

## Workshop 3a

# Procuring to deliver quality

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**Chaired by:** David Miller

**Room:** Arden



**NHMF**  
Maintenance  
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# Quality and procuring to deliver quality

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# Quality and procuring to deliver quality

*“The procurement process kick-starts the behaviours that we then see throughout design, construction, occupation and maintenance. The agreements made determine the relationship between those commissioning buildings, those constructing buildings and those occupying buildings. The agreements influence the approach to building work – for example, whether high quality work and safety is prioritised.”*

Dame Judith Hackitt – Independent Review

# Procuring to deliver quality

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# Procuring to deliver quality

- We know what the problems are, how can we make the changes required ?
  - Hackitt- Independent review of Building Regulations
  - Government -Building a Safer Future Consultation
  - Raising the Bar- Improving Competence for Building a Safer Future

# Making procurement changes in compliance with PCR 2015

- Soft market testing
- Challenge/ change your consultants
- Use different procurement procedures to get a better outcome
- Change your price evaluation
- Improve your quality questions
- Consider whole life cost evaluation
- Assess social value properly
- Use the right forms of contract to deliver on quality
- Get your executive teams and boards on board

# Soft market testing

- Permitted under Regulation 40- Preliminary market consultations
- Permitted under Regulation 41- Prior involvement of candidates or tenders provided declare interest
- Use the market to test your budgets
- Understand the technologies available
- Gauge the appetite of the market

# Are you getting the right advice?

Are your consultants appointed to make cost efficiencies on the new procurement?





# Change your procurement process

- Competitive dialogue
- Competitive procedure with negotiation



# Price evaluation

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# How to avoid a race to the bottom

- Why is lowest price = highest marks still attractive?
  - Pressure on budgets
  - Need to “capture” savings at procurement
  - VFM seen as linear: required quality at the lowest price
- **BUT:**
  - Highly competitive market-place
  - Ridiculously low (declared) margins accepted
  - Mistrust between client and bidders
- Leads to:
  - Fictionalisation of procurement process
  - Disconnect between tender and delivery phases
  - Disputes and disappointments (and mistrust...)

# Different approaches to price/quality evaluation

- Standard differential/comparative method
  - Benchmark from the lowest price
  - Award set percentages as to cheapest/next expensive (e.g. 100%/80%)
  - Award fixed percentage for tenderers within a range of the cheapest (e.g. within 10% = 90% of marks)
- Mean average method
  - Compare actual price of suppliers against the mean price
- Fit to the budget method
  - Compare tendered price against optimal price

# Legal issues

- Equal treatment
- Transparency
- PCR2015 only requires contracting authorities to:
  - Publish award criteria
  - Publish relative weightings
- But this is only part of the scoring picture:
  - case-law (*TNS Dimarso*) provides that you do not have to publish **scoring rules** unless it could have affected the preparation of tenders.
  - will always make a difference!
  - need to publish a lot more information than we're (perhaps) used to

*Coming soon Price Evaluation Guide*

# Improve your quality questions

- Bespoke to your requirements
- Focus on key issues which impact quality such as staff, supply chain for materials
- Challenge using scenarios

## Regulation 67 (2)

*“The .. tender .. Shall be assessed on the basis of criteria such as qualitative environmental and/or social aspects linked to the subject-matter of the public contract in question”*

# Assess whole life cycle costs

## Regulation 67(5)

*“ Award criteria shall be considered linked to the subject matter of the .. contract ..where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of the life cycle including..*

- specific process of production , provision or trading of those works, supplies or services*
- a specific process for another stage of their life-cycle..*

*Even where such factors do not form part of their material substance*

# Assess life cycle costs

## Hackitt

*“The invitation to tender and the bid process must prioritise building safety, and balance the upfront capital cost against quality and effectiveness. The safety requirements must be effectively tested during both the tendering process and the bid review. Shorter timescales in both tendering and construction should be achieved by encouraging efficiency and productivity, not by the use of cheaper and unsuitable materials”*



# Assess social value

- Recommend that you include with the criteria: weightings (including sub-criteria and sub-weightings if relevant), scoring guidance and overall price/quality split – how much value should social value have?
- Consider use of tools such as the HACT Social Value Calculator (needs to be made clear what approach you are going for in the tender documents)
- Evaluation panel guidance: who should sit on the panel/who should evaluate the social value element of the tender?
- How to price the social value initiative/link to the pricing document – look at pricing criteria to see whether this should be included in price

# Contractual tips

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# Contractual tips

- Choose the form carefully – choice conveys a message
  - NB: “relational contracts” – **Bates v Post Office Limited (2019)**
- Contract formation:
  - See:
    - **Sutton Housing Partnership Limited v Rydon Maintenance Limited (2017)**
    - **Harrow London Borough Council v Engie Regeneration (Apollo) Limited (2018)**
  - NB: Pre-commencement works/services arrangements/enabling works agreements/letters of intent
- Housekeeping
  - Risk and liability registers
  - Know your contract
  - Safekeeping/future proofing

# Contractual tips

- Active contract management
  - Monitoring and access to information/documents
- Whatever the subject matter/form of contract, when drafting/negotiating/administering contracts pay attention to the following aspects (and lots of others):
  - Standards/specification
    - Are these clear?
  - Timescales
    - Are these clear?
    - Penalties for non-compliance
    - Early warning
    - Notices

# Contractual tips

- Security for performance – how about?
  - Parent Company Guarantee
  - Bond (performance, retention and advance payment)
  - Retention Funds
  - Project Bank Accounts
  - Insurance
- Pricing:
  - Against a certain/fixed specification and information?
  - NB: the “known unknowns”: see **Colas Limited and others v Transport for London (2018)**
  - Uplifts – in respect of what, when and how?
  - Links to the payment mechanism arrangements

# Contractual tips

- Application/valuation/certification
- Deductions
- Supply chain arrangements
- Performance monitoring:
  - For works contracts
  - For services contracts
  - Reporting
- Remedial measures
  - When and how required?
  - A trigger to default/termination?: or
  - A contract management tool
  - or both

# Contractual tips

- Either way – prepare
- Termination arrangements:
  - Duration of term and options to renew/extend?
  - Default e.g. performance
  - Default e.g. insolvency
  - At will
  - Force majeure Nb. Brexit
- Dispute resolution:
  - Link to performance monitoring/contract management
  - Tiered?; use them
  - Notices/formalities

# Contractual tips

- Conclusion
- Any questions?



## Contact

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