

# Workshop 4c:

## Competitive Dialogue in the procurement of materials supply

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Chaired by: Paul Reader, Morgan Sindall

Room: Packwood Room



National Housing Maintenance Forum

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# Competitive dialogue in materials supply

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# Coverage

- Background to Derby Homes
- Scoping the procurement
- Pricing options
- What is competitive dialogue and why we used it
- Drafting the procurement and contract documents
- Mobilisation and initial benefits
- Implications of the new EU Directive.



# Background to Derby Homes



Set up in 2002 – round 1 ALMO

- Consistently 3 star

Council DLO transferred in 2010

- DLO delivers all but specialist works
- Developed in-house Gas team
- Improved productivity
- Strong focus on the supply chain
- Removed Client/Contractor duplication
- Close to completing first new homes
- Delivered over £2m in efficiency savings



# Scoping the procurement

## Previous position

- Fragmented supply but mainly Grafton
- Saved £250k overnight by shifting to EEM rates in 2010



Consultancy advice, economies of scale, “bells and whistles

Consideration of use of & interface with EEM

Concerns in relation to gas and electrical parts

Decision to procure “in-house” with just legal support

- Engagement of Anthony Collins Solicitors

# Pricing options

## Price based

- Price per item
  - Separate “management fee”?
- Price controls
  - Market volatile items and other items

## Cost based

- Cost reimbursable – agreed profit percentage
- Price control and price certainty issues

## Target cost

- Approach to rebates
- Administration
- Capped or “pain and gain”



## Pricing options - decision factors

**Significant third party work and  
desire to grow this business**

**Leaseholder work – service  
charge calculation and recovery**

**Integrity of the procurement  
process – link to tendered prices  
and “inflation control”**

# What is competitive dialogue and why we used it?

Nature of the supply market place

Typical problems under the restricted procedure

Advantages and disadvantages of competitive dialogue



Design of the dialogue process

- What we wanted to explore during dialogue
- Keeping the dialogue process sustainable
- Approach to the Descriptive Document and “dialogue questions”
- Contract documents mark-up and “commercial options”

# Drafting the procurement and contract documents

Decision to draft all documentation “up front”

Using ACS templates as a starting point

“Tailoring” the documents

Core Items “Price List”

Resourcing requirements



## Procurement & Contract Documents

- OJEU notice and PQQ
- Invitation to Participate in Dialogue and “Descriptive Document”
- Invitation to submit Final Tenders
- Contract
- Specification (schedule to Contract)
- Pricing Schedule with Price List (catalogue)
- Amendments to Supplier’s standard conditions of hire
- KPI Handbook
- Method statement “prompts”
- Property documents for “Stores”



# Drafting points

## Contract

- Duration and break clauses
- Contract management provisions
- Liability and risk

## Specification

- Clear delivery/availability deadlines with remedies for not meeting them
- EDI specification

## KPIs

- Use
  - Management, termination or incentivisation
- Drafting precision required

## Form of contract

“OGC supply contract” needs additional provisions for multiple one-off supplies (eg Order process) and simplification of some procedures

“TPC” requires significant additional documentation and “weak” on remedies

JCT MTC no advantages over TPC or OGC

NEC (short) supply requires order process and NEC expertise to use effectively

# Mobilisation and initial benefits

Total re-energisation of relationship

Dedicated Partnership store

Improved van stock

Supervisory support

Rapid delivery service, more jobs completed first time

Transparent process for negotiating rates for new products

£350k direct cashable savings, supporting new build

Further savings due to increased productivity

Re-instatement of free coffee machine for everyone

Tenants showroom for kitchen and bathrooms



# Implications of the new EU Directive - procedure

New procedure - competitive procedure with negotiation (CPN)

Competitive dialogue (CD) and CPN both available in same circumstances

Slightly greater flexibility with CD

- eg post tender negotiations

Note the need to draft all the contract and procurement documents “up front”

**CPN and CD both available where**

- requirements *“cannot be met without the adaption of readily available solutions”*
- contract cannot be awarded without negotiations eg on *“legal or financial make-up”*

# Implications of new EU Directive - flexibility

## Possible amendments needed

- Pricing (including inflation)
- Product substitutions
- Delivery arrangements – eg stores/branch etc

## Permitted where variation:

- is provided for in the contract in “*clear and unequivocal*” terms stating
  - scope and nature of modifications and options; and
  - circumstances in which they can be implemented
- has a value below both
  - 10% of contract value; and
  - applicable tendering threshold;
- is not “substantial” within *Pressetext*

“Substantial”  
changes – *Pressetext*

Changed contract  
would have attracted  
other tenderers or  
changed the tender  
result

Change to economic  
balance of contract in  
favour of the contractor  
in a way not provided  
for in contract

“Considerable”  
extension to scope

## Summary of key points

With work moving in-house, materials supply is becoming increasingly important

These contracts are “tricky” to get right

Scope the options well, particularly regarding pricing

Competitive dialogue gives greater flexibility and does not have to be “over-engineered”

Draft the documents carefully and build in the ability to make changes



# Questions

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