



NHMF Conference 2010

**From OJEU to contract:
procuring the contract &
contractor you want**

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Coverage

- Working out what contract you want
- Working out what contractor(s) you want
- Devising the strategy to get what you want
- Making sure you get it

Working out what contract you want

- Link between strategy and procurement
- Possible delivery options
- Contract strategy decisions
 - partnering
 - scope, size and length of contracts
 - number of contractors
 - payment strategy
- Risk vs convenience continuum

Who should have a say

- Stakeholders – residents
- Staff (contract management, housing management, finance)
- Finance Director
- Board
- Stakeholder aspirations document

Possible delivering options

- “Make” or “buy” (DSO or contractor)
- Group structure/shared services possibilities
- Joint venture options:
 - JV controlled by provider
 - JV controlled by contractor

How contracts can be packaged

- Scope – integrated or separate
- Number of contracts and contractors
- Size and type of contractors
- Framework agreement or contract
- Length of contract(s)
- Partnering or traditional

Scope of number of contractors

- Capacity to undertake the work
- Encouraging SMEs
- Spreading risk
- Economies of scale and incentive to partner – exclusive commitment

Type of contract

- Framework agreement or contract
 - minimum work guarantee
 - “predominant purpose”
- Term contracts
- Partnering or traditional
 - partnering includes hands on processes
 - costs attached to partnering
 - costs attached to not partnering

Contract length

- Longer term
 - encourages partnering
 - reduces procurement costs
- Shorter term
 - minimises risk & dependence
- Framework agreement limit to 4 years

Payment basis

- Price based or cost based
- Risk pricing
- Targets and pain/gain
- Incentivisation
- Contract management costs and technical expertise

“Getting what you want”

- Early preparation for re-let
- Planning the procurement
- Timetable
- When to bring in the lawyers
- Information collation
- Preparing the procurement and contract documents

Things that might stop you getting what you want

- Implied tendering contract
- Schedule 1/Members interests
- Consultation – tenants & leaseholders
- TUPE
- EU procurement
- Affordability

Tenant consultation

- Secure tenants
 - “new programme” of maintenance or improvements
 - change in policy or practice of landlord
 - substantial effect on secure tenants
- Assured tenants
 - good practice
 - Audit Commission expectations
 - anticipated TSA National standard

Leaseholder consultation

- “Public notice” or “no public notice” route
- Consultation when entering into a QLTA
- Consultation on “qualifying works”
- LVT dispensation

TUPE

- Service provision change
- Ongoing activities (could be “works”)
- Employees “assigned” to activities
- Transfer also from sub-contractors
- Transfer on same terms and conditions

EU procurement

- Classification of contracts
- Works, services, supplies split
- servicing or responsive work
- “Mixed contracts” – main object/greater value

Thresholds

- Works: £3,927,260
- Services: £156,442
- Supplies: £156,442
- Net of VAT
- Next update 1 January 2012

Valuation

- Services/supplies
 - value over contract life
 - 4 year limit
- Works
 - contract sum
 - total amount payable

Valuation

- Works
 - “same work”
 - “single requirement”
- Services
 - single requirement
 - requirement for similar services over a 12 month period

EU Treaty

- Fundamental freedoms
 - movement of goods/workers/businesses
 - cannot require “local” labour/supply chain
 - jobs & training opportunities
- Transparency and advertising
 - Interpretative Communication
 - of interest to non-UK contractors
 - “sufficient advertising”

Purchasing options

- Individual procurement (sole or joint)
- Framework agreement (existing or new)
- Central purchasing body (buying clubs)

Procurement – OJEU notice

- Consistent with strategy
- Build in flexibility – “significant change” risk
- Community benefits
- Attract the right contractors
- Briefing document

Prequalification and selection

- Different processes and requirements
 - minimum prequalification standards – pass/fail
 - selection criteria – scoring/weighting
- Must test eligibility, financial strength, technical and professional ability
- Tailor questions to strategy
- Transparency – disclose criteria and scoring and provide feedback

ITT

- Full contract documentation – reflecting strategy
- Clear tender return instructions
- Interface with award criteria
- Non-collusion certificate

Award criteria

- Consistent with strategy
- Clarity and objectivity
- Disclosure and scoring
- Coverage must test MEAT
 - Lianakis case
 - references, site visits and interviews

Protecting what you have got

- New standstill requirements
- Ineffectiveness
- Contract signature
- Substantial changes – Pressetext case



Questions

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