

# Procuring professional services

## Best practice principles

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## Procuring professional services

This paper outlines some key considerations for the procurement of professional services. Though written mainly with construction projects in mind, many of the principles discussed here can be applied to the procurement of services more widely.

### Engineering's contribution to the economy

Engineering services are integral to delivering a wide range of built and natural environment projects, from the simple to the complex.

UK consultancy and engineering companies contribute in the region of £10 billion to the economy every year, and are active in almost every country around the world.

### The need for procurement reform

Sir Peter Gershon's 2004 review of public sector efficiency identified a total of £20 billion of efficiencies that could be achieved over four years. Sir Peter noted that, in 2003-04, the public sector spent over £100 billion purchasing goods and services.

The recent recession has reinforced the need for greater value for public sector investment, and this is reflected in the current guidance on best practice from HM Treasury and the Office for Government Commerce.

There are also specific considerations to the procurement of professional services and engineering solutions, where assessment of best value is more complex than for the procurement of standardised goods.

Reforms of the way that clients procure professional services, therefore, should be reformed to avoid common pitfalls and meet core best practice principles.



## What are the common problems with procurement of professional services?

There are a number of issues commonly encountered when procuring professional services. These include the following:

| Problem  | Likely impact  | Potential solutions   |
|--|--|---|
| Poorly-scoped projects requiring remediation or re-tendering.          | Time and money wasted. Damage to client-supplier relationships. Damage to client reputation. Increased risk of litigation.   | Greater focus on developing realistic project plans. Early engagement and market testing with supply chain. Ensure end users are involved throughout.   |
| Poorly-constructed procurement processes resulting in legal challenge. | Time and money wasted. Damage to client reputation. Loss of confidence in supply chain   | Learn lessons from similar projects. Incorporate best practice into procurement strategies.   |
| Smaller suppliers excluded unnecessarily from supply chain.            | Long term damage to supply chain capacity to deliver. Innovation and best value solutions may be missed.   | Pay attention to pre-qualification processes. Consider offering smaller packages of work or two-tier frameworks.  |
| Expensive bidding processes that can deter potential suppliers.        | Best value solutions may be missed. Ultimate cost to the client is increased as a result.  | Incorporate best practice into procurement processes. Learn lessons from other similar projects.  |
| Expensive framework processes that can result in no work forthcoming.  | Some suppliers deterred from bidding. Cost risk shifted onto the supply chain. Potential damage to viability of supply chain.  | Consider whether a framework is really necessary. Learn lessons from other framework procurement processes. Consider joint frameworks with other client organisations, as per Transport for London's professional services framework. |
| Inadequate risk management.  | Potential for excessive project costs for the client. Increased risk of problems and disputes. Sub-optimal value for money. Damage to client-supplier relationships. | Avoid confrontational approaches. Ensure risks are placed with those best positioned to manage them. Avoid offloading risks to the supply chain.  |
| Use of highly bespoke terms and conditions.                            | Increased cost of project management for the client and suppliers. Unnecessary extra expenditure, e.g. on legal fees.  | Use industry standard forms of contract (e.g. ACE Agreements or NEC3) where possible.   |
| Poorly skilled procurement teams making poor choices.                  | Risk of having to redo or retender for works. Increased costs and sub-optimal value for money.   | Ensure procurement teams are competent to procure services. Ensure high quality internal collaboration within the client organisation.  |
| Late payment of suppliers and sub-contractors.                         | Cash flow issues for supply chain. Damage to client-supplier relationships. Reputational damage.   | Ensure all payments are within agreed terms. Consider using project bank accounts where appropriate, and explore the use of the "fair payment principle".   |



## The key principles of good procurement of professional services

Many issues commonly encountered can be mitigated or prevented by applying some core principles of good practice:

1. **Base procurement decisions on whole life value.** For every £100 of capital cost, £500 can be spent on maintenance over the lifetime of a building.
2. **Pay particular attention to the procurement strategy.** This can be a major determinant of the project's overall costs and value.
3. **Engage with the market early** to identify potential issues and establish a realistic and appropriate procurement approach.
4. **Incorporate established best practice into procurement processes.** Avoid re-learning past lessons or repeating past mistakes.
5. **Pay attention to the skills and capabilities of your procurement team.** Ensure they have the appropriate experience and skills necessary to deliver the process.
6. **Ensure project risks are placed with the party best placed to manage them.**
7. **The form of contract used matters.** Industry standard forms of contract should be used as far as possible.
8. **All payments should be made within the terms of the contract,** unless negotiated with the supplier. Sub-contractors should never be paid on a "pay-when-paid" basis. Consider using project bank accounts where appropriate, and implement the OGC's guidance on best "fair payment" practice.

For an overview of factors to consider when procuring construction projects, refer to the OGC publication *Construction Projects: a manager's checklist* (available from: <http://www.ogc.gov.uk/>).



## 1. Base procurement decisions on whole life value.

In its official guidance, HM Treasury (2010) defines value for money as “securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought. It is not about minimising upfront prices”.

Procuring professional services – particularly for construction projects – is not comparable to procuring standardised goods. Engineering companies provide solutions to specific business or technical problems; each response requires careful evaluation to determine its suitability and benefits versus costs.

As government advice makes clear, “the key factor is whole life cost, not lowest purchase price. Whole life cost takes into account the cost over time, including capital, maintenance, management, operating and disposal costs. For complex procurements, whole-life cost can be very different from initial price”.

The Improvement and Development Agency (2009) suggests that, for every £100 of capital cost of a building, £500 is spent on maintenance over the asset life. It is therefore important to consider whether a more expensive capital solution could yield a lower lifetime cost.

Using appropriate evaluation criteria is critical. Inappropriate criteria can lead to solutions being selected that are more costly or higher risk in the longer term.

Appendix 1 gives a priority list of factors that drive value for money in public and private sector projects. While this can be a good indicator of where optimisations can be made, it should be remembered that value for money is not the only factor in the decision making process.



## 2. Pay particular attention to the procurement strategy.

The methods used to procure project services is a major determinant of the overall whole life cost of the project. The most appropriate route depends on a range of factors including the project's size, scope, complexity, value, supply chain and risk profile.

Pre-qualification procedures can be a significant source of duplication and waste. Suppliers are often required to complete multiple pre-qualification questionnaires that ask for similar details in different ways, thus adding to the administrative load on prospective suppliers. Screening out of applicants at pre-qualification on grounds that are not necessarily a material consideration (e.g. company turnover) can result in potentially good suppliers being denied the chance to compete. This reduces the likelihood of the client achieving best value.

Smaller companies are particularly affected by inefficient procurement practice despite the potential benefits they can deliver, as noted by OGC (2005).

Using framework agreements can – depending on the project - potentially deliver savings, but also risk freezing out suppliers unnecessarily. The cost to the supplier of qualifying for frameworks can also be high, with little or no guarantee of work as a result. In some cases, procurement can be more efficient if conducted on a project-by-project basis.

Making use of standardised pre-qualification routes (such as Constructionline) or using shared procurement routes (such as the Transport for London professional services framework) can deliver cost savings for both clients and suppliers. BSI's Publicly Available Standard for pre-qualification questionnaires is currently in draft stage, and will soon be made available for use.

Appendix 2 sets out a typical construction project life cycle for reference. Further details on establishing an appropriate procurement strategy can be found in the ACE guidance *Avoiding Procurement Pitfalls*.



### 3. Engage with the market early to identify potential issues and establish a realistic procurement approach.

The procurement approach you choose will, in part, be determined by the capabilities of the supply chain. Early engagement with the market can be beneficial by testing your outline project scope with potential suppliers. This can help to highlight important considerations for developing a realistic, deliverable project and programme.

This will also help in understanding the capabilities of potential suppliers. Be aware that company turnover or size does not necessarily reflect their ability to deliver. Capabilities vary - smaller companies with specialist, innovative or creative skills may be as capable of delivering your project as larger multidisciplinary firms.

Ensuring that the marketplace receives as much information as possible in advance about upcoming projects will help suppliers to prepare to deliver against client requirements. This can help to deliver better value and ensure that capacity is in place throughout the supply chain to deliver.

OGC notes that Dorset County Council engaged in market consultation over its 2004 street lighting PFI project. After forming a business case, the council held a national-scale one day event to meet with potential suppliers. The event provided useful feedback that enabled the council to further define and develop their strategic approach, as well as gaining greater knowledge of the market.



#### 4. Incorporate established best practice into procurement processes.

There are many sources of information on best practice in procurement processes. It should not be necessary to re-invent the wheel or re-learn old lessons; taking into account the experiences of earlier projects is valuable in avoiding pitfalls in future developments.

OGC provides a wide range of [best practice guidance](#) to assist procurement professionals, project managers and directors alike.

The Institution of Civil Engineers' evidence-based [Client Best Practice Guide](#), published in 2009, maps the critical contribution of clients to the success of construction projects. The guide is accompanied by a free online assessment tool that helps clients to positively influence the success of their projects at an early stage.

The financial benefits of implementing established best practice can be considerable. Research by the [National Audit Office](#) in 2005 estimated that implementing the Achieving Excellence in Construction programme had avoided public sector cost overruns of £800 million.

Collaborating with other client organisations to procure services can be beneficial. For example, Hampshire County Council created a joint construction procurement framework for local authorities across the south east that has the potential to generate efficiency savings of more than £40 million (source: Improvement and Development Agency).

Another example is Transport for London's current professional services framework, which is also open to borough councils and other major public sector bodies in the capital.

ACE has also produced guidance on developing a procurement strategy and a casebook of evidence of the impact of collaborative procurement in the local government arena.



## 5. Pay attention to the skills and capabilities of your procurement team. Ensure they have the experience and skills necessary.

Sir Peter Gershon's 1999 review of civil procurement in central government emphasised the importance of procurement skills.

Procuring professional services requires a different set of knowledge and experience than procuring standardised goods. A construction procurement team should be given the support necessary to set out and deliver realistic programmes.

A strong focus on sector-specific skills is therefore important in driving value for money. For example, Essex County Council restructured and retrained its procurement team to better support and meet the needs of its children's services. By ensuring that the procurement team had the right skills, experience and infrastructure, total savings of £2.2 million were achieved which was re-invested into service provision (source: DCSF).

OGC and [Local Partnerships](#) provide a range of support, advice and training for public sector personnel in managing procurement effectively.



## 6. Ensure project risks are placed with the party best placed to manage them.

The improper management of project risk is one of the biggest causes of delay, dispute and cost overrun on a construction project.

While the use of adjudication processes has reduced the number of disputes that eventually proceed to litigation, proving liability adds an unnecessary additional cost to a project.

Management of risk can be placed entirely with the supply chain, but clients should recognise that this will be expensive. A better approach would be for clients (be they public or private sector) and their suppliers to agree a risk management approach that allocates risks with those best placed to manage them.

As Chinyio and Fergusson note (in Akintoye et al, 2003) for the case of PFI, “a client organisation should weigh its risk allocation decision against the effect on VFM. The achievement of VFM should be optimised. So, if the transfer to the private sector of many risks that cannot be mitigated by the client undermines the achievement of VFM, then a client should consider bearing those risks”.



## 7. The form of contract used matters.

The most appropriate form of contract for the project depends on the type of project, the nature of the supply chain relationship, and the risk profile of the project.

In general, clients should seek to use industry standard forms of contract (such as ACE Agreements or NEC3) when procuring professional services, and avoid making amendments to the standard terms.

This will reduce the workload and cost to the client, while making the contract strategy more transparent for the supply chain – thus aiding the management of project risk. It may also reduce the potential for costly disputes and unnecessary delays.

Mott MacDonald found that the use of NEC contracts on the re-decking of the Dartford Tunnel helped to engender mutual trust and cooperation between client and supplier, which also helped to limit the number of compensation events (source: NEC).



## 8. Payments to contractors and sub-contractors should always be within the terms of the contract.

Research by [Bibby Financial Services](#) in 2009 suggested that late payment could be costing the UK economy an additional £2 billion per year, and that businesses were subsequently stalling payments to their suppliers to bridge the shortfalls caused by late payments. Smaller companies were estimated to be owed a total of almost £26 billion in unpaid debts.

Clearly, the onus is on the client on a project to pay its bills according to the terms of the contract(s) involved. However, major contractors – who may employ other sub-contractors, particularly on large projects – also have a responsibility not to hold up payment within the chain.

As of 1 January 2008, all central government construction clients are expected to adopt the principles set out by OGC in their guidance on best “fair payment” practices. The guide includes a model charter that states that companies have the right to receive correct full payment as and when due, and that all contracts will provide for regular payments and have payment periods not exceeding 30 days.

Project bank accounts are a means of avoiding the ripple effects caused by late payments. Once the client pays into the account, all contractors and sub-contractors that are party to the agreement can draw down payments to which they are entitled.



## Further reading

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South West RIEP. *Toolkits, procurement skills and capacity building*. Available from: [http://www.swcouncils.gov.uk/media/Publications/Efficiency%20Casebook/Toolkits\\_procurement\\_skills\\_and\\_capacity\\_building.pdf](http://www.swcouncils.gov.uk/media/Publications/Efficiency%20Casebook/Toolkits_procurement_skills_and_capacity_building.pdf)



## Appendix 1: measures that enhance value for money in PPP/PFI projects

This ranked list of factors that enhance value for money was compiled by Akintola Akintoye<sup>1</sup> of Glasgow Caledonian University:

| Measure   | Significance for enhancing value for money in: |                  |         |
|---|--|------------------|---------|
|   | Public projects                                | Private projects | Overall |
| Efficient risk allocation                           | 1  | 4                | 1       |
| Output based specification                          | 4  | 2                | 2       |
| Long term contracts                                 | 6  | 3                | 3       |
| Early project service delivery                      | 7  | 1                | 4       |
| Risk transfer                                       | 3  | 7                | 5       |
| Competitive tender                                  | 2  | 11               | 6       |
| Private sector management skill                     | 12   | 5                | 7       |
| Optimal use of asset/facility                       | 9  | 9                | 8       |
| Private sector technical innovation                 | 13   | 6                | 9       |
| Nature of financial innovation                      | 11   | 10               | 10      |
| Low project life cycle cost                         | 14   | 8                | 11      |
| Off balance sheet public sector financial treatment | 5  | 13               | 12      |
| Improved/additional facilities to the public sector | 8  | 12               | 13      |
| Profitability to the private sector                 | 15   | 15               | 14      |
| Level of tangible and intangible benefits to users  | 10   | 16               | 15      |
| Reduction in disputes, claims and litigation        | 16   | 14               | 16      |
| Low shadow tariffs/tolls                            | 18   | 17               | 17      |
| Environmental consideration                         | 17   | 18               | 18      |

<sup>1</sup> Available from:

<http://www.strath.ac.uk/Departments/CBE/CPD%20Seminar%20Series/Past%20Seminars/Handouts%20for%20Past%20Seminars/3%20June%202004/Presentation.pdf>, retrieved 5 March 2010



## Appendix 2: the construction procurement life cycle

The following diagram sets out the indicative procurement life cycle of a typical construction project:

| Phase  | Notes |
|--|-------|
| Possible need for project raised   |       |
| Identify business needs  |       |
| <b>Gateway 0: strategic assessment</b>   |       |
| Options to meet business needs – confirm that project is required                    |       |
| Prepare high level business case   |       |
| <b>Gateway 1: business justification</b>   |       |
| Develop project brief  |       |
| Conduct feasibility study  |       |
| Select procurement route and outline business case                                   |       |
| Output-based specification   |       |
| <b>Gateway 2: procurement strategy</b>   |       |
| Prepare contract   |       |
| Confirm arrangements with existing supply team or invite new expressions of interest |       |
| Conduct tender process using predetermined criteria                                  |       |
| Produce full business case   |       |
| <b>Gateway 3: investment decision</b>  |       |
| Award contract   |       |
| Outline design   |       |
| <b>Decision point 1: outline design</b>  |       |
| Detailed design  |       |
| <b>Decision point 2: detailed design</b>   |       |
| Construction   |       |
| <b>Gateway 4: readiness for service</b>  |       |
| Contract management  |       |
| <b>Gateway 5: benefits evaluation</b>  |       |
| Disposal   |       |

(Adapted from *Project procurement lifecycle: the integrated process*, published by OGC)