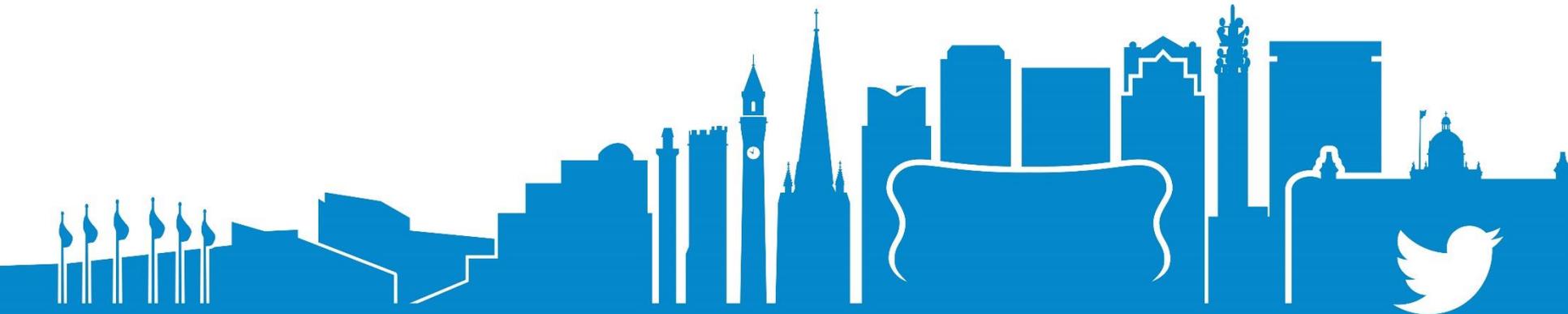


Workshop 4c:

Five tips for successful procurement of your retrofit project

Speakers: Richard Brooks, (Anthony Collins
Solicitors LLP)

Chaired by: Declan Hickey
Room: London Room



Setting the standard for maintaining assets
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Coverage

Current market conditions

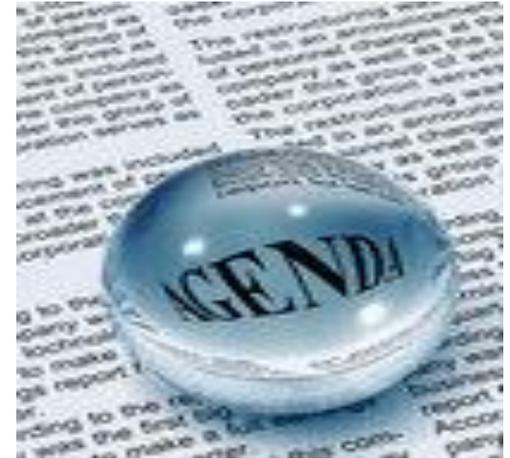
Project planning and objectives

Pick your procurement route

Future flexibility is king

Appropriate award criteria

Contract terms and managing changes



Current market conditions

Energy

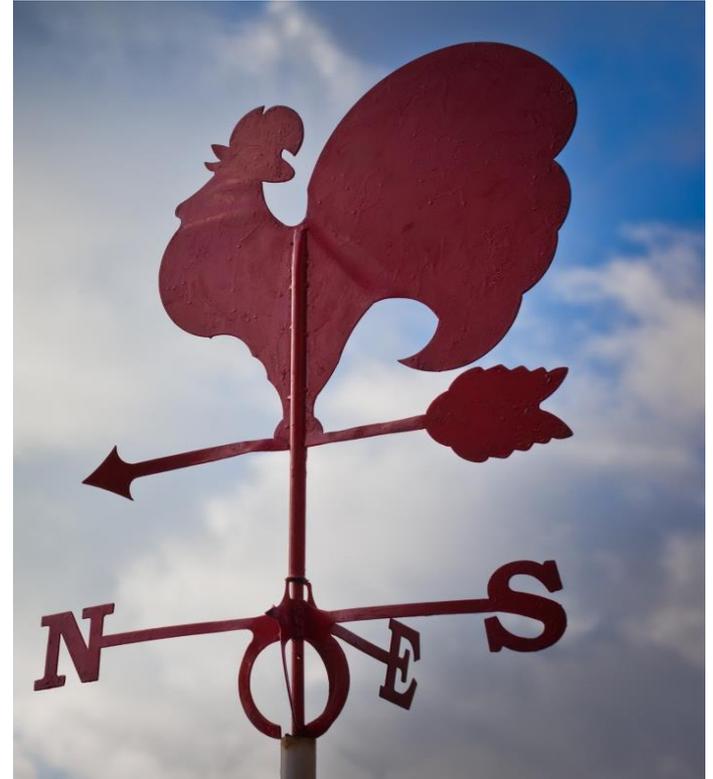
- oil prices
- energy costs
- subsidies

Energy efficiency

- social housing
- private rented sector

Issues

- health, wellbeing and education
- fuel poverty
- economic and social challenges



Project planning and objectives

<p>Objectives not</p> <ul style="list-style-type: none">• agreed• shared• supported• clear	<p>=</p>	<p>makes for poor procurement</p>
<p>Objectives</p> <ul style="list-style-type: none">• agreed and progress the corporate plan• buy in from SMT• used to measure success	<p>=</p>	<p>makes for excellent procurement</p>

Project planning and objectives

What do we need to know?

- what will success look like at completion?
- how can you maximise social and other benefits along the way?
- what is the budget – how important is price?
- when is the “go live” date?
- leaseholders/tenants paying variable service charges?

Write this in a project plan to use later!

Procurement route?

To OJEU or not?

- What are you procuring?
- Which organisation is procuring? (CA or not?)
- Exemptions?
- Out of scope?
- Thresholds?

If OJEU process.....

Which way now?

- Procure a contract?
- Procure a framework?
- Use an existing framework?



Your own procurement?

Procurement of contract

- Takes longer
- Can be tailored to better achieve your objectives
- Select own specification and contract
- Your award criteria leads to a better result for you?

Existing framework

- Save time/expense on PQQ
- Compliance issues?
- Framework fees?
- Suitability?
- At least a couple of specialist retrofit frameworks available

If your own OJEU process.....

Which process?

- Restricted procedure?
- Competitive dialogue?
- Competitive procedure with negotiation?



Flexibility is king

Avoid substantive change

- during procurement
- and afterwards!

Key areas

- Flexible OJEU contract notice - carefully word requirements ie subsidy not ECO, insulation not EWI....
- Signposting potential change within the contract too



Award criteria

Must measure price or non-price factors for award

- Not pre-qualification matters
- Against clear requirement(s)
- Scoring matrix



Award criteria in frameworks

- Slight flexibility to depart from original criteria and weighting

Flexibility of award criteria

Good example:

Question

If you have proposed contract amendments please note them on the contract.

Requirement

The contracting authority will award higher marks to sets of amendments which reallocate risks to the bidder.

Difficult examples

Please state the FiT subsidy you will guarantee to the contracting authority?

State your experience of previous similar projects.

How would you communicate with us effectively to keep us up to date with contract progress?

Contract terms

Clarity about:

- Interaction between subsidy and price
- How “pay as you save” contracts will work in practice:
 - What if savings not made?
 - Sharing additional savings?
 - Re-base lining?



Contract terms

Clarity about:

- Timescale for delivery and possible degression
- Garden taps, unlawful exterior lighting, having three sets of different terms, uninsured sub-contractors, planning permission and statutory consents, re-measurment or not re-measurement.
- Contract administration and instructions



Variations – opportunities, risks and tactics

Deals with the “poor procurement” issue

Negotiation strategy

- is the change “substantial”?
 - if benefits Employer - unlikely to be “substantial” – *Denfleet v NHS*
- possible use of break clause

Risks & protection

- ineffectiveness
- damages for breach of PCR 2015
- VEAT notice

Ineffectiveness

- Risk is for 6 months after change
- Effective from the date of the hearing – does not affect validity of anything done in reliance on varied contract before hearing
- Accompanied by “civil penalty”
- *Varney* – sets aside the variation but not the original contract

A warning on contract changes

Variation can be agreed by conduct

Can override (per *Mears v Shoreline*):

- clause prohibiting “changes not effective unless agreed in writing”
- “entire agreement” clause



Mears v Shoreline, 2015

- During mobilisation discovered that (bespoke) SoR was incomplete
- Core Group agreed composite rates
- Shoreline said no need to amend contract
- Shoreline deducted £300K saying composite rates did not apply
- Mears recovered £300K saying they had relied on the Core Group “agreement” to their detriment

Questions



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Disclaimer: Whilst every effort has been made to ensure the accuracy of these materials, advice should be taken before action is implemented or refrained from in specific cases. No responsibility can be accepted for action taken or refrained from solely by reference to the contents of this presentation.

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