

Date: 25 May 2022 (08:30-12:30)

Location: Friends House, 173-177 Euston Road, London NW1 2BJ

Chair: Mike Turner (Chair)

Minutes: Andrew Burke (Deputy Secretary)

Attendees: Fiona Lund, Susie Sinden, Nicola Yeowell, Rory Nixon, James Darker, Victor Salciuc, David Hyndman, Tom Laws, Amy Boothman, Mike Turner, Claire Clutten, Peter O'Toole, Felicity Reilly, Paul Dawson, Tony Woods, Ben Virgo, Imogen Bowen, Matt Clarke, Andrew Burke, Gemma Edwards, David Miller, Duncan Forrow, Rita Lad, Nicola Ihnatowicz, Rebecca Rees, Paul Maghie, Chris Sutton, Chris Pritchard, Sonya Russell, Alex Thomas, Paul Belton, Adam Smith, Jonathan Byrd, Chrissie Dewsbury, Paul Dougherty, Dean Wincott.

NHMF Contractor Forum Meeting Minutes

Agenda:

No.	Description	Who
01.	Welcome, Introduction & member survey feedback	Mike Turner
	MT welcomed everyone to the first CF meeting in 2022 and explained that the annual member survey was used to shape the CF programme agenda with topics and presentations. Imogen confirmed that only 10 members had responded to date (out of about 50 members). MT encouraged people to <u>complete the survey</u> .	Members to complete survey – email Imogen for a copy .
02.	Soft market testing (SMT): conclusion	Amy Boothman
	<p>Amy explained she was deputising for Melissa and circulated copies of the SMT report (see members' area), setting out the background to the WG on the Government's Green Paper: Transforming Public Procurement. The WG set out to understand the extent SMT was used and how effectively so as to set out a best practice approach. They surveyed members to gather evidence via the NHMF which was then validated at a workshop at the NHMF Conference 2022.</p> <p>The results showed that while 100% of contractors used SMT, only 67% of clients did – scope for development, especially for clients who had not used SMT. Clients had different preferences for pre-market engagement but none used LinkedIn. All should be using PIN. Contractors had a fairly even split between face-to-face, questionnaires and webinars (COVID legacy?). Whereas about 50% of clients used questionnaires, with face-to-face (17%) and multiple (28%) but used webinars least (5%). To ensure SMT was valuable, contractors needed to think about their expectations and</p>	

	<p>how these should shape questions to initiate an effective dialogue, key areas were listed to help with this process. WG identified that clients had low expectations and these needed to be raised so that they could see the value of SMT. This should build their confidence and promote greater openness and transparency. 12 lessons were identified to improve SMT for both clients and contractors and key recommendations from the survey were listed. It was important to plan this process because time is precious</p> <p>Discussion:</p> <ul style="list-style-type: none"> • Members wanted to know how to promote this work. Good examples, such as case studies, guides and lessons learnt should be used to promote this to clients. This was a role CF needed to do via NHMF. It was recognised that it needed to be kept up to date and relevant, perhaps review every 2 years. • CF was reviewing survey results to consider next topics for WGs. There was a need to review how things had changed since the pandemic – webinars are likely to continue. • In terms of involving the client side, the CF would feed into the NHMF to promote evidence-based change. Targeting projects/contracts there were about to change in next year, as well as contracts where break clauses were being exercised and clients needed to procure quickly. • For future WGs, based on this WG, it was suggested that 2 years be allowed for surveys, evidence gathering, validation (Conference) and final paper. 	
03.	M3NHF Schedule of Rates Consultation ahead of Version 8	David Miller
	<p>DM explained the plans and timetable to create V8 of the SoR that had first been launched in 1994 at the NHF AM Conference. This had later resulted in the creation of the NHMF. He set out the different versions, explaining how schedules had expanded in scope and number of items in response to clients'/contractors' requirements. (See members' area for presentation.)</p> <p>In terms of material costs, DM showed a comparison of inflation (CPI) vs market (BCIS) and explained unforeseen financial impacts had been cause by international and national events, such as Brexit, Pandemic, climate change, rising energy costs and war, as well as Government policy and regulations. Price increases had resulted in erratic tendering and a big spread of adjustments that would pose a challenge for pricing V8.</p> <p>DM set out the proposed programme to develop V8 through a consultation (2 events held and more planned) for launch at NHMF Conference 2023. Other modules would be launched later. The final consultation would examine what needed to change, identify anything missing, any deletions, as well as new trades and elements, modules, possibly separate DLO and contractor modules. sSakeholders would be consulted about social value, sustainability and electronic only SoRs.</p>	

	<p>Discussion:</p> <ul style="list-style-type: none"> • Members suggested CF/M3 could help with consultation by circulating questions using Survey Monkey. • It was suggested that an allowance for apprentices be included in SoR. • There was general concern that erratic tendering could continue, sometimes due to lack of time, client response, different sectors. Main contractors felt procurement could be improved (SMT). Any delays resulted in costs for contractors and shorter mobilisation periods. There was a need to improve upfront processes. • More frequent review periods were suggested (JCT yearly but could be 6- or 3-monthly). However, clients were constrained by annual rent increases. • In terms of tender award timescales, price evaluation no more than 2 weeks but client assessment depending on criteria 2-7 weeks (could be shortened). Price review dates set out in contracts. 	M3 to follow up.
04	Compliance Update	Andrew Burke Paul Maghie
	<p>AB explained the latest updates on the Best Practice website since the 2022 NHMF Conference, explaining this was the first time the NHMF Award winners and shortlisted schemes had been published. The remaining awards will be published on a monthly basis. The main regulatory change was the passing of the Building Safety Act for which briefing was being finalised. The main change had been the removal of the requirement for the BSM role but this function would still be required by the Accountable Person. In practice the BSM function is likely to be provided by a number of experts. Discussions with the early adopters indicated that social landlords who had recruited BSMs had found them essential to change culture in the way intended by the new Building Safety regime. A training webinar was being planned for 7 Sept. (See presentation in members' area.)</p> <p>New fire safety Q&A had been added to explain the new PAS9989 that should be used for FRAs of external wall construction. In addition, there was briefing about the value of coroners' reports so that social landlords could learn from previous fire-related deaths.</p> <p>AB highlighted the NZC series and invited members to suggest topics and case studies for this year's articles, as well as further best practice case studies they had been involved in. Another NZC training webinar was being planned for early July.</p> <p>PM provided an update from the contractor's perspective, noting the earlier discussion about market volatility and suggesting the balance needed to shift to address contractors' experiences. In terms of retrofit, while the SHDF demonstrators had started 2 years ago and the 1st wave was out to tender, his firm was not bidding for 5 or 6 schemes because the requirements were</p>	

	<p>inadequate. He felt a discussion with consultants was needed to improve the process, especially in the initial development. There were competing requirements for clients – high-rise (cladding), responsive repairs, building safety – that would benefit from a more strategic AM approach. The CF could have a role (instead of consultants) to influence AM strategies.</p> <p>Discussion:</p> <ul style="list-style-type: none"> • None. 	
05	<p>Thorny TUPE Issues in Procurement</p>	<p>Nicola Ihnatowicz Rebecca Rees</p>
	<p>NI explained there was potential for TUPE to be used creatively if contractors understood their obligations, legal, contract and procurement requirements. There were 2 situations in which TUPE applied (i.e. relevant transfer):</p> <ul style="list-style-type: none"> • Transfer of an Undertaking (typically stock transfer/business unit) • Service Provision Change (more common now and informed by a lot of case law). <p>Contractors need to assess whether TUPE applies irrespective of whether the client gives a view and may need legal advice in considering the options, particularly when there are attempts to avoid TUPE through fragmentation or changes in service. It was important to examine how the service is structured and what it covers when bidding for existing or new contracts or gaps in the service. Another consideration is who transfers – employees and workers (casual, consultants, etc) – complicated if they are working across services, lots or contracts.</p> <p>The next requirement is TUPE information and consultation for both the transferor and client. The contract could require TUPE information to be provided earlier than statutory 28 days. With consultation there are requirements for both the transferor and transferee, with significant financial penalties for errors but often it is not possible to consult before the contract award unless it affects redundancies. It is important to interrogate TUPE data (numbers, application), any warranties. When the client (could be out-going provider) is not interested then it is the contractor's responsibility, although it may be possible to include in the procurement process phase of the contract. It can be useful to look at the previous contract to see what the obligations are for the existing contractor.</p> <p>NI set out the protections and liabilities under TUPE as to when dismissal after transfer was unfair and when allowed. These also included changes to terms and conditions. Contractors should expect to consult. TUPE applied less with insolvency. A challenge was whether harmonisation possible if terms and conditions changed.</p> <p>TUPE generally does not apply to pensions (only in 2 cases) but this needs a critical look, possibly with specialist advice. It was less generous for 2nd generation transfers, minimum provision</p>	

	<p>possible. This has a major effect on pricing. There are different consultation rules for pensions.</p> <p>RR explained how TUPE doubles the complications of normal procurement and these issues can only be addressed through questioning, which can be difficult if the existing provider has the information. Bids may need to be qualified until TUPE information is clear. TUPE should be included in the Contract Notice and questionnaires should include questions on TUPE, pricing structure (numbers included but not transferred) and a granular approach should be adopted to pricing TUPE. However, the client may not answer clarifications, so qualified bid has to be submitted but competitive dialogue could be used to get the necessary information for TUPE, such as productivity levels. An open-book model allows costs to be set out separately re TUPE. The existing contract may specify limits on changes to terms and conditions for staff.</p> <p>In conclusion, the top tips were for contractors not to take the client's position at face value, to interrogate TUPE data and think about what they wanted TUPE to achieve. It was important not to leave it too late and to take legal advice on employment and procurement. (See members' area for presentation.)</p> <p>Discussion:</p> <ul style="list-style-type: none"> • Options where an existing contractor would not transfer staff were limited but the procurement and contract terms could allow more time, which clients should support (unless they are uninterested). It was always useful to check existing contract conditions. • With staff shortages, the challenge was how to retain staff rather than restructuring. The workforce more experienced in relation to TUPE. • It was important to manage resident expectations i.e., a new contractor and so expect new operatives. 	
06	NHMF Procurement Consortium update	David Miller Mike Turner
	<p>MT updated members on what work had been done since the Conference and reminded them of why an NHMF Framework was being proposed. Frameworks played an important role in procurement and it was a large market at least £1.5-2.0billion. Even with over 18 providers, none were aligned with NHMF and fees were typically 2-5% depending on service. There were variations in Geography, Services and methodology but Social Value and Training often left to members. A client survey had shown strong support for NHMF to have its own framework and these were being developed in line with NHMF's 2025 strategy. It was designed to provide benefits for members because it would be aligned to SoR and any surplus would be invested in social value, sustainability, innovation research and training.</p> <p>A Delivery team had been set up and it was proposed to launch the tranches in 3 stages. A sales profile had been created and a procurement timetable proposed. IB explained that a brand had</p>	

	<p>been created for marketing, starting with M3 stand at CIH Conference in Manchester.</p> <p>Discussion:</p> <ul style="list-style-type: none"> • Frameworks for individual contracts currently limited to 4 yrs, even though contracts could be 10 yrs but were likely to be extended. Government is reviewing procurement rules to extend up to 8 yrs. • It was suggested there should be a consideration of lifetime costs (i.e. boilers) to ensure quality and value. • Clients could procure through SoR (can be used by anyone, incl other frameworks but they do not know the schedule and charge higher fees) or the Framework. • Intention was to drive best practice in the sector and provide best value (possibly for other sectors as well). • How would local Frameworks work in relation to devolved administrations to support local businesses? Wales should be straightforward because the same legislation as England but separate versions would be required fo NI and Scotland. • Further modules and Tranches being considered. 									
07.	AOB and Dates for the diary	Mike Turner								
	<table border="1" data-bbox="236 981 992 1357"> <thead> <tr> <th>Date</th> <th>Event</th> </tr> </thead> <tbody> <tr> <td>6 July 2022</td> <td>Contractor Forum Meeting (Online)</td> </tr> <tr> <td>14 Sept 2022</td> <td>Contractor Forum Meeting (and possible social - London)</td> </tr> <tr> <td>23-25 January 2023</td> <td>NHMF Conference, AGM & Awards (Stratford-upon-Avon)</td> </tr> </tbody> </table>	Date	Event	6 July 2022	Contractor Forum Meeting (Online)	14 Sept 2022	Contractor Forum Meeting (and possible social - London)	23-25 January 2023	NHMF Conference, AGM & Awards (Stratford-upon-Avon)	Mike Turner
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	MT ended the meeting by thanking everyone for their contributions.									