients to standardise their specifications and to forward plan their works/services programmes. In addition, costs charged by certain consortia have been significant, giving rise to concern among members that savings are eroded through sustaining the consortium establishment itself.

The large number of consortia have generated some confusion in the marketplace as to how clients should make a valid comparison. The role of the National Change Agent has moderated the position between the NCA consortia, but in a free marketplace there is always the risk of duplication and overlap.

One significant obstacle to the expansion of successful consortia has been the inability to introduce new clients post-procurement where those clients need to undertake their own Section 20 consultation in order to recover leaseholder contributions.

9.2 **Insourcing of professional services to support direct labour organisations**

The Working Group recognise that a number of social landlords have in-house resources whether by way of direct labour organisations or their own contracting arms, and that this has a direct impact on their approach to procurement of external contractors and consultants.

Recognition of in-house resources has led consultants and contractors to offer insourcing support in order to address:

- Problems in performance and resident satisfaction;
- Issues that require particular expertise by reason of poor quality of stock;
- New ideas to seek cost efficiency and other value for money objectives;
- Benchmarking against other clients;
- Refreshing of the workforce through new training and employment initiatives.

Insourcing is a relatively new form of support for social housing clients, and needs to reflect its own procurement exercise to the extent that the anticipated value of insourcing services exceeds the relevant EU thresholds. It also requires a very careful selection process to ensure:

- That the brief reflects the client's needs and priorities and is properly communicated to the external provider;
- That the external provider offers individuals of a sufficient calibre to meet the client's brief and with sufficiently wide experience to bring a new dimension to the client's organisation.

9.3 **Client/contractor joint ventures**

Another means of securing additional contractor commitment to a social housing client is the client's participation in the main contractor organisation itself through a direct shareholding in a joint venture. While this approach involves risk in respect of the client's investment and the commitment of additional client resources to participate in management, those clients who offer a significant flow of work can use participation in a joint venture to ensure shared information and joint commitment at all stages of each project. Emerging successful joint ventures include:

- Delivery joint ventures such as the Sheffield City Council/Kier joint venture under which the client workforce and workflow were transferred to the joint venture in return for a capital sum and a guaranteed minimum turnover against achievement of agreed targets;
- Development joint ventures such as the Tonbridge Wells/John Laing Partnership local asset backed vehicle;
- Use of other joint venture structures such as Local Education Partnerships to provide an alternative vehicle for housing development.

To establish a joint venture requires a demanding procurement exercise under which the client scopes firstly its requirement for works and services, and secondly its prospective participation in the joint venture, so that bidders can respond to both requirements with an integrated set of proposals. For example, the Sheffield/Kier joint venture covered not only housing, but also schools and other public buildings and was stated to create "*a partnership that will share the Council's core values, in particular its commitment to equal opportunities, social justice and regeneration*".

The importance of procurement and joint working through partnering is evident in any joint venture structure and is arguably the strongest form of partnering relationship, where risks are shared by way of joint investment as well as through contractual mechanisms.

Annex to Section 9

Review of client consortium options

1 Procurement for Housing

Launched in March 2004, PfH currently has over 610 Members collectively managing over 2.6 million units. Whilst its initial emphasis was setting up framework agreements under arrangements for such things as office supplies and office equipment including IT and vehicle leasing, it now also covers such areas as central heating supplies, bathrooms and kitchens (a planned arrangement for windows and doors is currently being reviewed in terms of viability).

Clients making use of these latter arrangements would then have to make separate contractual arrangements for installation, and it is unclear as to whether such contractors are responsible for materials supplies or if this risk passes to the client.

The use of PfH services is free to HouseMark members, but in order to access them an organisation needs to agree to a Direct Debiting system for payment being set up and to provide an explanation should it choose to procure goods or services direct where these are available via a PfH framework.

2 London Housing Consortium

LHC has established framework agreements similar to PfH, although these are restricted to building requirements whilst being open to public sector organisations other than social housing providers.

These agreements cover not just supplies and components but also external envelope repairs and kitchen/bathroom installation works.

In order to access these arrangements, an organisation has to become an Associate Member and commit to spend a total of £200k pa on at least two of the LHC framework arrangements. No fees are payable as LHC recovers its costs by way of rebates from its contractors with any surplus being distributed amongst the member organisations.

3 Fusion 21

Fusion 21 has developed a “*National Procurement Solution*” which consists of seventeen framework agreements covering a wide range of works from roofing, kitchens and bathrooms to digital TV to void security. As with the LHC arrangements, these are open to the public sector as a whole.

A management fee of 4% is payable to Fusion 21 for any use made of their frameworks.

4 National Change Agent (NCA)

4.1 What is the NCA?

The National Change Agent (NCA) initiative for improved efficiency in social housing capital works is now into its fifth year and due to conclude in April 2011.

It was created by the ODPM in 2005 with the support of an Efficiency Challenge Fund to provide grant, and was taken over by the Department of Communities and Local Government and then to the Homes and Communities Agency.

4.2 **What was the purpose of the NCA programme?**

The primary purpose of the NCA initiative was to contribute to the Gershon target of achieving £340m of savings in procurement of the Decent Homes programme and other housing capital works by 2008, primarily through a series of procurement consortia of social landlords, in the expectation that they would work more efficiently together than individually.

The remit of the NCA has since been extended to include consortium procurement of revenue-funded repairs and maintenance.

4.3 **What has been done so far?**

A total of 14 consortia have been formed in England across a wide regional spread that accounts for a total of 122 social landlords and 1.2m homes - 60% of current consortium members are housing associations, 7% are local authorities and 27% are stock transfer organisations or arms length management organisations.

The current NCA consortia comprise:

- **North West** – GM Procure, Impact Manchester, Lancashire Housing Partnership, Cumbria Housing Partnership
- **North East** – North East Procurement
- **Yorkshire & the Humber** – Efficiency North
- **Midlands** – Central England Procurement Partnership (CEPP)
- **London** – Cyntra, Supply Chain Management Group (SCMG)
- **South East** – South East Consortium
- **South West**- Advantage South West, Westworks
- **National** – Procurement for All.

The cost savings achieved through the NCA programme by March 2009 exceeded £160m against total expenditure of £1.33bn – just under 11%. Projected overall savings exceed £590m against a total expenditure of £3.59bn.

Efficiency North (covering Yorkshire and the Humber region) has exceeded its business plan efficiency savings target of £58m by £31.3m in the third year of its five year programme. Meanwhile, GM Procure (based in the North West) has developed alliances with other consortia for joint procurement of materials while setting up local labour frameworks for SME's to serve each consortium, and their direct supply chain management model has delivered efficiency savings averaging 20% against baseline costs.

4.4 **How have the savings and efficiencies been achieved?**

Consortia have adopted different approaches to the delivery of their business plans. Some have procured contractors under joint EU selection processes, achieving major economies of scale by aligning and integrating their works programmes from the outset. Other consortia have allowed their members to establish their own works programmes and have then integrated these programmes at subcontractor/supplier level, engineering cooperation among a range of appointed main contractors to obtain subcontractor and supplier savings/efficiencies. A third group of consortia have adopted a new procurement approach, separating appointment of specialist contractors from appointment of suppliers and managing each of them directly. In all cases, consortium performance has been benchmarked and reported to the NCA.

4.5 **What has the NCA done to support these activities?**

The NCA has created templates for consortium agreements and for the contractor frameworks, plus guidance on alternative forms of contract for efficient delivery of construction programmes.

Significant challenges have emerged, such as the need to navigate a path between the constraints of the EU procurement regulations on the one hand and the demands of leaseholder consultation procedures on the other. To address such issues, the NCA produces guidance for consortia and their members. The NCA also organises meetings of consortia to exchange best practice, and a national training programme through which consortium members can establish a better understanding of key legislative, contracting and project management processes.

4.6 **What is the Homes and Communities Agency doing differently?**

When the NCA programme was extended for a further two years from April 2009, the HCA made it clear that it expects to see the formation of new consortia and an expanded range of activities. In addition to economic gains, the HCA expects that the NCA programme will use consortium joint working to deliver a sound basis for environmental stewardship as well as measurable social/community benefits.

Some of these benefits are already apparent, for example through consortia such as GM Procure, Efficiency North and Cyntra (based in London) who have created opportunities for 318 trainees achieving NVQ Level 2 qualifications and 421 internal technical staff receiving CPD training. GM Procure has also attracted 46% of its trainees from the long-term unemployed by working with local agencies such as Social Services and the Probation Service.

4.7 **Can the NCA programme be extended further?**

In February 2008, the joint Audit Commission/Housing Corporation "Better Buys" report endorsed the NCA programme and recommended that central government should:

- *"provide incentives to housing associations to make well-informed and effective choices in procurement, building on the existing work of the National Change Agent for Housing"; and*

- *"widen the scope of the National Change Agent for Housing to allow consortia to offer all types of materials and services for the full range of repairs and maintenance activities as well as for new build".*

10 PROCUREMENT AND THE 2012 CONSTRUCTION COMMITMENTS

(Paul White, Town & Country Housing Group)

“Meeting the 2012 Construction Commitments through different procurement methods”

10.1 Background

In March 2007 the ‘Housing Corporation’ announced that it has adopted the ‘2012 Construction Commitments’ (commitments). These were developed by industry and Government to set the standards for the construction of the ‘2012 Olympics’ and the ‘Housing Corporation’ at the time subsequently seized the opportunity to adapt them for use by partnering developers. The commitments include much that is relevant to any sustainable procurement strategy in all the six sections listed further below.

The Corporation required all bidders to its 2008 National Affordable Housing Programme to sign up to a set of 2012 Construction Commitments.

By replacing the ‘Clients Charter’ procurement best practice model it was intended that the new approach would result in a reduction of bureaucracy for affordable housing providers as well as:

- ‘a clear industry supported focus on best practice across this multi billion pound sector’
- The commitments were developed by the ‘Strategic Forum for Construction’s 2012 Task Group’ in conjunction with the Department of Culture, Media and Sport and the Department of Trade and Industry. The six areas covered include:
 - i Procurement and integration
 - ii Client leadership
 - iii Design quality
 - iv Sustainability
 - v Commitment to People
 - vi Health and Safety

Although it had laudable aims the previously unpopular ‘Clients Charter’ had involved a great deal of internal coordination between departments and it was unnecessarily time consuming to produce the required 3 year action plan showing regular progress against the many categories. The system involved an online submission, which had to be approved by an external organisation with a ‘green light’ in order for a ‘Registered Social Landlord’ (RSL) to maintain partner status with its funders. (To be fair surely some positive legacy must have been left by the Charter!)

The self-certification method introduced by the commitments was a welcome change. However, it still contains a large number of wide ranging and overlapping commitments, which needed to be understood in terms of their application at a time when the governing body has been through a period of transformation. Therefore it has taken time for the

commitments, and the interpretation of the particular terminology used, to be fully understood particularly for frontline staff (and consultants & contractors alike). There has certainly a period of osmosis as partners learn to understand what is expected of them from the new 'Homes & Communities Agency' (HCA). As with all these things subjectivity is ever present and there is much room for clarification. 'Housing Forum' regional events have been helpful in disseminating good practice in this regard by showcasing a method of benchmarking against the commitments.

As there are so many commitments it would be unreasonable for RSLs to be expected to achieve 100% compliance in everything for all sites - especially in the case of 'Section 106 Agreement' sites where there is less control - and understanding of one's current position and prioritisation of the most important commitments is certainly required to focus on improving any weak points to improve overall performance. Implementing and training frontline development staff is another challenge (amongst all the other challenges and when many RSLs are cutting development staff!) and requires astute management. As the commitments were formulated based on the high partnership aspirations of the delivery of Great Britain's Olympic dream they are very much slanted towards the partnering ethos and therefore partnering contracts and procurement methods that allow more time for quality criteria to be emphasized, such as two stage tendering (or even if correctly managed the 'OJEU' process) lend themselves to their delivery to how they were originally intended more faithfully. For the purposes of this paper the focus is on new build development rather than maintenance as the commitments are more aimed at this and more likely to be of interest to auditors.

10.2 **Issues Arising from Meeting the commitments**

Regardless of procurement route housing associations could be forgiven in thinking that they meet many of the commitments as a matter of course due to the way they typically manage their development activities and in part to the use of consultants and design and technical briefs, financial feasibilities, 'Design & Quality Standards' and required due diligence applied. There are a number of the commitments that they would indeed expect to be able to demonstrate compliance fairly easily including in particular many of the items in the 'Client Leadership', 'Design Quality', 'Health & Safety' and 'Sustainability' sections – and these sections will be dealt with later on in this paper. Some individual commitments are also only applicable to large 'OJEU' projects and therefore should really be taken care of by that process and through framework agreements (as long as they have been in existence since the commitments came in). It must be borne in mind that for many developing RSLs the size of many 'bread and butter' development sites fall below the 'OJEU' threshold and there may be extra time and resource implications in meeting all commitments, but this is not to say efforts are not worth making and once it is routine is much less of a burden.

Firstly turning to the '**Procurement and Integration**' section an example of expected easy compliance for all housing associations would be confident of meeting the commitment in this section, which is obviously the most relevant section to this paper, states:

'Risks will be clearly, financially quantified and allocated in line with each party's ownership and ability to manage the risk.'

Financial feasibilities and checks are surely easy for all RSLs to dig up for auditors for all types of contract.

As previously stated there is a certain amount of subjectivity in how the individual commitments can be interpreted and to what extent each item should be complied with. For instance, the second commitment in the 'Procurement and Integration' section calls for:

'All members of the construction team will be identified and involved at an early stage, particularly during the design process, and encouraged to work collaboratively'.

Perhaps absolute clarification on what constitutes the 'construction team' would help but even those who favour a traditional 'JCT Design & Build' route would argue that the 'team' however loosely applied is involved early in the process in terms of the typical consultancy services they use, although that usually does not involve the contractor, of course, which is probably what is being suggested.

No one would admit to not encouraging 'collaboration' and it could easily be argued in all cases and could be difficult to disprove unless something has gone drastically wrong! Obviously a scheme partnered in the true sense of the word or even two stage tendered with early contractor involvement would more easily comply. It depends how rigidly and how firmly these sorts of commitments are applied and what stance the HCA wish to take.

Another item which is very relevant in the current market, which is also in the 'Procurement and Integration' section is:

'To ensure effective and equitable cash flow for all those involved, all contracts will incorporate fair payment practices, such as payment periods of 30 days, no unfair withholding of retentions, project bank accounts, where practicable and cost effective, and will include mechanisms to encourage defects free construction'.

For the first part of this all RSLs would consider that they have a decent defects procedure in place to reduce defects and be easily able to put their hands on it - indeed it is a standard Key Performance Indicator. However, ensuring that 'effective and equitable cash flow for all those involved' is another story and implies that supply chain partners should all be treated in turn the same as the main contractor. Whether this happens in practice, enforcing it down the supply chain and finding the evidence is a different matter. Presumably the intentions of the client can be stated as preference and promoted as far as is feasible. It would be interesting to know how many clients in practice are applying this commitment in its true meaning. It is assumed that on partnered projects the 'open book' practices would encourage openness on this particular issue ensuring it is indeed more fully complied with.

(For guidance on 'fair payment practices see weblink: <http://www.ogc.gov.uk/documents/CP0159FairPaymentPractices.pdf>)

It must be noted that typically about 80% of the work on all housing schemes is actually done by the subcontractors so it is important for clients to engage more fully with the supply chain to ensure the best practice ethos is carried through the bulk of their building programme if they are truly committed. There is surely more scope to do this through partnering contracts.

The treatment of the supply chain is particularly relevant to the '**Commitment to People**' section specifically commitments 3, 4, 5 and 6 in that section. There are surely practical limits to enforcement some of these for many smaller projects (as suggested for policing

'fair payment practices)' although this is not to say that there are not examples of good practice. Local labour clauses are notoriously tricky to implement and the definition of 'local' is normally applied quite broadly for most contracts unless they are of a regeneration nature with a strong existing community input. It is important to note that the principles underpinning 'OJEU' in respect of the free movement of labour across the Union (which strictly speaking should really be applied to all contracts regardless of the 'OJEU' thresholds) mitigate against anything prescriptive in terms of local labour being entered into contracts including for regeneration schemes. Clients are well advised to seek legal advice in this regard before considering such measures (and for that matter any subsequent contract variations particularly in the light of the recent introduction of the new 'ineffectiveness remedies' and the increased potential for challenges to the awarding of 'OJEU' contracts).

'Equal Opportunities' is a subject dear to all in the social housing sector with a relatively good track record over the years and some monitoring should always be present for all contracts – the more challenging task is to promote compliance with these policies down the supply chain to subcontractors. This can be aided by 'Constructionline', who vet 'Equal Opportunities' and diversity policies for compliance and display them online, even for some subcontractors, although to be truly successful it needs as many companies as possible to join. (<http://www.constructionline.co.uk/>)

Relevant to a number of commitments not only are 'Equality & Diversity' policies vetted by 'Constructionline' but financial checks are also made (its original, main function), feedback scores given on previous performance and 'Environmental' and 'Health & Safety' policies are all held on this online database for ease of access, viewing and printing and all are checked according to a standard format for all contractors. This is a useful administrative tool if nothing else saving clients time – particularly as the website has been re-launched to make it a much simpler and more intuitive system to use. It is claimed the benefit for contractors is that it opens them up for more business opportunities for a relatively small fee based on size of company. With wider take up this facility can only be improved. The wide take up of the 'Considerate Constructors Scheme' also allows RSLs to show an auditor evidence to satisfy much of the 'Commitment to People' section in the form of the score sheets produced and there is much in the scheme if followed in the right spirit to commend it (<http://www.ccscheme.org.uk/>).

Much of the '**Client Leadership**' section is policy and procedure related and most clients would consider that their policies & procedures in the form of Design Briefs, risk management procedures, procurement policies and financial regulations would cover the territory covered here. What is perhaps more open to question is to what extent these aspirations are being implemented in the spirit being called for. In terms of this paper whether a client can demonstrate that they are indeed developing a 'clear, collaborative and flexible procurement policy' can surely only be evidenced if they are using different methods of procurement to suit a range of different circumstances – and most would surely argue that they are.

Whatever the procurement route checking the implementation of the policies of supply chain partners, especially if they are not on 'Constructionline', would be somewhat of a burden for the client to carry out directly and therefore it is absolutely essential that the main contractor is fully on board and briefed as to the client's expectations. Obviously a true partnering contract route means the terms of the contract are clear with the contractor involved from the outset.

Another benefit of closer links with the supply chain particularly in the current difficult market conditions (and is also relevant to 'fair payment practices') is that they can potentially act as another check on the competence and financial status of main contractors. This is bearing in mind that sudden financial collapse of main contractors is a real risk for clients and can be symptomatic of poor management. Clients could be alerted in good time to this by some subcontractors before it is too late and painful, although admittedly some may be reluctant to engage for fear of compromising future business.

The two stage tender route allows the client (if they are minded to) to make the commitments clear in the first stage by assessing the tenderers responses against the requirements of the commitments as well as other the desired criteria. With a single stage tender process there is usually less time to interview and explore each tenderer's methods of compliance to the commitments and the quality criteria, even if requested, tends to get overshadowed by the financial bottom line (and accompanying policies parked on file for auditing purposes without too much scrutiny!)

This is not to say it is impossible to meet the commitments using single stage tendering and 'JCT Design & Build' (or similar) contract, which may be entirely appropriate in the circumstances, and with a bit of effort there are measures that can help deliver the commitments such as encouraging contractors and their sub-contractors (more uncommon) to sign up to 'Constructionline' (or an equivalent such as EXOR <http://www.exorgroup.co.uk/>), benchmarking 'Considerate Constructors Scheme' scores with its requirements amongst contractors and making sure they are all aware of this and interviewing them in regular review and feedback meetings (with minutes) whilst at the same time discussing how better to meet the commitments. Perhaps also all 'Tender Reports' should carry a section paying heed to the commitments and how compliance may be achieved. This may at least provide evidence of compliance for enthusiastic auditors. But the reality is that there is less scope to insist upon one's intentions, less scope to check and it depends upon the attitude and quality of the contractor.

All too often as long as a reasonable product is delivered in reasonable time and on budget (or thereabouts) then that will suffice. It could be argued that in the current market RSLs are a relatively dependable cash flow for contractors and therefore contractors should be more willing and eager to follow the clients wishes given the necessary leadership. However, there are rumours of sharp practices in the supply chain with prices being shaved to win contracts and as many as 12 tenders being sought from suppliers for certain components with lowest price as king regardless of other factors.

It is important at the very least for all contracts that a statement of intentions is made to the main contractor to encourage them to make efforts to check their sub-contractors policies, which is probably only practical for larger subcontractors and suppliers as the smaller companies may struggle with this. It is being able to show evidence that this is being done which must surely be the way to fulfil this commitment.

A directive from Communities & Local Government (CLG) in the summer of 2009 stated that the government wishes to see PPA partners promoting apprenticeships in their development programmes, which is relevant to the fourth commitment in the '**Commitment to People**' section and supply chain partners would be crucial in delivering this. Therefore making closer links with sub-contractors is essential for closer delivery of this section.

Training initiatives are certainly one area of construction procurement (and there are others) where some larger private developers and have been leading the way and have seen the benefit for this in recent years in order to safeguard the future of the industry. The lack of skilled labour is increasingly becoming an important issue particularly as there are aspirations for higher standards and will certainly become even more accentuated when the market picks up.

To implement CLG's wishes the HCA has clearly stated the prioritisation of this area by requiring all grant funded developers (RSLs and private) to complete a proforma detailing their plans and projections for creating and safeguarding apprenticeships in the grant funded affordable housing programme until March 2011. This is certainly an area where compliance should therefore be strong across development programmes, if not for all sites, due to this clear prioritisation and is likely to be carried into the future beyond 2011 – and all procurement practices will need to take this much more into account.

Engaging local communities is again something most RSLs would claim they do to a greater or lesser extent – again it depends how far it is applied and how much gravitas is attached to full compliance. Other than through the planning process (which in itself can often be tortuous) this would be a challenge to do for all sites, especially smaller, non regeneration sites, if the delivery programme is not to be significantly delayed further than it might already be. Rural sites where community involvement is often strong take a famously long time to deliver relative to most other sites. Impact assessments do pick community involvement up to some extent it has to be noted.

In terms of the '**Design Quality**' section much of it is covered by the necessities of meeting 'Housing Quality Indicators' (or future equivalent) and 'Building for Life' so the commitments in this section should be fairly easy to demonstrate regardless of procurement route although this is arguably the most subjective section of the lot. The principles of 'Building for Life' are embedded in planning guidance and are becoming increasingly important for planners bearing in mind the training 'CABE' is providing for planning officers to carry out the related assessments.

The '**Sustainability**' section may be seen at first glance as less influential for the procurement route and again much of it is open to interpretation. RSLs would feel that many of the commitments are taken care of **simply** by the requirement to meet the 'Code for Sustainable Homes'. This section refers to 'best practice approaches' and perhaps more guidance should be given for what exactly this means. Those who have joined SHIFT (Sustainable Homes Index For Tomorrow) programme may feel they would be complying fully whatever procurement route they tend to favour. (<http://www.sustainablehomes.co.uk/>)

It has to be said that the increasing demands of the higher 'Code for Sustainable Homes' targets and the need to innovate opens up clients to greater technical and financial risks and challenges, which need early design awareness and thoroughness to ensure that, once on site, the construction team does not find they are faced with problems in trying to meet the targets that have been set. This could result in unnecessary and potentially costly compromises and materials costs, in undesirable solutions and possibly even that Code targets may possibly not met resulting in grant reduction. These problems may or may not be immediately apparent, and a lack of clarity of design responsibility could impact seriously on the quality and performance of buildings to the detriment of the client, residents and future maintenance contractors. It could also result in disputes and

significant unwanted delays on site. Therefore attempts to keep costs down too low could be a false economy although this is always a delicate balancing act for development departments seeking viability targets.

Procurement routes that encourage earlier contractor involvement, particularly at a time when there is still a learning curve within the industry to achieve higher environmental targets, must surely minimise the risks of problems on site happening as a more integrated contractor will be better briefed and aware of any design challenges in practical terms, would have better chance of seeing potential problems and be able to influence the specification in a more positive manner.

Clients would be very well advised to ensure that for all contracts a 'Code for Sustainable Homes Pre-assessment' is carried out by a 'Code Assessor' as early on as practical to clarify targets for individual sites. It is advisable that such a 'Code Pre-assessment', which is relatively inexpensive, should always be provided in any tender documentation to give tenderers fair and equal information. It will provide clear objectives in order for tenderers to price more accurately, reduce the risks once on site and ensure the necessary quality is delivered. Quality is after all an important factor in determining the level of sustainability of a building.

The requirement to design according to the concept of 'One Planet Living' (<http://www.bioregional.com/our-vision/one-planet-living/Default.aspx>) is perhaps interesting as this concept is a particular brand and not as open to interpretation as many might think. Membership of 'One Planet Products' (<http://www.oneplanetproducts.com/>) is a certainly the most obvious way of evidencing compliance with this or, if not full membership, then at least encouraging the mainstream use of products and suppliers vetted by 'One Planet Products' for their 'green' authenticity against 'One Planet Living' principles. It is suspected that being able to evidence this is probably not something the HCA is minded to enforce to the letter of the law.

Lastly the need to comply with the CDM Regulations and RSLs' traditionally cautious approach to '**Health & Safety**' means that this section should not pose any difficulties for compliance as such - again regardless of procurement route – as long as client responsibility is fully understood. (Whether there are any figures that show partnered contracts are safer is not known). One point that has arisen is the reference to a 'risk register' in this section as even though most would feel the CDM process naturally takes care of this point it now appears the HCA are requiring an actual form to be created which an RSL would not automatically receive unless it is specifically requested. Apparently at the time of writing the provision of a Health & Safety File and associated documents is not enough. Making efforts to promote the 'Construction Skills Certification Scheme' is also a must for all routes but this is something most clients have been aware of for some time.

10.3 **Conclusion**

By two stage tendering and partnering in the true sense there is no doubt that it is a closer fit for the commitments and it is easier through these routes to disseminate the best practice message promoted by the commitments in their true spirit. But it is still not guaranteed in practice unless effort is put and a conducive culture is in place on the ground.

It is still possible to be able to make a case for compliance with the commitments with a typical single stage, design & build contract route but more effort has to be put in and

importantly it is not so easy for positive ethos to be implemented rather than merely token gestures even if there is paperwork of some form or other to satisfy auditors. If measures such as those suggested earlier are not being implemented with this route then there must be certain key sections that the client must be falling short on.

The HCA need to clarify their position on how rigorously they expect the commitments to be met, whether they expect them to be applied in general across the programme or everything applied for each scheme and perhaps clearly list what their main priorities are within the commitments themselves now that they have been live for some time. To be fair as well as the HCA's apprenticeship directive one of the last things the Housing Corporation did was to brief RSLs as to the added importance of 'fair payment practices' during the credit crunch and this is certainly one area that needs more focus and re-emphasis by the HCA in the current tough market conditions where companies are relying more heavily than ever on timely payments. We are still in a period when the commitments are bedding in and auditors reactions are being fathomed out. The commitments do require an informed client, well trained staff with robust procedures for them to be properly implemented.

The reality is the market needs RSLs to hold firm to even more so to prevent more hardship for the industry than is necessary. It is believed they are currently monitoring feedback to assess take up and what good examples they can promote in a positive light. If applied rigorously then it may encourage more take up of partnering protocols but with the harsh market and the future uncertain it would be perhaps surprising if a strong line were to be taken. There is no doubt that strong, informed leadership is required at present to truthfully deliver such commitments in their full and original meaning.

11 Residents Voice on Procurement

(Terry Bird, Swan Housing Group)

11.1 Background

The majority of 'Registered Housing Providers' now consider strategic procurement as a long-term objective for enhancing quality and maximising Value for Money. Quality and VfM are clearly fundamental to the success of any customer focused business operation and it's therefore no coincidence these key issues have become explicit through the work of the Tenant Services Authority; as highlighted in their proposed *'New Regulatory Framework for Social Housing in England'* and in part the proposed *'Tenant Involvement and Empowerment Standard'*.

The methodologies used in procurement are fairly systematic in their approach, using a 'Quality-Cost Model' as the driver for Service Provider selection. These QCM's commonly range between ratio's of 60:40 to 80:20 dependent on individual organisational circumstances, albeit there are marginal variants.

With the advent of time, the 'Quality' aspect of procurement has reached it's limitations. Being able to effectively discern high quality bids from the pool of competitors is no longer as effective. Key services provided by Registered Housing Providers are not unique; in fact they are fairly common. The resultant effect is that Service Providers have clearly established through the use of in-house bid teams an approach that indicates commonality and consistency in demonstrating high levels of quality during procurement stages. The impact of such a conflict is driving the process into one that is ultimately decided on 'Cost' or 'Price', completely undermining the objectivity of the initial exercise and the outcome desired.

The provision of new-build homes, regeneration schemes and the continued upkeep and investment in existing housing stock, makes up over eighty percent of most social landlords expenditure throughout the year. It's no surprise that organisations have clearly focused on maximising their procurement potential in these areas for enhancing service provision and driving through efficiencies. This should not however detract social landlords from the fact that procurement opportunities existing for a wide range of other key supplies and services.

Whilst recognising that innovation in new-build plays a key part in meeting sustainability objectives, standardisation in the main can still be achieved through a number of methods, particularly through innovation from the supply chain & suppliers used. Fundamentally, organisations need to maximise a consistent approach in;

- setting cohesive property standards
- agreeing commonality of components
- implementing structured performance monitoring methods
- maximising continuous review techniques to drive up quality
- use feedback to implement clear 'improvement action plans'.

11.2 Current Constraints

Social landlords to date have made reasonable attempts in collaborating and engaging residents in the selection of supply chain partners, through involvement and participation of procurement panels. However, there are a number of issues that restrict the level of engagement and involvement as well as the effectiveness of the involvement that stem from;

- Residents' limited knowledge of the subject matter
- limits on the number of residents used
- frequency and therefore inconsistency of residents used
- residents lack of understanding of procurement processes
- lack of suitable corporate training for residents to ensure full participation
- lack of strategic commitment and understanding from organisations in recognising the importance resident's play in procurement.
- inadequate national and vocational training courses available for residents specifically relating to procurement
- a lack of strategic direction outlining when residents are involved in procurement.

With tenants being assured a greater voice and involvement by the TSA in future, social landlords now need to consider how residents can enhance their influence and in some ways unlock the 'Quality' aspect of procurement. For many social landlords there needs to be a re-assessment of how to link the excellent work in the provision of new homes to that of future investment and maintenance particularly around standards and services.

To achieve greater resident involvement through procurement there needs to be a top-down driven process. This should in part be facilitated by officers but there needs to be a far more effective and practical approach to engaging residents in the cross-cutting processes. Primarily though there needs to be an acceptance and more importantly a commitment to training group's of residents in effectively aiding procurement

As stronger governance of social housing Boards moves to more and more resident representation, there is clearer opportunity to enhance this message and convert it into strategy. A fundamental review of maximising resident involvement needs to be tackled at both local and national level to make it effective. Sector practice needs greater emphasis and more importantly greater recognition that the *resident's voice* in relation to procurement is currently inadequate.

11.3 Key Factors

Factors to therefore consider in raising the bar towards enhancing and improving resident involvement in procurement can be considered as follows;

- recognition that joined up thinking is required by organisations to maximise property standards and components across strategic property services that have been approved by residents.

- recognition by social housing providers of the need to firmly establish and to uphold continuity of a resident group (a Residents Quality Panel as an example) who can focus on standards, components and procurement as a collective, thus providing an effective, consistent and robust approach over time.
- recognition by sector partners and sector bodies that national and vocational training courses are established and tailored to specifically assist residents with procurement.
- Through interpretation of the TSA's Framework Standards, setting clear objectives in the Quality aspect of tenders to gauge how service providers propose meet a range of diverse and separate local standards for social housing providers.
- Ensuring that residents who are part of a Panel form a key part of procurement and selection process from the outset of a project which should include setting standards and objectives against which Quality can be clearly assessed.
- Linking residents to contract management (not just tokenism) and being key in the decision making process, attendance and membership of Core Group and/or the Partnering Team.
- Consideration of rewarding (or even remunerating) small groups of residents for actively participating in contract management and active forums/panels.
- Setting objectives for specific regions, estates, areas, communities and groups of residents that forces contractors to think laterally on tailoring services specifically and not just a "one size fits all" approach.
- Following adequate training consider shifting accountability and responsibility towards a more tenant driven management and control with shadow support.
- Promote the use of resident champion's and make it clear through procurement that services will be resident driven and monitored and establish how contractors would address such a model.
- Consider implementation of payments that are directly linked to performance and more importantly resident satisfaction through the use of a matrix that targets local service standards and areas, "thus again addressing the one size fits all approach".
- Consideration of employment or (rotational employment) opportunities in the delivery of services that allows thorough engagement and that reinforces buy-in ultimately through integration of residents and staff for say a call centre scenario. This then enhances the voice of the resident within the service where improvements first hand can be considered and fed back into performance monitoring aspects.

11.4 **Conclusion**

To facilitate greater resident involvement in procurement and to enable a clear shift away from just standard quality scenario's the end user has to be at the heart of service delivery as well as setting the standards.

It will no longer be ok just to use residents for procurement but will become necessary to have them lead and set standards. The sector and organisations need to think more

radically as to how best to deliver more effective procurement utilising the skills of residents. Resident involvement must not just become a tick box exercise which simply ends up with outcomes that are cost appraised.

Longer term emphasis has to be inward investment through national and vocational training in order to raise the standards of resident capacity and ultimately their ability to effectively understand, engage, participate and make strategic decisions in what are sometimes quite complex processes.

Ultimately the need for greater involvement in procurement will lead to a far smoother passage towards co-regulation, a pre-requisite of the TSA Standards Framework for the future.

OPTIONS APPRAISALS IN CONTEXT

(Kim Newman, PML Group)

Option appraisal is not a new process. Equally, it is not exclusively to support the Procurement process and should be practiced routinely as part of good management and planning.

Before looking at the role of option appraisal within the procurement process, it is useful to consider general questions in relation to option appraisal. Option appraisal defines and assesses different potential options to achieve required outputs or outcomes. It assists in making decisions on whether to proceed with a project and in identifying the best option for procuring and delivering a project.

Why would local authorities use option appraisal?

Decision making in the Public Sector is becoming increasingly complex. As the rate of change increases and the number of options widens, decisions based on intuition and historical reference have less credibility. A more analytical, objective and defensible decision making process is needed. In addition, public bodies are required to deliver Value for Money in the use of resources and delivery of services.

Use of option appraisal enables informed and transparent decisions to be made and provides a consistent, systematic approach to decision-making. This provides a clear basis for review and links various corporate planning processes such as capital planning and service planning.

Situations where Option Appraisal could be used:

Housing organisations should consider an option appraisal approach to decision making in the following scenarios:

- When there are doubts as to whether to go ahead with a project or programme
- To help achieve maximum effectiveness and Value for Money
- If a project/programme could meet other, wider objectives
- If a project/programme has a high level of risk or uncertainty
- If a project/programme impacts on many stakeholders
- Where transparency is required in decision making
- To provide a consistent approach to decision making
- If a project involves the council and partner organisations
- Where the long term approach to a project/programme may differ from the short term

Examples of practical situations where option appraisal could be used include:

- Appraisal of procurement options for a capital programme

- Appraisal between capital proposals where there is limited budget
- Decisions on which contractor should be used for a particular capital project
- Deciding on specific individual projects within a broad spending programme
- Lease versus purchase eg lease or buy a car, building, photocopier
- Capital versus revenue eg new build or refurbishment
- Public Private Partnership compared to traditional procurement

Why Option Appraisal is important

Option appraisal is a decision making tool for use in:

- Identifying objectives;
- Identifying the different ways in which they can be achieved;
- Examining all the important factors before taking a decision.

Therefore, effective option appraisal will help to answer three important questions:

- Have all relevant factors been taken into account in deciding what the project or programme should be?
- Should the project or programme go ahead?
- What is the best way to procure the services or works?

Option appraisal should be carried out when planning projects for which there are a number of possible different approaches to meeting the desired objectives. This is to ensure the final decision and subsequent actions represent good value for money.

Key stages in the options appraisal process

Define Objective

Option appraisal is a fairly straightforward process although it exists in many forms. The complexity of the process should be directly proportional to the scale of the project or programme. Central to the process is the clear identification of objectives, criteria and outcomes driven by the strategic agenda. This is imperative along with an appropriate consultation framework and an appreciation of the likely funding options.

Transparency and realism are at the heart of any option appraisal system. Specific objectives for the project/programme should be defined very carefully because they will form the basis for all subsequent assessments in the process. They should usually not exceed five or six in total otherwise the risk exists of the wrong option being selected through poor definition although a slightly greater number can be included if all objectives are clearly expressed through a “SMART” process.

How are options identified?

Developing the Options

It is commonplace nowadays for a “Best in Class” review to take place when options are being selected. Many examples, both nationally and internationally, exist of effective delivery of public sector projects and this avoids constantly “re-inventing the wheel” if they are investigated and the best features understood. Such a review should be combined with a workshop style forum to generate as many options as possible, taking onboard the views of a range of stakeholders. A baseline position or “do nothing/minimum” option (also sometimes called the status quo option) should always be included in the list of options. When the initial list of options is being generated, the outcome should be to generate as many possibilities as possible without constraint or limit. The most effective solutions are sometimes those that do not immediately present themselves as the most obvious.

Gathering Information on each Option and “Filtering”

As much information as possible should be gathered about each option. A fairly holistic overview should be made of the applicability of each option against a range of internal and external factors. For example, there is no point selecting an option for detailed review if its selection would be against the policy of the public body or its chances of being adequately financed were slim. Such a “filtering” mechanism should be used to reduce the existing list of options (there can be as many 10-15 at this stage) to five or six, which will be put forward for more detailed review.

Assessing and Analysing the Options

The remaining five or six options (although there can be slightly more) should be subjected to a robust quantitative and qualitative analysis. The level of sophistication at this stage can vary widely and there is no one “correct” way of delivering the outputs. However, the best systems have some sort of ranking and weighting system for scoring and attempting to quantify in as methodical a way as possible the best solution. More sophisticated systems undertake full scale discounted cash flow modelling of each option and in some cases integrated risk and value for money assessments.

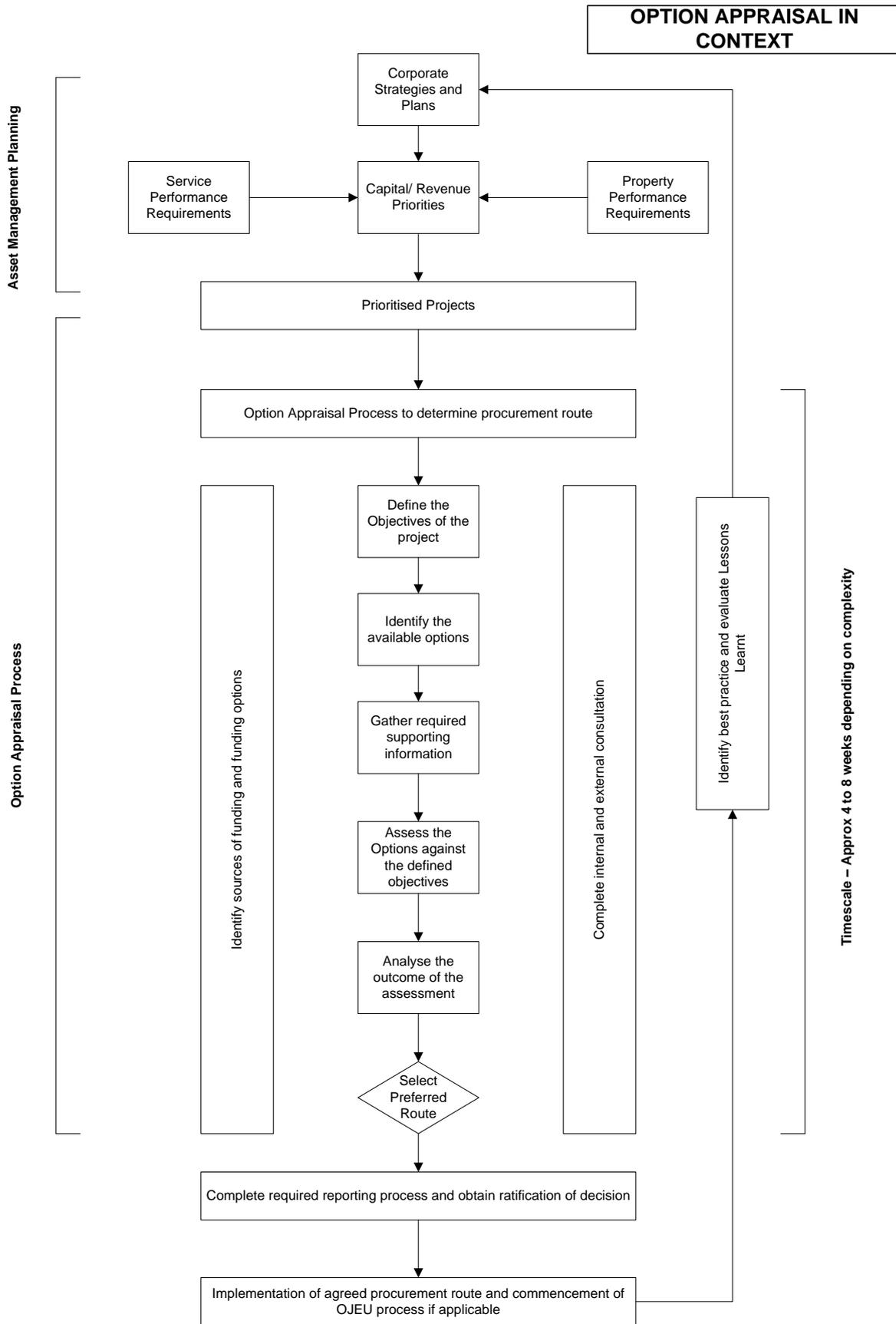
Selecting the Preferred Option

A preferred option should always be selected and clearly approved and authorised by Members, Board or the review group charged with this function at the end of the option appraisal process. The degree to which the output of the options appraisal process is the business case for a preferred solution will depend on the completeness of the business case that can be made.

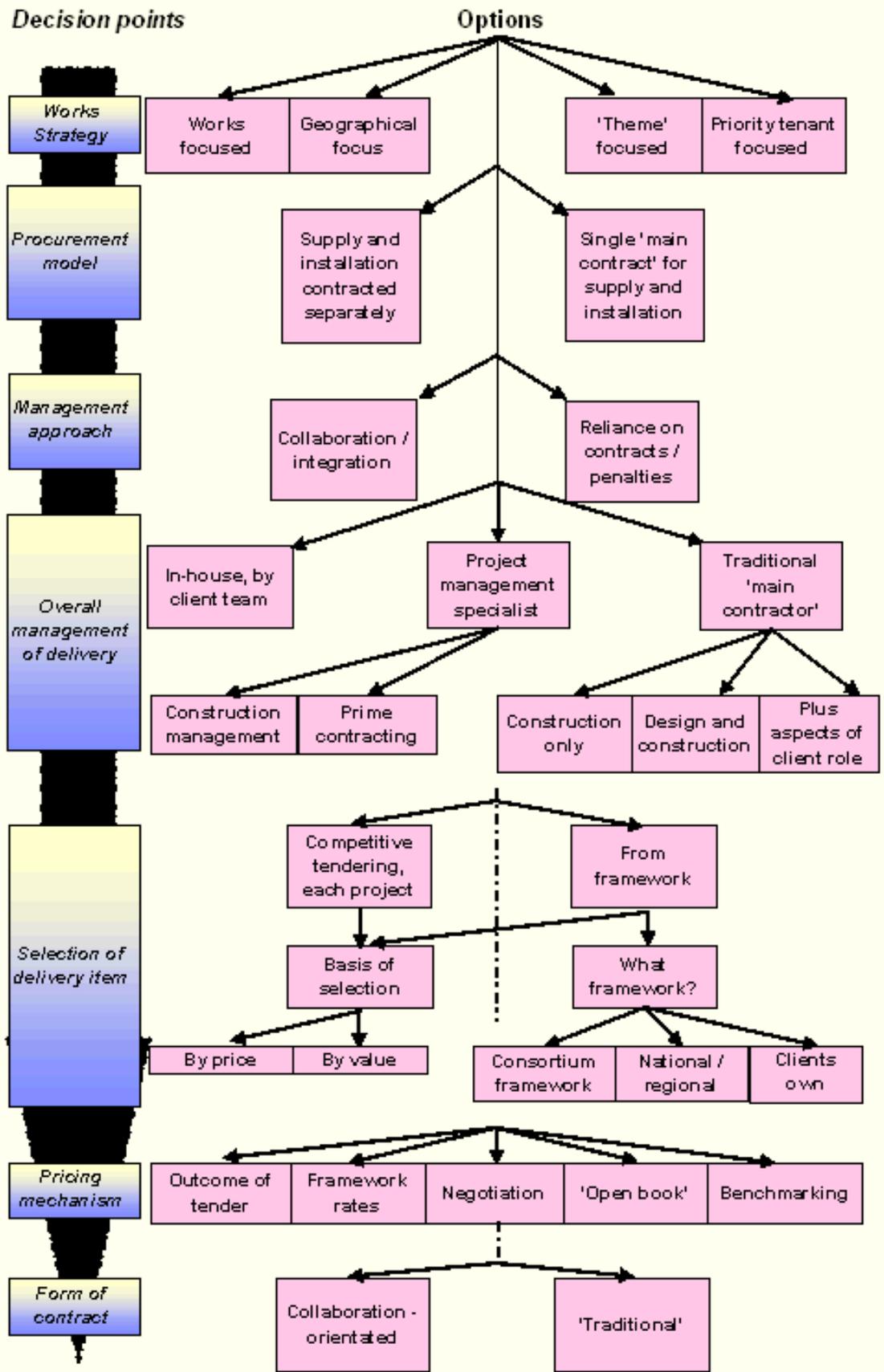
In a complex environment, the output of the options appraisal could be an outline business case. Further focused development, design and detailed investigation, perhaps involving external consultants, and other resources may be required to make the full business case. In simple or straightforward situations, the output of the options appraisal may enable acceptance of the business case and enable full authorisation to proceed to set up the project/programme and procure the works and services necessary for implementation.

Steps in Option Appraisal

Each Council will determine its own requirements for using option appraisal. It may be appropriate to simplify or shorten the process, particularly for lower value or lower risk decisions and to set de minimis limits for option appraisal. Any such limits should be incorporated into financial regulations and standing orders. Further, the size and nature of the project/programme will determine the extent of work required at each stage of the appraisal and some stages may take place simultaneously. It is likely that consultation will take place throughout. This is reflected in the diagram below.



A practical example in relation to a specific procurement process is provided below.



The Benefits of Effective Option Appraisals

A thorough and robust option appraisal will:

- Enable informed and transparent decisions to be taken
- Provide a consistent approach to decision making
- Help achieve maximum effectiveness and Value for Money
- Provide a clear basis for future reviews of the cost effectiveness
- Ensure that the option selected is more likely to meet the desired objectives

Summary of Good Option Appraisal Practice

Although the scale and nature of a project or a decision will influence the level of detail that you will need to build into your appraisal, any technique should incorporate steps that ensure you have:

- been clear about what you are hoping to achieve – **Set clear objectives**
- thought about the different ways in which they could be achieved – **Generated a range of options**
- assessed the costs and benefits of the different options – **Assessed cost effectiveness**
- considered relevant risks and sensitivities and have contingency plans - **Prepared for optimistic and pessimistic scenarios**
- considered what represents the most appropriate option and best value use of resources in line with objectives – **Chosen well**