

# **Building a better deal**

## **Procurement Guide for Registered Social Landlords**

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**SCOTTISH EXECUTIVE**



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## USING THE PROCUREMENT GUIDE

This Procurement Guide:

- supersedes Scottish Homes Procurement Guide (1997).
- is advisory, rather than mandatory.
- establishes a framework for good practice for registered social landlords (RSLs) and other construction industry clients.
- will be drawn upon as a key good practice source by Communities Scotland in its regulatory role in future inspections under the Single Regulatory Framework.
- complements (and occasionally repeats) the current best practice in the following Scottish Federation of Housing Association's publications :
  - 'Raising Standards in Housing Development: Project Briefing and Procurement of Consultants'
  - 'Raising Standards in Housing Development: Selection of Contractors'
  - 'Raising Standards in Housing Maintenance'.
- incorporates the content of Scottish Homes Procurement and Partnering Policy Advice Note (July 2000).
- should be used with other complementary guidance (Appendix C); RSLs should note the 'Client Pack': Construction Works Procurement Guidance (Scottish Executive, July 2002) which establishes the operating context for public sector procurement best practice; the current version can be accessed via the Scottish Executive's Building Division's website [www.scotland.gov.uk/building](http://www.scotland.gov.uk/building).
- allows the procurement process to be informed by strategic thinking.
- assists RSLs when reviewing and revising their procurement strategies.
- is written to reflect the key stages of any capital or maintenance project.  
requires users to decide which sections, or activities, are relevant and appropriate to their circumstances and the characteristics of the area(s) in which they operate
- encourages RSLs to be innovative and embrace positive change.

RSLs are advised to review their current approach to procurement before deciding how to use the guide on a specific project. This should involve a post project evaluation of recently completed contracts to establish areas of strength and weakness in their own performance and in that of consultants and contractors.

The procurement strategy for any capital or maintenance contract (including term contracts, framework agreements and/or partnering alliances) should take account of:

- the availability of briefing information to inform the process of selecting consultant services.
- determining the appropriate members of the design team and their terms of appointment.
- value and complexity.
- phasing.
- relative importance of such issues as sustainability, 'Housing for Varying Needs' requirements, innovation, life cycle costs and design quality.
- local circumstances, such as the capacity of the local construction industry in remote areas.

These and other criteria relevant to specific projects and/or programmes will inform the strategy for procurement implementation, and the way in which this guide should be used. The following table provides a 'signposted' route to the layout of the guide.

Project Characteristic	Activity	Section	Key Issues
All projects	Prepare strategic brief	2	Include all available information about the project but avoid preconceptions in respect of procurement route unless clearly committed (e.g. Design and Build).
Aggregate value of all of consultancy services likely to exceed c £150,000 (or c£3.8m for construction cost)	Follow EU regulations for appointment of consultant and contractors	3	Make single, multi-disciplinary consultant appointment, or separate appointments for each member of design team.
Relative importance of time, cost and quality	Consider procurement route	4	Other than Design and Build, final procurement route choice may be left open until project team appointed, but client knowledge of options is beneficial before selecting consultants.
Interest in innovative procurement	Use partnering	5	Project partnering for single commissions or strategic partnering for multiple commissions.
Follow best value route in the selection of consultants	Balance quality and price	6	Value based selection of consultants instead of competitive tendering.
Developing the strategic brief	Work with appointed consultant team to understand and describe the output	7	Effective two way communication between the client and advisers.
Using best practice techniques and tools	Consider extent to which each technique adds value to the procurement process	8	Consistent with the nature, complexity and value of the project.
Increase quality criteria in contractor selection	Move towards a quality based contractor selection procedure	9	Reduce the dominance of price in final selection and move towards incentivisation and performance measurement.
Desire to reduce energy consumption during construction and occupation, as well as environmental impact; and to exploit use of locally sourced labour and materials	Assess energy and environmental impact of materials, construction methods and energy consumption	10	Include consideration of all energy consumption (including embodied energy), repair and replacement cycles of materials and environmental impact of transport, pollution, production methods and so on.
Performance measurement and continuous improvement	Benchmarking, incentivisation and use of Key Performance Indicators coupled with sharing of information and experience	11	Willingness to embrace change that will improve performance, and to share benefits with others.

RSLs should take a view on the appropriateness of these procedures and techniques on individual projects or programmes, and when they review their existing procurement activities. The application of relevant elements of this guide is the key to meeting best value criteria and achieving continuous improvement.

The practices, procedures and techniques described in the following sections of this guide cannot be recommended for universal application. However, RSLs may find they are relevant in the following situations:

SECTION	SHOULD CONSIDER		WORTH CONSIDERING		THINK ABOUT	
	CAPITAL PROJECTS	MAINTENANCE PROJECTS	CAPITAL PROJECTS	MAINTENANCE PROJECTS	CAPITAL PROJECTS	MAINTENANCE PROJECTS
<b>2</b> Strategic briefing	X XX XXX	X XX XXX				
<b>3</b> EU procurement rules	XXX	XXX				
<b>4</b> Procurement options			XX XXX	XXX	X	X XX
<b>5</b> Partnering			XX XXX	XXX	X	X XX
<b>6</b> Value based selection of consultants			XXX	XXX	X XX	X XX
<b>7</b> Project briefing	XXX	XXX	XX	XX	X	X
<b>8</b> Using 'added value' procurement techniques	XXX	XXX	XX	XX	X	X
<b>9</b> Quality based selection of contractors			XX XXX	XX XXX	X	X

- X indicates small, straightforward projects
- XX indicates medium value, non repetitive projects
- XXX indicates high value complex projects

# 1 BACKGROUND

Key Issues:

- The UK Construction Industry is in a period of significant change as it reacts to the challenges set by two major reports.
- Major funding organisations, such as Communities Scotland, are responding by embracing best practice in all aspects of procurement.
- The public sector has been charged with becoming a best practice client through a process of continuous improvement.

1.1 Scottish Homes Procurement Guide was issued with the Housing Association Grant (HAG) Procedures Guide (1997). The procurement guide reflected changes in the procurement of social housing following the publication of Sir Michael Latham's report 'Constructing the Team' (1994) which introduced the concept of partnering. The guide's weaknesses included the lack of advice either on the suitability of various procurement routes or the selection and appointment of the contractor. The guide's focus was principally on the appointment of the architect (rather than the design team). In this connection, the guide reproduced one of the Construction Industry Board's best practice publications 'Selecting Consultants for the Team: Balancing Quality and Price'. This signalled Scottish Homes' commitment to the value based selection of consultants. As a result, many RSLs should now be using a form of value based consultant selection.

1.2 'Rethinking Construction' (1998) was a further review of the UK Construction Industry by the Construction Industry Task Force chaired by Sir John Egan. The Egan and Latham Reports have been catalysts for change in construction procurement. The construction industry was alerted to the need for change if it was to survive in the global market and meet the reasonable expectations of its clients who were experiencing improved levels of quality and service from every other sector of the economy.

1.3 The public sector's response has been particularly positive, with central government backing a number of new initiatives, and challenging the public sector to become a best practice client. Since 1994, this has been the goal of a number of organisations and initiatives which have provided both the industry and its clients with sometimes conflicting advice on a range of procurement best practice issues. Examples include:

- Construction Industry Board
- Construction Industry Council
- Construction Clients' Forum
- Movement for Innovation (M4I)
- Construction Productivity Network
- Housing Forum.



- 1.4 This has led to an element of duplication and confusion, with clients often unsure where to seek procurement advice relevant to their needs.
- 1.5 DETR's response was to set up the Construction Best Practice Programme (now funded by DTI) with a remit to harness the various initiatives in a way that would best benefit the clients of the construction industry. In Scotland, this resulted in the launch of 'Pulling Together Scotland' in October 2000.<sup>1</sup> This programme is intended to co-ordinate all the current activity and make it available to clients in a logical and beneficial way. The construction industry can only improve its efficiency and quality if the commitment to implement value based selection procedures for consultants and contractors is matched by a commitment from clients to be better informed.
- 1.6 Communities Scotland aims to encourage RSLs to become best practice clients who can demonstrate continuous improvement by applying the tools and techniques described in this guide, and by sharing their knowledge and experience. Communities Scotland is not seeking to impose procedures which detract from existing successful operations or which are not relevant to the scale, complexity or characteristics of a particular project or programme. Communities Scotland will provide every encouragement to RSLs who demonstrate a commitment to best practice and continuous improvement by using this guide and, most importantly, by constructively commenting on its effectiveness in achieving best practice. Communities Scotland encourages RSLs to share their successes and concerns with as wide an audience as possible and intends building on existing area networks to ensure that this is achieved.
- 1.7 The remaining sections of this guide address the key issues essential to achieving these aims. They are:
- strategic briefing.
  - EU Regulations.
  - procurement options.
  - partnering.
  - selection of consultants.
  - project briefing.
  - procurement best practice procedures and techniques.
  - selection of contractors.
- 1.8 The use of this guide should lead to continuous improvement in procurement practices. However, this will only happen if experience is fed back in a constructive way and the lessons learned are used to review and update the content of the guide. RSLs are encouraged to use the feedback questionnaire at Appendix B.

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<sup>1</sup> See 'Pulling Together Scotland' website: [www.pullingtogether.co.uk](http://www.pullingtogether.co.uk)

## 2. STRATEGIC BRIEFING

Key issues:

- Good briefing sets the tone for a successful project.
- The strategic brief should incorporate any lessons from the review of the last completed project.
- The strategic brief must be sufficient for the application of quality based consultant selection procedures.
- The difference between the strategic brief and the project brief should be clearly understood.

### What is it?

2.1 Effective procurement depends on good communication among all parties associated with a contract, but especially the client, consultants and contractors. Good communication depends on the quality of the briefing process. At the outset, clients need to identify and define their needs and expectations in sufficient detail for consultants to interpret and deliver best value by offering an appropriate quality of service for an optimum level of fee.

2.2 The briefing process is generally in two phases: the strategic brief and project brief. The initial strategic brief is prepared by the client to describe the proposed project in as much detail as is available at a relatively early stage. This informs consultants who are invited (or who apply) to bid for the provision of professional services at the following stages:

- pre-qualification (if appropriate)
- long listing
- short listing
- interview.

### Why is it necessary?

2.3 The strategic brief:

- sets the tone for a successful project or programme.
- establishes the first link in the communication chain which is essential to the success of any procurement process.
- signals the client's knowledge, experience and expectations in respect of implementing best practice and achieving best value.

2.4 When the consultant team is appointed, the lead consultant takes responsibility for development of the project brief (refer to Section 7). This describes the project in considerably

more detail and is a document that evolves and changes as the dialogue between client and consultants develops. The project brief may challenge elements of the strategic brief in the early stages of its development.

### **How is it used?**

2.5 RSLs generally have experience of preparing strategic briefs for projects and programmes. Maintenance programmes should be similarly treated. Any project should follow the general principle that a brief is an expression of all that is known about a project at any given time in its life cycle. Lessons learned from a review of the last completed project (whether new build development, refurbishment or maintenance) should be used to enhance the quality of the strategic brief and to achieve continuous improvement. Care should be taken to delay the preparation of the strategic brief if too little has been decided or identified in respect of key issues necessary for an understanding of the client's needs, aims and objectives. If the strategic brief is being issued to consultants as part of an invitation to provide design and/or management services, it should contain sufficient information to allow respondents to make a meaningful submission and to compete on a level playing field in terms of their understanding of the range, type and quality of services appropriate to the project and the client. Where an RSL lacks the knowledge or expertise to prepare a brief in a form that sufficiently describes a project to consultants, external assistance might be sought.

### **What should it contain?**

2.6 The strategic brief might include the following:

- why the project is needed.
- issues addressed by the project, including people issues.
- cost, time and quality criteria.
- life cycle expected.
- expectations in respect of innovation, sustainability, performance measurement and other matters considered relevant to the project and client.
- client's level of knowledge and experience of procurement.
- expectations in respect of best practice and the use of tools such as partnering, risk and value management and Key Performance Indicators.
- factors likely to influence the procurement route (without necessarily defining the procurement route at this stage).
- details of all information already available (e.g. site survey, ownership(s)).
- details of the process for procuring consultants' services (see also Section 6).
- description of the proposed project (in as much detail as possible).

- a clear statement of the criteria used to judge and measure success and their relative importance.

2.7 Since the introduction of the concept of partnering, there has been a growing recognition of the benefits of forms of procurement which allow the contractor to become involved at an early stage. This allows contractors to make a valuable contribution to issues of 'buildability' which can influence the brief by demonstrating cost and/or time benefits or increased value (i.e. higher quality for the same cost). The intention to use partnering, or other best practice techniques described in Section 8, should be included in the strategic brief. Partnering is described in more detail in Section 5.

2.8 RSLs need to understand that different forms of procurement have different fee implications. If a fee agreement is made with the consultant and the procurement route is subsequently changed, it is important to realise that fees may need to be adjusted and/or abortive costs incurred which may not have been included in the initial fee schedule. Requests for fee proposals should ask for a statement of the adjustments that would apply (if any) to specified alternative forms of procurement such as management contracting or design and build, for example.

#### **Where to find more information**

'Raising Standards in Housing Development: Project Briefing and Procurement of Consultants', SFHA 2002

### 3. EU PROCUREMENT RULES

#### Key Issues

- Projects which are likely to exceed EU threshold values in terms of capital cost and/or fee levels must be subjected to EU Procurement Rules.
- Consultants appointed for feasibility studies may have to be subsequently subjected to competition through EU advertising if threshold values are exceeded.
- Additional time should be allowed for consultant selection if EU rules are applied.
- When assessing the value of consultants' fees in relation to the thresholds at which EU procurement rules apply, it is necessary to aggregate these to determine if thresholds are met.
- RSLs should assess term contracts, framework appointments and the like to ensure compliance with EU Procurement Rules.

#### Background

- 3.1 The EU public procurement rules consist of Treaty of Rome obligations in respect of, for example, non-discrimination and equal treatment of suppliers and public procurement directives.
- 3.2 The Treaty of Rome obligations apply to all procurement activity, irrespective of value. However, the EC procurement directives only apply to contracts above certain thresholds. Where the directives *do* apply, contracts must be advertised in the Official Journal of the European Union (OJEU), in accordance with certain procedural requirements. Further information on the EU procurement rules is available from the OGC website at <http://www.ogc.gov.uk/index.asp?id=397> or from the Scottish Executive (Scottish Procurement Directorate) at <http://www.scotland.gov.uk/about/FCSD/PCSD-POL/00017555/EUProcurement.aspx>
- 3.3 EU public procurement rules are deemed to apply to 'bodies governed by public law'. In this context, a body governed by public law is defined as "any body:
- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and
  - having legal personality, and
  - financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law, or subject to management supervision by those bodies, or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law".

- 3.4 The European Commission referred the UK Government's failure to apply the EU procurement rules to RSLs to the European Court of Justice in December 2003. The UK Government has accepted the European Commission's view that RSLs are to be regarded as bodies governed by public law. **This ruling means that RSLs must comply with the requirements of the EC Public Procurement Directives.**

**What are the rules?**

- 3.5 Contracts awarded by public sector bodies and by other bodies using public money must comply with rules laid down by the European Union in EC Procurement Directives. These promote open competition for European public contracts to support the free market and help ensure value for money in public purchasing. For works contracts and supplies or services contracts over specified threshold values (refer 3.8 below) the Directives require that opportunities are advertised in the Official Journal of the European Union (OJEU); they also require that contracts are awarded in accordance with certain standard procedural rules (e.g. on timescales for the contracting process, information that potential suppliers should provide; and the basis on which bids may be assessed). Treaty principles also prohibit discrimination between suppliers and require that procurement procedures are open and transparent.
- 3.6 The EC Procurement Directives have been transposed into UK law in Regulations: Public Works Contracts Regulations 1991(S.I. 1991/2680), Public Supply Contracts Regulations 1995 (S.I.1995/201)and the Public Services Contracts Regulations 1993 (S.I. 93/3228), as amended by Public Contracts( Works, Services and Supply) (Amendment) Regulations 2000 (S.I. 2000/2009). The Regulations can be accessed at the Office of Government Commerce (OGC) website <http://www.ogc.gov.uk> in the Procurement Policy and EC Rules section on the homepage.
- 3.7 When the rules apply, they are mandatory and failure to comply can result in:
- Suspension or cancellation of a tender procedure by the Courts if an aggrieved party takes court action.
  - a liability to pay damages.
  - loss of sources of public funding.
  - potentially embarrassing publicity.

### When do the rules apply?

3.8 The rules apply when the relevant threshold values for various categories of contract are exceeded. As at **September 2004**, these thresholds are:

<b>Supplies</b>	£153,376	€236,945
<b>Services</b>	£153,376	€236,945
<b>Works</b>	£3,834,411	€5,923,624

In other words, if professional fees are likely to exceed c£150,000, and a tender is expected to exceed c£3.8m, EU rules should be followed for the appointment of consultants and contractors respectively.

3.9 For certain services the threshold is £129,462 (€200,000). Detailed guidance can be found on the OGC website at: <http://www.ogc.gov.uk/index.asp?id=397>. RSLs should also regularly use this website to check whether there has been any adjustment of the threshold values.

3.10 It should be noted that:

- rules against discrimination apply irrespective of contract value
- the value of smaller contracts of a similar nature may in certain circumstances have to be aggregated
- contracts will generally be subject to full application of the rules only where they exceed the relevant thresholds.

### Are there any exclusions?

3.11 The Regulations provide a limited number of specific exclusions. Importantly for RSLs, these exclusions include contracts for the acquisition of land or any interest in land. For example, this exclusion will apply in circumstances where the RSL is entering into a contract to purchase:

- an interest in land; and
- newly completed or existing dwellings.

### Who is responsible for ensuring compliance?

3.12 RSLs should consider at an early stage whether the rules apply. Where they do apply, particular care should be taken on the following matters:

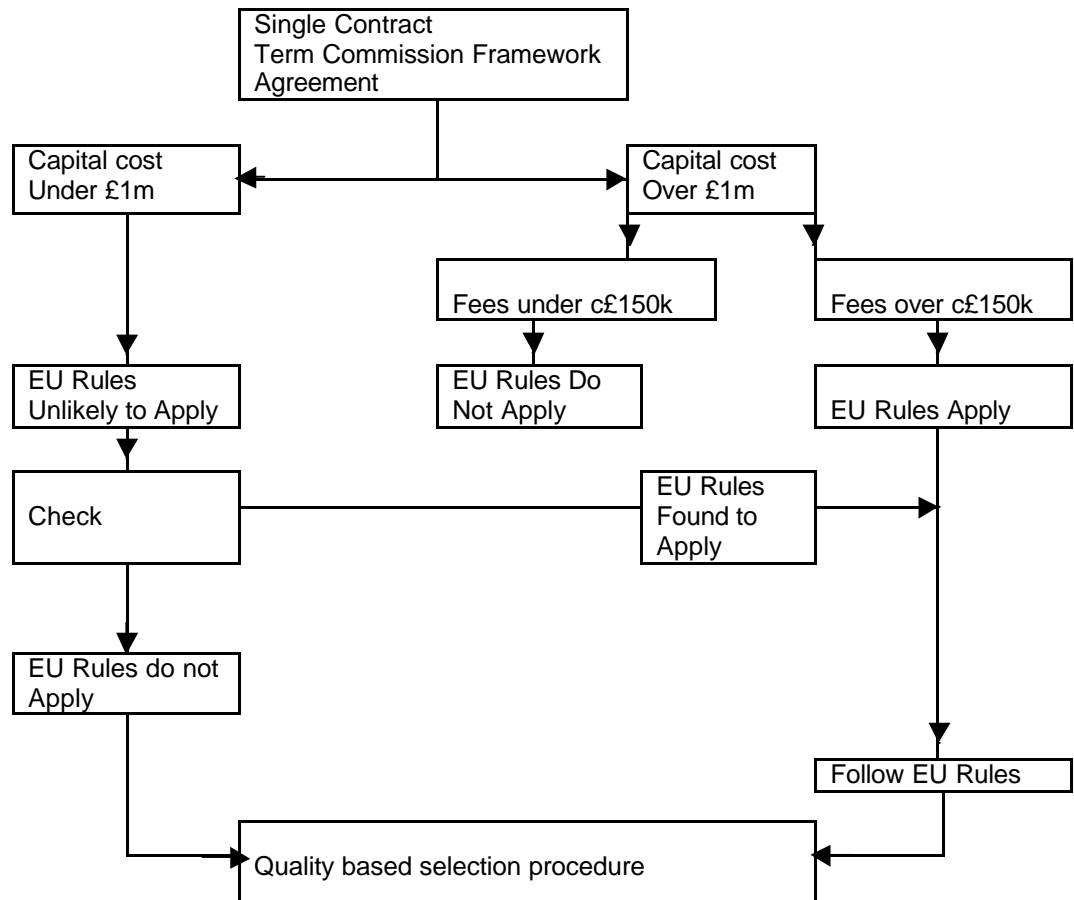
- procedures adopted;
- advertising obligations;
- selection criteria;
- award criteria.

- 3.13 While purchasing policies of RSLs may wish to favour local producers or suppliers over cheaper or more efficient providers, under European law this may be construed as being at the expense of providers or suppliers of goods or services from other Member States. A fundamental rule of EU law is the prohibition of discrimination on grounds of nationality (or discrimination in favour of one nationality). This rule applies to any value of contract, and may conflict with policies aimed at enhancing sustainability.
- 3.14 Communities Scotland is not in a position to offer advice on whether particular contracts fall within the scope of the EC Public Procurement Directives, or whether particular procurement arrangements are compliant. If it is considered that a social housing project is covered by EU rules the guidance in this section should be followed, and specialist advice taken in respect of its detailed implementation as required. The grant provider - Communities Scotland area teams and local authorities where local authorities are responsible for development funding - requires this as a condition of funding. Contracts let on behalf of a housing association by a private sector entity acting as its agent may also be covered.
- 3.15 Most services contracts to be let by RSLs will be covered fully. For example, architectural and design team services; urban planning and landscaping and construction contracts. There are some excluded services but, if in doubt, assume the rules apply or seek advice from a solicitor. The Royal Incorporation of Architects in Scotland, through its Consultancy service, has extensive experience in the application of EU procurement rules.
- 3.16 Contracts to be awarded for the carrying out of works of a construction or civil engineering nature (which include maintenance and refurbishment) are subject to the procurement rules where they meet the relevant thresholds. The thresholds have changed considerably in recent years. Very different thresholds apply to construction works than apply to services. Adjustments are also made to account for exchange rate variations every two years. Current figures must be checked, especially where the value of a contract is near the threshold figure.
- 3.17 If a contract exceeds the thresholds then, unless an exclusion applies, it will be subject to the rules. A contract may not have a value exceeding the relevant threshold but may be subject to the procurement rules. This may occur where there is a single requirement for services and a number of contracts are to be entered into to fulfil that requirement. In that event, it is necessary to assume that each contract has the value of the aggregate of all the contracts. This is common in respect of professional fees on capital projects (new build and refurbishment) where the value of the services of each individual member of the project team may have to be aggregated to calculate its relationship to the threshold. If project team services are likely to be around 10% in total, for example, any project in excess of around £1.5m should be considered for the application of EU rules.



3.18 Where there is a series of services contracts to be let or where contracts are renewable, it may be necessary to aggregate the value of all such contracts. This would apply, for example, when term commissions are being let, or framework agreements negotiated. Where a contract is concluded for an indefinite period (i.e. is simply ongoing with no definite end date) it is necessary to assume that it will endure for four years in arriving at the value for threshold purposes. Splitting contracts in order to bring them below the thresholds as a way of avoiding the rules is prohibited.

3.19 How to determine if EU rules apply to the appointment of consultants:



**What are the options?**

3.20 Three basic procedures are provided for under the EU rules.

(i) Open procedure: contracts are advertised and tenders are invited from all interested parties. This is only appropriate for simple contracts where specifications and terms of supply can be stated in the advert or follow up document.

(ii) Restricted procedure: This is a two stage procedure. The purpose of the first stage is to identify tenderers who satisfy the minimum criteria laid down by the contracting entity in terms of their technical capability or their economic and financial standing. The contracting entity

then selects a limited number of suppliers which it will invite to submit tenders as part of the second stage;

(iii) Negotiated: contracts are negotiated with several suppliers chosen by the contracting entity, after advertising the tender process in the EU Official Journal. In very limited circumstances contracts can be negotiated without any advertising.

- 3.21 The negotiated procedures can be used only exceptionally where there is justification for doing so, such as where no tenders, or only irregular tenders, have been submitted in a previous open or restricted procedure and the original terms of the contract are not substantially altered; where for technical or artistic reasons services may be provided only by one supplier; or where, due to extreme urgency brought about by events unforeseen by the contracting authority, the time limits involved in open and restricted procedures cannot be observed. Legal advice should be obtained before using this procedure.
- 3.22 Most RSLs will find that, for development and maintenance works, Restricted Procedures are most appropriate as calls for expressions of interest can typically result in fifty or more pre-qualification submissions. The method of reducing this to a more manageable number under restricted procedures is described later in this section.

#### **What is the procedure?**

- 3.23 There are rules on the standards which can be used. Technical standards used for contracts should be European standards, but if no European standards exist, international standards (if they exist) should be used but goods/services meeting equivalent standards should be acceptable. No reference may be made in specifications to goods or services of a specific make, source or brand name, or made from a particular process, where this has the effect of favouring certain suppliers. It may be permissible to refer to a brand name or source in certain limited circumstances but the words "or equivalent" should always be added to the reference.
- 3.24 From 1 May 2002, new standard forms for the publication of OJEU Notices were introduced under EC Directive 2001/78/EC. See <http://simap.eu.int/EN/pub/src/welcome.htm>.
- 3.25 There are three general obligations:
- (i) To publish a Prior Information Notice (PIN Notice) as soon as a decision to proceed with a works project has been made and, more generally in relation to services contracts (and supplies), to publish a notice at the start of the financial year indicating the services likely to be required that year where the aggregate value of those types of services contracts is likely to exceed €750,000. This gives advance warning of contracts coming up. Although publication is mandatory there is no specific sanction for failure to do so. However, compliance gives a timetable advantage (for contracts subject to the rules).

(ii) To publish a contract notice to start the tender procedure, usually referred to as an OJEU notice.

(iii) To publish a contract award notice within 48 days of the award.

3.26 Contracts to be awarded by open or restricted procedures (and in many cases by negotiation) must be advertised in the Official Journal of the European Union (OJEU) to allow interested parties throughout Europe to consider bidding. The EU rules aim to give bidders sufficient time to bid for a contract in another Member State.

### **Timescales**

3.27 In **open procedures**, contracting authorities must allow tenderers 52 days from the date when the tender notice is sent to the Official Journal to submit tenders. This can be reduced to a period sufficient in the circumstances where a relevant PIN notice has been published but that period must be no shorter than 22 days.

In **restricted procedures**, and **negotiated procedures** which require to be advertised, the minimum period for submission of applications to tender or request to participate is 37 days.

In restricted procedures, after the contracting authority has selected those firms it wants to invite to tender, it must allow all successful applicants at least 40 days from the date of the invitation to submit their tenders. This is likely to involve a number of stages where quality based consultant selection procedures are used (see also Section 6). In restricted procedures the 40 day period can be reduced to 26 days where a relevant PIN notice has been published. In negotiated procedures, after the expiry of the initial 37 day period, no further time limits apply. In cases of genuine urgency, shorter deadlines (specified in the rules) are permissible.

### **Information required from bidders**

3.28 Bidders can only be asked to provide certain information at pre-qualification stage in order to assess them for the tendering short-list. The permitted categories of information are set out in the rules. Essentially, information requests must be restricted to:

- Relevant technical capability and experience.
- Relevant financial status and standing.

Assessments as to whom to invite to tender should be based on an assessment of the information requested.

3.29 Lists can be used to allow for a pool of qualified suppliers to be available. For contracts subject to the procurement rules it is not permissible to select only from the approved list

unless the list has expressly been compiled for a specific contract or contracts following an advertisement in which case the list is simply the qualified bidders who were successful in the first stage of the restricted procedure. No further information should be required of providers from other Member States than is required of national providers.

3.30 It should be borne in mind that where a consultant has been involved in the feasibility stage of a project, consideration should be given as to whether competition is distorted where the consultant has an opportunity to bid for the resultant project. This can lead to difficulties whether or not the incumbent practice is re-appointed following an OJEU Notice. **RSLs are strongly advised to apply EU rules and OJEU procedures for the award of a feasibility study if the value of the project is likely to meet or exceed the relevant thresholds.**

3.31 Pre-qualification assessment of bids should not form part of the subsequent assessment of tenders after the shortlisting of pre-qualification submissions – all those meeting the minimum standards should enter the second stage on an equal basis. Evidence of financial standing which may be required at pre-qualification might include:

- Appropriate bankers' statements.
- Accounts.
- Turnover over last 3 years.
- Turnover over last 3 years in area of practice concerned.
- For services contracts, evidence of an appropriate level of professional indemnity insurance.

Information on solvency, payment of taxes, criminal convictions and the like should also be sought.

3.32 The details required to demonstrate technical capability must be stated in the contract notice in open procedures and either in the contract notice or in the invitation to tender or negotiate in restricted or negotiated Procedures.

3.33 For **services** (consultants), details of the following should be required as a minimum:

- relevant experience.
- confirmation of absence of conflict of interest.
- professional/educational qualifications.
- principal services of similar type.
- average annual manpower/managerial staff over last three years.
- IT systems.
- approach to, and knowledge of, best practice.
- measures for ensuring quality.

- any proportion of the contract to be subcontracted.
- level of Professional Indemnity Insurance.

3.34 For **works** (contractors), details of the following should be required as a minimum:

- relevant experience
- professional/educational qualifications of managerial staff, for those responsible for carrying out the works.
- list of works carried out over last five years and certificates of satisfactory completion
- statement of plant, equipment, etc, available to carry out the work.
- average annual manpower and number of managerial staff over previous three years.
- statement of technicians/technical services which may be called upon

### **Assessing submissions**

3.35 Bids should be assessed on the basis of most economically advantageous bid. A value based selection procedure should be adopted for consultants in which the ratio of quality to price is in the range 60/40-80/20. (see also Section 6). If a contract notice or invitation to tender does not state this, the lowest bid criterion will apply. In most cases the most economically advantageous tender, which takes into account price and quality, is appropriate to achieving and demonstrating best value.

3.36 Award criteria should be considered well in advance and should be set out in the documentation made available to bidders. In practice, careful thought should be given to what it is that is relevant and can be used to differentiate the quality of responses in the context of the development or maintenance works.

3.37 For important and prestigious buildings, clients often use design competitions to select their architect, or even their full design team. These must be managed by an experienced professional organisation specialising in this method of consultant selection. The Royal Incorporation of Architects in Scotland has a dedicated Competitions Unit: [www.rias.org.uk](http://www.rias.org.uk).

3.38 Design competitions may be open or restricted. In the case of the former a very large number of entries may be received and clients should appreciate that a great deal of time must be spent both by the consultants who submit as well as by assessors and judges. EU procurement rules apply to design competitions.

3.39 RSLs must assess every service and works contract in relation to the requirement to comply with EU regulations. Broadly speaking, any development or maintenance project with a value in excess of £1.5m must be considered as project team fees (architect, engineers, quantity surveyor, planning supervisor, project manager etc) may be in the region of 10% in total. If fees might exceed this percentage, the project value to which the rules will apply will reduce

(see also 3.17 above). The selection of contractors must similarly be advertised if the works cost is likely to exceed c£3.8m.

### **Action plan**

3.40 The following staged approach should be followed in the case of consultant selection. (This should be read in conjunction with Section 6, Value Based Selection of Consultants):

- Prepare OJEU notice.
- Form a selection panel.
- Prepare brief and pre-qualification questionnaire.
- Send OJEU notice to the Official Journal of The European Union for publication.
- Allow 37 days for practices to respond with expressions of interest.
- Issue brief and pre-qualification questionnaire to all practices expressing interest.
- On expiry of the 37 day period, undertake a quality assessment of all pre-qualification submissions to identify a list of practices to be invited to submit a stage 2 questionnaire tender (typically up to 6).
- Prepare and issue a stage 2, project specific, questionnaire to practices selected from pre-qualification submissions to tender.
- Allow at least two weeks for the submission of stage 2 responses.
- Undertake a quality assessment of stage 2 submissions to identify practices to be invited to attend a presentation/interview (usually up to 6). Use a matrix scoring system to give each practice a quality score from their written submissions.
- Invite short-listed practices to make a presentation to the selection panel and adjust quality scores if appropriate.
- Invite practices whose final quality score exceeds the appropriate quality threshold to submit fee proposals.
- Balance quality and price to identify practice offering best value (most economically advantageous tender).
- Notify successful consultant and unsuccessful consultants, with the offer of a debriefing to the latter.
- Within 48 days, advise OJEU of the result.

### **Where to find more information**

Advice on the application of EU rules is available from:

The Royal Incorporation of Architects in Scotland : [www.rias.org.uk](http://www.rias.org.uk)

OGC website at: <http://www.ogc.gov.uk/index.asp?id=397>

<http://www.scotland.gov.uk/about/FCSD/PCSD-POL/00017555/EUProcurement.aspx>

An OJEU Notice should contain information under the following headings:

<b>Heading</b>	<b>Notes</b>
1. Contracting authority	Name and address of client
2. Category of services and project description	Disciplines to be appointed
3. Place of delivery	Location of project
4. Eligibility	Requirements for professionally qualified staff
5. Division into lots	Not usually applicable
6. Number of Service Providers invited to Tender	Under restricted procedures, typically up to 10
7. Variants	Not usually accepted
8. Duration of contract or time limit for completion	Period to end of project or programme
9. Legal form in case of Group Bidders	Usually joint and several liability – if applicable
10. Requests to participate	Deadline for expressions of interest – 37 days from date of notice
11. Final date for despatch of invitations to tender	Usually 2-3 weeks from deadline for expressions of interest
12. Deposits and guarantees	PII requirements
13. Qualifications	Reference to appropriate EU Directive(s). also state that receipt of pre-qualification questionnaire will be considered as an expression of interest
14. Criteria for selection for interviews and award	Reference to value based selection process being adopted
15. Other information	
16. Date of despatch notice	Date notice sent to OJEC

From 1 May 2002, OJEU Notices must be submitted in a standard, electronic format. This can be found on <http://simap.eu.int/EN/pub/src/welcome.htm>

The timescales relevant to restricted procedures are illustrated below:

ACTION

Typical number of practices under consideration

Place OJEU Notice *			
Pre-qualification response period	37 days		
Quality assessment	7 days	Dependent on response to OJEU	
Issue 2 <sup>nd</sup> stage documents *			4-6
Response period	14 days		4-6
Quality assessment	7 days		
Invite short-listed practices to presentation/interview *			4-6
Hold interviews	14 days		
Invite fee bids	7 days	*	4-6
Balance quality and price		*	4-6
Appoint		*	1
Debrief unsuccessful consultants	at each stage		



## 4. PROCUREMENT OPTIONS ( fully described in APPENDIX A)

Key Issues:

- Most consultants and clients have good and bad experience of a number of procurement options.
- Decisions on the identification of the most appropriate procurement routes should involve all members of the project team.
- Time, cost and quality criteria should be prioritised to identify the most relevant procurement route.

4.1 A number of procurement options can be used on any development or maintenance contract. The so-called 'traditional' procurement route which separates the activities of design and construction through the use of bills of quantities and competitive tendering is still in regular use. However, it is increasingly common for other forms of procurement to be considered. The pros and cons of each route should be considered and the decision-making process which informs the preferred option needs to be robust.

4.2 The three main procurement options are:

- traditional
- design and build
- management contracts (not commonly used by RSLs)

Partnering, described in Section 5, can be applied to any of these procurement options.

4.3 The procurement principles described below apply to both development and maintenance contracts, but management contracts are generally applicable only to development works.

### How to decide

4.4 The selection of the procurement route should be a result of collective debate or a workshop involving the client and the consultant team. The strategic brief issued to the consultants at the selection stage may refer to procurement preferences but in most cases it is advisable to keep an open mind on this until it can be the focus of a procurement workshop involving the design team and client. Care should be taken when seeking fees from short-listed consultants to identify any adjustment that might be applied should an alternative form of procurement be adopted. This will avoid the risk of a claim for additional fees when the appropriate procurement route is agreed and implemented.

4.5 An analysis of the characteristics of each procurement option should be undertaken in the context of the objectives of the brief to identify the procurement route most likely to meet the identified time, cost and quality criteria. The following table is representative of the type of matrix analysis that can be used to inform decisions in procurement route selection. Its value is determined by the quality of lateral thinking that is generated in its use.

		Procurement Route				
		Traditional				
Priority	Client Weighting *	Single Stage	Two Stage	D&B	Management Contract	Construction Management
Time						
Early site start						
Early completion						
Cost						
Early cost certainty						
Cost risk accepted						
Quality						
Paramount						
Important						
Buildability						
Early contractor input						
Risk						
With client						
With contractor						
TOTAL SCORES						

\*This column will have relative weightings for each of the selection criteria, perhaps on a scale of 1-10. Scores for each procurement route option, relative to the extent to which it meets the priority, will be inserted in each box.

## 5. PARTNERING

Key Issues:

- Partnering is a term used to describe a non-confrontational way of working through which all parties to a project act as a united team with common goals.
- The success of partnering depends on commitment from the RSL – this in turn requires a full understanding of its critical success factors.

### What is it?

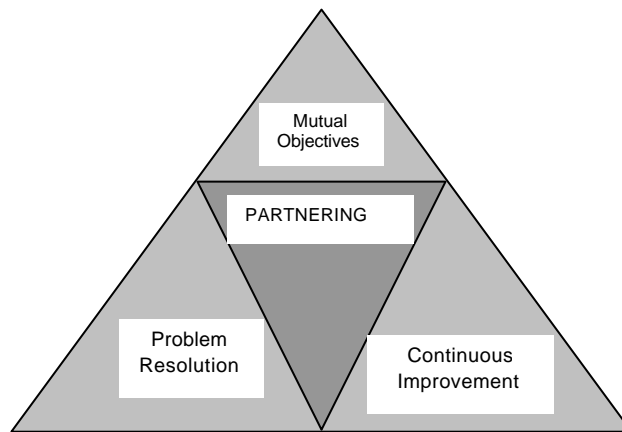
5.1 Partnering was the term used by Sir Michael Latham in his report 'Constructing the Team' to describe a form of co-operation between clients, consultants and contractors intended to overcome old, confrontational ways of working which were often reinforced by the prevailing forms of contract. Partnering requires a new working culture based on teambuilding. This is reflected in a structured management approach to allow team members to work across contractual boundaries. The essential components of successful partnering are formalised mutual objectives, agreed problem resolution methods, and an active search for continuous measurable improvements.

5.2 It is important to appreciate that partnering is **not**:

- a new form of contract – it is a procedure for making relationships work better.
- a soft option.
- a quick fix for a weak business – strong players make each other stronger, weak ones destroy each other.
- about systems and methods – it is about people, enabling them to operate more effectively and efficiently.

Partnering should not be confused with other good project management practice, or with long-standing relationships, negotiated contracts or preferred supplier arrangements, all of which lack the structure and objective measures that must support a partnering relationship.

5.3 The critical success factor for partnering is the commitment of all partners at all levels to make the project a success. All those involved in partnering need to understand what the process means and there should be a clear understanding of each party's role and responsibilities. The resulting partnering agreement or charter (which can often be written on as little as one sheet of paper), rather than the contract documents, drives the relationship between the parties.



### When should it be used?

5.4 Partnering principles promote a climate of trust and agreement on mutual objectives and are applicable to most contracts, whether for development, planned or reactive maintenance. The extent to which this is reflected in a formal Partnering Agreement or Charter will depend initially on the commitment of the RSL to the potential benefits. RSLs should then reflect this in the value based selection procedures for appointing consultants and contractor. These should ensure an appropriate level of knowledge and experience of, and commitment to, the partnering approach.

5.5 Partnering Charters can be used in association with most procurement routes, including Design and Build, and with all forms of contract. Traditionally, RSLs have relied on the standard forms of Joint Contracts Tribunal (JCT) contract documentation which are generally considered to be confrontational. Other forms of contract, such as NEC Option C, have been developed to be significantly more amenable to teamworking as the basis for the procurement route. However, PPC2000<sup>2</sup> is the only bespoke form of contract currently available which encompasses partnering, but others are being drafted. The JCT is developing a binding, multi-party partnering contract which is expected to be available from early 2003. Communities Scotland's Rethinking Procurement action plan includes testing the application of PPC2000.

### How is it used?

5.6 Project partnering is applicable to one-off projects and strategic partnering can be applied when there is the prospect of a programme of several projects. Partnering arrangements can

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<sup>2</sup> PPC 2000, ACA Standard Form of Project Partnering, from the Association of Consultant Architects is the first formal contract document for use in a partnering arrangement.

be agreed with consultants and/or contractors and confirmed with a Partnering Charter. A Partnering Charter commits all parties to:

- improved efficiency.
- cost reduction.
- quality improvements.
- reasonable profits.
- shared risks.
- common goals.

5.7 A sample charter is illustrated on page. This is only one possible format which must be negotiated and agreed by the partners to have validity.

5.8 Major clients of the construction industry are claiming significant benefits in terms of cost and time reductions linked to improved quality from partnering arrangements. Consultants and contractors should be asked about their knowledge and experience of partnering and of their opinion on its application and benefits as part of quality based selection procedures.

#### **What makes it succeed?**

5.9 Partnering is only appropriate for organisations who share the fundamental belief that people are honest, want to do things which are valued, and are motivated by challenge. Such organisations trust their people and seek ways to enable them to add value to their business. Using this approach allows organisations to set up mutually advantageous working arrangements, either for single projects or in long term strategic relationships. Strategic alliances produce significantly more advantage than single project arrangements. Experience has shown that the benefits are significantly greater if partnering is applied throughout the supply chain, rather than simply between clients and main contractors.

5.10 Partnering may not be an appropriate procurement tool for all construction or maintenance projects and programmes. For example, it should not interfere with existing successful working relationships developed over time without recourse to partnering. When considering partnering arrangements, parties should seek by discussion to identify sources of risk and then to establish who can best assess and manage the quantum risk. Partnering succeeds best, and repays the initial investment of resources, where

- the client's procurement strategy accepts that the project or programme will benefit from an innovative approach.
- the consultants' and contractors' interests are fuelled by the prospect of working with a reputable client with a commitment to quality and value.

5.11 The experience of some RSLs can be used to 'educate' others on the implementation of partnering. Under this arrangement, one RSL may act as a 'Development Agent' for another in an appropriate capacity.

#### **How is it structured?**

5.12 Partnering has the following basic features:

- **Mutual objectives**
  - agreed and committed to at the outset of the project
  - kept under review through meetings and effective communications.
  - require long term goals – sustained reasonable profitability rather than quick profits.
  - benefit from open book relationships.
  - respect mutual confidentiality and work for each other's success.
  
- **Problem resolution**
  - a systematic approach to problem resolution.
  - seeking solutions, not parties to blame.
  - more and better discussion – less paperwork, more constructive correspondence.
  - based on win-win solutions.
  - equality of rights between parties.
  - requires mutual acceptance of the principle that adversarial attitudes waste time and money.
  
- **Continuous improvement**
  - specified quantified targets, measured progress, reviewed performance.
  - acknowledges that price competition is not the only way to achieve best value for money.
  - customer focused, adding value, eliminating waste
  - identifying and aiming for best practice.

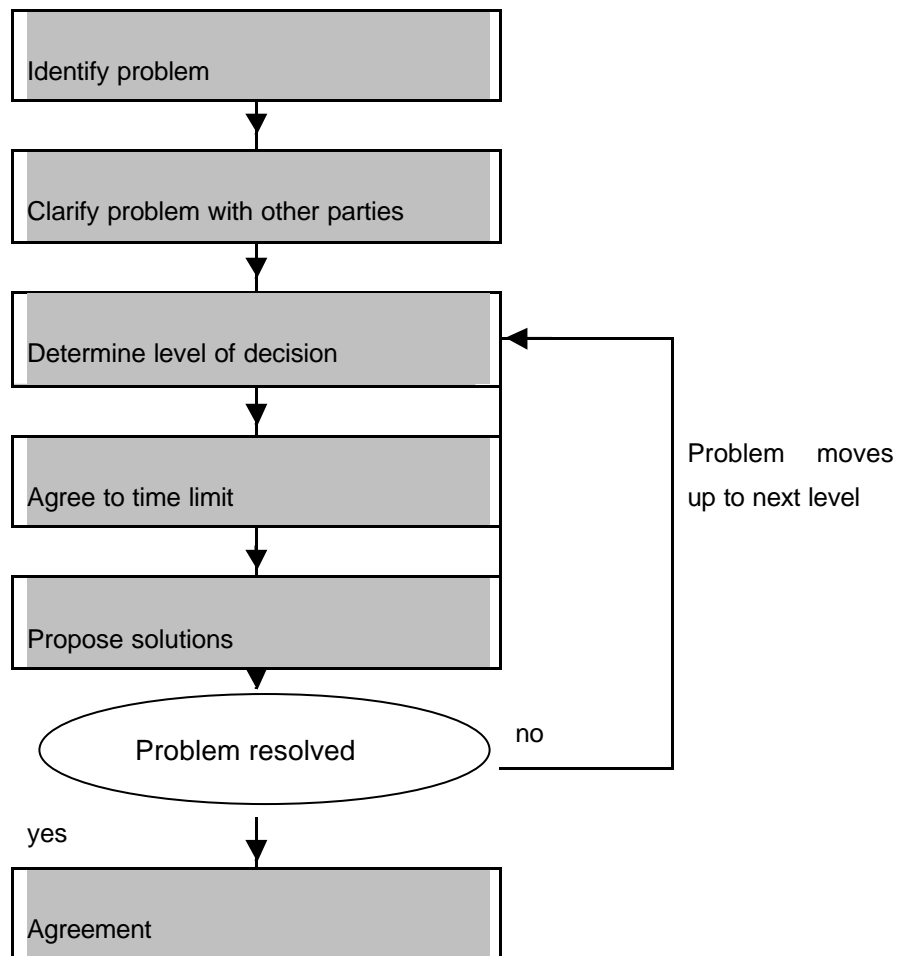
#### **Mutual objectives**

5.13 Each of the partners' teams should brainstorm their objectives, focusing not just on their end objectives but also on their intermediate objectives through the process. Each will produce a list of around a dozen items. A comparison is likely to reveal at least a few common objectives.

### Problem resolution

- 5.14 Partners have to accept that problems will occur, so at the outset there should be an agreed procedure for dealing with all problems as they arise, before they become disputes. The aim is to understand the problem correctly, and then resolve it at the lowest possible level, within a given timescale. If a solution cannot be found at one level then the next level of resolution is clear to everyone.
- 5.15 The agreed problem resolution procedure is non-contractual and should always be used in a genuine attempt to resolve the problem without recourse to the contractual route. Three levels of problem resolution are recommended – technical, managerial and ‘political’ – each of which should follow an agreed procedure as illustrated below.
- 5.16 If a solution has not been agreed at the end of the procedure, the problem may need to go to adjudication. A failure to resolve a problem within the partnering framework is damaging, so every effort should be made by parties to achieve a solution.

### Problem resolution flow



## SAMPLE PARTNERING CHARTER

(One possible format, to be negotiated and agreed by the partners to have validity; agreement to a dispute resolution procedure might also be included.)

### STATEMENT

We will operate in an open and honest manner to meet the needs and expectations for this project and to achieve its delivery to the benefit of all parties.

### OBJECTIVES

#### Quality:

- Approach design solutions in an innovative manner.
- Aim to achieve a 'right first time' construction process.
- Be a considerate contractor in the community and the environment.

#### Programme:

- Commit to a continuing process of project programme control and improvement for productivity, efficiency and innovation.
- Complete the project within budget and on time.

#### Communication:

- Communicate clearly, concisely and timeously with all parties.
- Deal openly, fairly and frankly with each other in an atmosphere of mutual co-operation, respect and trust.

#### Decision making:

- Facilitate timely decision making, empowering key personnel, adopting an open process and accepting collective responsibility for outcomes.

#### Cost:

- Demonstrate best value by operating an open-book policy set in a realistic funding framework mutually agreed by all parties.
- Provide added value through the use of Key Performance Indicators, in the spirit of continuous improvement and risk sharing.

**Signed \***.....

**Date** .....

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\* The Partnering Charter is signed by every party to the partnering agreement. This should include client, consultants, contractor and other key members of the supply chain.



**What is its contribution to continuous improvement?**

- 5.17 Partnering and Benchmarking (see Section 8) are inextricably linked as it is essential that the parties to a Partnering Charter have a commitment to achieving continuous improvement. This will generate a climate within which all parties will be keen to measure and demonstrate the ways in which improvements have been achieved.

**Where to find more information**

The Housing Forum:

20 Most Frequently Asked Questions about Partnering

Demonstration Projects Programme

20 Good Ideas for Rethinking Refurbishment, Repairs and Maintenance

[www.thehousingforum.org.uk](http://www.thehousingforum.org.uk)

Association of Consultant Architects, Standard Form of Contract for Project Partnering, 98 Hayes Road, Bromley, Kent BR2 9AB.

A Model Project Pact – Construction Best Practice Programme PO Box 147, Bucknalls Lane, Garston, Watford, WD2 7RE.

Clients Charter – Confederation of Construction Clients, 1 Warwick Row, London SW1E 5ER.

A Guide to Project Team Partnering – Construction Industry Council, 26 Store Street, London WC1E 7BT ([www.cic.org.uk](http://www.cic.org.uk))

## 6. VALUE BASED SELECTION OF CONSULTANTS

Key issues:

- Best value is achieved by combining quality and price.
- An emphasis on quality should lead to measurable continuous improvement.
- Fee tendering has been replaced with value based selection.
- Audit trails must be robust as lowest cost can be rejected.

### Why do it?

- 6.1 It is now generally recognised that best value does not equate with lowest cost but is a combination of quality and price, particularly in construction projects. Scottish Homes, Communities Scotland's predecessor, recognised the need for a move away from fee competition towards value based selection methods in the appointment of consultants. This was reflected in Scottish Homes' Procurement Guide (1997) which this guide supersedes. Despite this advice, there are still examples of RSLs malpractice/poor practice in this area.
- 6.2 The scope and quality of services being offered, relative to fee levels, may vary significantly. The resulting impact on the quality of design and workmanship, as well as the potential for achieving greater control over cost (capital and life cycle) and programme, can be adversely affected by fee competition. This was recognised by Sir Michael Latham in his report, 'Constructing the Team', and by the Construction Industry Board (CIB) which was set up to implement Latham's recommendations for improvements in construction procurement.
- 6.3 The CIB produced a series of guides which addressed key areas where changes to procurement practice could contribute to the ambitious improvement targets set by the Latham report. One of these was "Selecting Consultants for the Team: Balancing Quality and Price". This was adopted by Scottish Homes and reproduced in full in its Procurement Guide published in 1997. Since then, Scottish Homes/Communities Scotland has also recognised other value based selection methods as outlined in Raising Standards in Housing Development, Procurement of Contractors (SFHA).
- 6.4 Scottish Homes commissioned a case study of a value based consultant selection procedure, with Craigdale Housing Association providing the subject project. Since then, quality based consultant selection has become widely adopted throughout the public housing sector, mirroring similar changes in other public and private sectors of the construction industry. The use of this technique can result in fees other than the lowest being accepted. This requires a robust audit trail to demonstrate fairness, transparency and accountability. If best value is to be achieved, public accountability must be demonstrated even when lowest fee is accepted.

Hence the question to be answered has moved from 'Why was lowest fee not accepted?' to 'Can it be demonstrated that the cost (even if lowest) represents best value?' This makes RSLs responsible for selecting consultants and increasingly contractors using a recognised form of value based selection as opposed to lowest fee/tender (see also Section 9).

- 6.5 The use of 'approved lists' of consultants by RSLs can promote efficiency by avoiding repeated use of the short-listing process. A value based initial selection process, based on the principles set out in this section, can be used to establish an approved list. However, it is advisable to review this list at regular intervals (at least every three years) and to introduce new practices to benchmark the extent to which approved consultants are demonstrating the use of best practice and achieving continuous improvement. Also, the procedures set out below can be used to select consultants for long term, or strategic, partnering arrangements.
- 6.6 The success of any project will be largely dependent on the people involved, their approach and their working style. When individual consultants are selected, due consideration needs to be given to their ability to be a team player. Selection needs to accord as much importance to the 'people' aspects of any organisation as to technical and financial considerations.

#### **What is it?**

- 6.7 The key components of value based consultant selection are:
- setting a quality/price ratio.
  - inviting multi-disciplinary or separate appointments.
  - using EU procurement rules when necessary (see also Section 3).
  - identifying a selection panel.
  - inviting pre-qualification expressions of interest (optional).
  - assessing expressions of interest for quality.
  - seeking project specific submissions (2<sup>nd</sup> stage).
  - assessing 2<sup>nd</sup> stage submissions for quality.
  - presentations/interviews.
  - fee proposals.
  - balancing quality and price or negotiating with preferred consultant(s).
  - debriefings.

#### **How is it done?**

- 6.8 'Raising Standards in Development: Project Briefing and Procurement of Consultants' (SFHA) provides a detailed approach to value based consultant selection. The method described here is based largely on the Construction Industry Board's guidance, but a number of similar

approaches are promoted from equally authoritative sources, such as 'A Guide to Quality Based Selection of Consultants' (Construction Industry Council: [www.cic.org.uk](http://www.cic.org.uk)).

### **Setting a quality/price ratio**

- 6.9 The CIB recommends quality/price ratios varying from 20/80 for repeat projects through to 85/15 for feasibility studies and investigations. It is likely that a ratio of quality to price of 60/40 or less would become an effective fee competition and ratios in the range 70/30 to 80/20 are considered to be appropriate to most housing projects. This will provide a reasonable balance between quality and price and demonstrate a commitment to the former, whilst maintaining an appropriate level of price competition. If a fee negotiation with a single preferred practice is anticipated this can be stated in place of a quality/price ratio.

### **Inviting multi-disciplinary or separate appointments**

- 6.10 The selection of an architect as lead consultant with sub-consultants in such disciplines as engineering, quantity surveying and landscape design is common. Alternatively each of these can be appointed separately. A hybrid arrangement often used is the appointment of an architect as lead consultant with sub-consultants in all disciplines other than quantity surveying which is the subject of a separate appointment with the client. Consideration should be given to delaying the quantity surveying appointment until completion of the architect selection to allow the lead consultant to participate in the interview panel for the quantity surveyor. This will contribute to the successful generation of a team spirit which is essential to a partnering approach (see also Section 5).
- 6.11 Many architectural practices are reluctant to take responsibility for other disciplines, particularly beyond the feasibility study stage. Most, however, will accept a single multi-disciplinary appointment for feasibility, with the proviso that separate appointments may be made for scheme design and beyond. Clients should assess their criteria before deciding on the procurement policy for consultants.

### **Using EU procurement rules**

- 6.12 There are strict rules governing the advertising of projects which exceed threshold values set by the European Union. These vary according to fluctuations in the value of the Euro but are in the order of £3.8 million for capital works and £150,000 for professional fees. This latter figure represents the aggregate value of all fees attributable to a single project, from which it can be seen that the thresholds apply to projects of less than £3.5 million if fees are in excess of around 4.3%. It is strongly advised that any need for European advertising is thoroughly investigated at the outset of a project as failure to comply with EU regulations can result in severe penalties (see also Section 3). Also, if feasibility studies are undertaken without OJEU

advertising and values are subsequently found to exceed the thresholds, difficulties can arise if the incumbent practice is reappointed after OJEU advertising, or if a new practice is appointed and the work associated with the feasibility study largely aborted. OJEU advertising can result in significant numbers of practices expressing interest and a process must be developed which will manage this in an efficient and effective way. Restricted procedures should be adopted whereby only a limited number of practices expressing interest are short-listed to tender. This short-listing can be based on an assessment of such information as resources, experience and financial standing.

- 6.13 A short-list of around ten practices can then be identified for the second stage of a quality based selection process which is described more fully in 'Raising Standards in Housing Development, Project Briefing and Procurement of Consultants', SFHA 2002.

### **Paying for professional services**

- 6.14 Having selected and appointed the design team using a recognised value-based approach, RSLs should not expect any member of the design team to subsequently work 'at risk'. RSLs should expect to pay for all services they receive whether funding from Communities Scotland is available or not. In this connection, RSLs are reminded that the practice of 'pay when paid' is effectively outlawed by the Housing Grants, Construction and Regeneration Act 1996 (commonly referred to as The Construction Act, Part II Sections 109-113 cover respectively : entitlement to stage payments; their amount and timing; the need for an adequate mechanism for determining payments due under the contract; the circumstances under which payment can be withheld; and the contractor's right to suspend performance for non-payment).

### **Where to find more information**

'Raising Standards in Housing Development – Project Briefing and Procurement of Consultants', SFHA 2002, provides a detailed description of the procedures for quality based selection, together with examples of questionnaires and scoring matrices.

'Selecting Consultants for the Team: Balancing Quality and Price' available from Thomas Telford Publishing, Thomas Telford Services Ltd, 1 Heron Quay, London E14 4JD.

'Guidance for Clients on the Brooks Method of Architect Selection' available from RIBA, 66 Portland Place, London W1N 4AD.

## 7. PROJECT BRIEFING

**Key Issues:**

- The project brief should develop the strategic brief.
- All projects should have a written brief which is fully understood by the client.
- The project brief must be 'frozen' at an appropriate stage to achieve financial certainty.

**What is it?**

- 7.1 The strategic briefing process described in Section 2 must be continued after the appointment of a project team. Responsibility for the development of the brief usually transfers from the client to the project team at this point (design team, cost consultant, project manager and/or contractor as appropriate to the procurement strategy adopted for a particular project). Principal responsibility for the project brief should be vested in one party, usually the lead consultant.
- 7.2 The purpose of the project brief is to continue the communication link between the design team, the client and, in cases where partnering and other forms of early contractor involvement are used, the contractor. The project brief must be prepared and presented in a form that is fully understood by the RSL. It must be read in combination with other documents such as the cost plan to gain a full understanding of all aspects of a project. The project brief must pull all relevant information together into one source, and must address issues which will include maintenance and life cycle costs, sustainability, security and risk, for example, as well as the more familiar basic objectives and functions of a project. Many projects are developed without a full project brief, with the design team placing an over-reliance on drawings to provide information on content, quality, specification and other key elements.

**What should it contain?**

- 7.3 The conversion of the strategic brief into the project brief should clarify:
- the aim of the design, including prioritised project objectives.
  - the site, including details of accessibility and planning.
  - the functions and activities of the client.
  - the structure of the client organisation.
  - possible number of units and the desired housing mix.
  - options for sustainable development.
  - servicing options and specification implications such as security, deliveries, access, etc.
  - outline /performance specifications.
  - a budget for all elements.

- the procurement process.
- environmental policy, including energy and sustainability.
- the project execution plan.
- key targets for quality, time and cost, including milestones for decisions.
- method for assessing and managing risks and validating design proposals.

#### **How to use it ?**

7.4 The importance of incorporating flexibility in the briefing process must be balanced by appreciating the need to 'freeze' the brief at as early a stage as possible, before cost certainty is required. In general, changes to the brief become increasingly costly and disruptive the later they are made. Changes can cause significant difficulties when the post contract stage has started and work is progressing on site. This is certainly the case in most traditionally procured projects where the contractor is selected by competitive tender based on a fully designed and billed project.

#### **Where to find more information**

'Raising Standards in Housing Development : Project Briefing and Procurement of Consultants', SFHA 2002.

## 8. USING 'ADDED VALUE' PROCUREMENT TECHNIQUES

Key issues:

- The use of new techniques should be appropriate to the nature of the project.
- The added value of all good practice initiatives must be agreed by all participants.
- The over-riding criterion must be continuous improvement.

- 8.1 The move away from accepting lowest cost to best value has had a significant effect on the ways in which maintenance and development works are procured. 'Best Value' is described in the Scottish Executive Client Pack (Construction Works Procurement Guidance) as 'the optimum combination of whole life cost and quality to meet the customer's requirement'. Quality may relate to a number of factors including fitness for purpose, aesthetic appropriateness to surroundings, long term adaptability and maintenance, environmental implications and ability of consultants and contractors to innovate, improve buildability and work as a team.
- 8.2 The best value agenda can only be met if relevant techniques are applied to the procurement process, each of which must add value on its own and in combination. Best value can only be demonstrated by implementing procedures which are accepted by all participating parties as beneficial to meeting this objective, particularly if they can be measured in a qualitative way. The quality based selection of consultants, described in Section 6, sets the tone for achieving best value in the procurement process, and should ensure that key members of the project team are committed to, and appreciate the client's commitment to, achieving best value through the application of best practice.
- 8.3 Best practice is continually evolving and its contribution to continuous improvement can only be optimised if knowledge, experience and information are shared by those with a common interest in striving for excellence. Each RSL should develop its own view of the benefits of specific approaches to best practice in the context of particular projects or programmes.
- 8.4 Some of the increasingly common techniques which are making key contributions to achieving best value and continuous improvement, in addition to partnering (described in Section 5), include:
- risk management.
  - value management.
  - benchmarking.
- Each is described in more detail below, but it is important that all participants (RSL, consultants and contractors) believe in the process being adopted and consider the time



spent in its implementation to be of value to the project. Careful consideration should be given to the level of sophistication used in the application of value and risk management, for example. It could be counter-productive to use full RM and VM workshop techniques if little tangible benefit is derived from the significant human resources that such exercises require in preparation, attendance and follow-up.

- 8.5 The techniques which follow are increasingly offered by consultants (most frequently quantity surveyors and project managers) as 'added value' or complementary services, or even as stand-alone specialist services. RSLs should have sufficient knowledge of their application to make an informed assessment of their relevance and of the expertise being offered, and subsequently being delivered, by consultants.

## **RISK MANAGEMENT**

### **What is it?**

- 8.6 All projects contain risks that may affect cost, quality and/or time. Risk management is the identification and statistical analysis of these risks, followed by the formulation of an action plan to manage and control them throughout the life of a project. The importance of managing risk in construction procurement is increasingly recognised and risk management is now a specialist service with its own professional body, the Institute of Risk Managers. The application of risk management ranges from relatively simple assessment by key members of the client body and design team, to a dedicated service from a specialist risk manager applying sophisticated, computer-based risk assessments and managing an active risk register.
- 8.7 Risk management should influence the application of contingency allowances at pre and post contract stages to achieve greater cost certainty from project inception to completion. The principal benefits of risk management are:
- the identification of risks at the earliest possible stage.
  - a means of allocating each risk to the party best able to deal with it.
  - having a structure for avoiding, transferring, holding or reducing each risk as appropriate.
  - quantifying the residual risk and allocating an appropriate contingency allowance to cover it.; contingency allowances are not permissible under current HAG funding arrangements.
  - continually monitoring identified risks to track their relative movements and to target appropriate actions.
- 8.8 The key tools are workshops at which all members of the project team (including the client) apply lateral thinking to the identification of all known and anticipated risks. These are then categorised according to their impact and probability to give each risk a weighting. Risks with high weighting, or those whose weighting increases between revisions of the risk register, are

given priority in terms of identifying ownership and actions to reduce, avoid, transfer or hold the risk.

#### **When should it be used?**

- 8.9 An assessment of risk management experience should form part of the consultant selection process for large and/or complex projects. Project Managers and quantity surveyors should be particularly articulate on this topic.
- 8.10 Consultants' responses to questionnaires and interviews should be included as part of the form of agreement for services and clients should ensure that methodologies are fully understood and are delivered. On very large or complex projects risk management can be considered as a specialist service from a separate consultant.

#### **What are the benefits?**

- 8.11 Risk management will provide:
- a structured, practical approach to managing risks.
  - an increased understanding of the project.
  - a more pro-active management approach.
  - a process which increases confidence in achieving project objectives of cost, time and quality objectives.
  - a process which will lead to continuous improvement and better value for money.
  - a process which is auditable.
- 8.12 Risk management also provides:
- increased commitment to the project from the design team as they are more involved in problem solving.
  - a more realistic contingency provision which can be actively managed to reduce risk throughout the life of the project.

#### **How is it used?**

##### **Identifying risks**

- 8.13 Initially, risk workshops with the client and design team will highlight any potential risks on a project. A database of typical construction risks can be developed as part of a benchmarking initiative and constantly revised to include new risks experienced on recent projects.

## Classifying risks

- 8.14 Risks are graded according to how likely they are to occur and their potential impact on the project. Greatest consideration should be given to the risks most likely to occur and having the worst consequences.

	Likelihood of Risk		Impact of Risk
5	Highly probable	5	Catastrophic
4	Very likely	4	Critical
3	As likely as not	3	Serious
2	Could happen	2	Marginal
1	Improbable	1	Insignificant

## Quantifying risks

- 8.15 Each risk is given a score from each of the two tables above. Scores are combined to identify their likely impact, and to provide a prioritisation of risks which should be actively managed and continually monitored until their rating diminishes or, ideally, is cancelled.

	Insignificant	Marginal	Serious	Critical	Catastrophic
Improbable	2	3	4	5	6
Could happen	3	4	5	6	7
As likely as not	4	5	6	7	8
Very likely	5	6	7	8	9
Highly Probable	6	7	8	9	10

- 8.16 A more sophisticated statistical analysis which forecasts risk impact can be applied using computer programs. Such statistical analyses predict the potential value of loss, with minimum, most likely and maximum figures based on the combination of cost and time criteria. These provide the client with a picture of what may occur should things go wrong, and supports actions to be taken to reduce the risks.

## Managing Risk

- 8.17 Risk analysis itself does not solve the problems created by project risks. Action must be taken to manage the identified risks. They should be reduced by initiating one of the following responses:

- **Hold** : retention of particular risks by a party when other options are.  
Risk analysis itself does not solve the problems created by project risks.
- **Avoid** : the risk is eliminated by taking action to bypass it; any knock- on effects must be carefully considered.
- **Reduce** : risks can be minimised by alerting people to potential risks and

providing adequate protection to reduce the likelihood of loss.

- **Transfer** : control of risk to other parties through contract conditions or transfer financial responsibility of risk through insurance policies .
- **Share** : risks are shared with other parties where the risk is beyond the control of the one party.

### Monitoring and review

8.18 Any action taken to reduce risks must be monitored by use of a risk register. This ensures it is having the desired effect and allows remedial action to be taken if necessary. Risks may be identified at any time during the project and should be classified, actioned and monitored accordingly. Risks with an increasing combined probability/impact rating (between reviews) should be given greatest attention; those remaining static should have their action reviewed; and those with a reducing score can be noted. At every stage from inception and early budget costing a risk based contingency calculation should be undertaken.

8.19 Risk management is a continual process which can be implemented at almost any stage of a project. However, its effectiveness tends to diminish with time and, for maximum benefit, it should be introduced during the earlier stages. Although risk management is a relatively new development in the construction industry, its importance has already been recognised by the government, who expect the service to be provided by quantity surveying and contracting organisations bidding for government projects. A sample risk register page together with hypothetical examples of risk items is illustrated here:

Risk		Grading		Change			Time
Description	Probability	Impact	Total	+/-	Actions	Ownership	By date
Window replacement/removal may reveal hidden problems	3	5	8		Remove 5 per cent sample for inspection	Client	15 May
Unknown ground conditions	2	3	5	- 1	Ground investigation	Structural Engineer	End March
Availability of labour	3	4	7	+1	Market forecast	QS	End February

### Where to find more information

The Institute of Risk Management, [www.irm.org.uk](http://www.irm.org.uk)

Raising Standards in Risk Management, SFHA 2002

## VALUE MANAGEMENT

### What is it?

8.20 Value engineering (VE) is a term used to describe an approach to a proactive form of cost control where options and alternatives are identified and assessed in relative cost terms. On the other hand, **value management** (VM) is a more systematic approach to delivering the required functions at optimum whole life cost without detriment to quality, performance and/or reliability. VM should not be confused with cost reduction exercises (often referred to as value engineering), but is an allocation of cost in the areas where it will achieve best value. VM can be used very effectively to re-allocate costs, when no cost savings are required, and to ensure that the available budget is spent in ways that will optimise quality and function.

### When should it be used?

8.21 Any project should be subjected to a careful analysis of needs. Failure to think through the needs a project must satisfy will cause problems in the design and construction stages. Many projects suffer from poor definition due to inadequate time and thought being given at the earliest stages (see also Section 2 – Strategic Briefing). This can result in cost and time overruns, claims, user dissatisfaction or excessive operating costs. Value management can help to avoid these problems.

8.22 The extent to which value management processes will be beneficial to a project should be carefully considered to avoid inefficient use of valuable time input from consultants, contractors and RSLs. The table below indicates the level of VM likely to be appropriate to specific circumstances.

	<b>High Value</b>	<b>Low Value</b>
High Risk	Full VM procedure	VM studies recommended
Low Risk	VM studies recommended	Value engineering usually adequate

### What are the benefits?

8.23 Value management goes beyond value engineering in achieving best value, as opposed to lowest cost. It will take account of such factors as:

- integration with risk management.
- quality relative to function.
- life cycle replacement costs.
- energy efficiency.
- sustainability.
- buildability.

- innovative design.
- defining the project carefully to meet user needs.
- adopting change control procedures.
- avoiding waste and conflict by adopting teamworking and partnering arrangements.
- not appointing consultants and contractors on the basis of lowest initial price alone.

**How is it used?**

8.24 A VM framework should be established for each project, ensuring a structured approach to planning and managing value from inception to completion.

8.25 A careful analysis of need is much more than compiling a ‘wish list’ of all possible requirements. It requires a consensus from all parties about the needs and objectives of the project, giving due weight to their relative value and importance. The value attached to each objective can be given a weighting which represents relative importance in value terms, and a value management process will assist in ensuring that resources are targeted to elements with the highest value ratings. A ‘value tree’ can be a useful in this process. Here is an example :

Primary Objective	Secondary Objectives	Tertiary Objectives
	Comfortable living conditions	Space, light Storage provision High quality kitchen units
A high quality, sustainable social housing development	Low maintenance and running costs	Highly sustainable materials Sustainable landscaping High insulation levels Low energy heating/lighting systems
	A safe and attractive environment with build form most appropriate to user requirements and the locality	High quality landscaping
	Accessibility	Public transport, schools, shops, facilities/amenities, play areas/parks

By weighting the objectives, the concentration of expenditure into high value areas should give optimum value overall.

8.26 The application of value management as a formal technique will largely depend on the value and complexity of a particular project and the level of risk involved. VM may be secured as a separate specialist consultancy commission or as an ‘added value’ service from a member of

the project team such as the quantity surveyor or project manager. However, it is important to ensure that all members of the design team, the client and possibly the contractor are involved in considering the options and alternatives. Value management should not be seen as a cost-cutting exercise.

8.27 VM is best achieved through a series of facilitated workshops which will create the conditions for innovative and lateral thinking. The appointment of an experienced facilitator can help make any value management exercise a success. This facilitator should have a thorough knowledge of, and experience in, value management methods and techniques, and should apply them using a range of skills including:

- the organisation and management of workshops.
- communication with both technical and lay project participants.
- provision of conditions to challenge project assumptions about needs and approaches.
- motivation of project participants towards achieving objectives.
- the ability to analyse complex problems.
- creating the conditions to seek innovative solutions to project needs.
- the ability to tease out issues from a project background.
- leadership and authority.

8.28 The decision to appoint either an internal or an external facilitator should take a number of considerations into account:

	<b>An Internal Facilitator</b>	<b>An External Facilitator</b>
<b>Pros</b>	Familiarity with the project Can help the team achieve a deeper understanding of the project Can contribute towards effective team building	Fresh ideas are generated The design can be critically appraised without having to defend existing ideas or approaches Can bring experience from other more diverse projects and organisations
<b>Cons</b>	May not be able to appraise their own work critically May not be able to introduce fresh and new ideas Are more likely to confirm that their original approach is the most effective one	Potential conflict between external and internal parties The project team may be unwilling to implement recommendations made externally The ownership, and liability for design ideas, may be unclear May experience a more difficult learning curve

8.29 Value management usually incorporates a series of workshops and reviews through which the project requirements are evaluated against the means of achieving them. Value management is a structured approach to:

- establishing what value means to a client in meeting a perceived need.

- clearly defining and agreeing project objectives.
- establishing how these objectives can best be achieved.

8.30 As with risk management, an assessment of the knowledge and experience of consultants should be part of any quality based selection procedures. RSLs should be sufficiently aware and informed of the process being proposed to assess whether it is being effectively delivered.

### **Where to find more information**

The Institute of Value Management : [www.theirm.org](http://www.theirm.org)

## **BENCHMARKING**

### **What is it?**

8.31 Benchmarking is well established in most sectors of industry, but its adoption in construction has been slow. This has been attributed to the difficulties associated with direct comparisons where every project is different and unique. However, a two year study by the Building Research Establishment (BRE) concluded that Benchmarking has an important role to play in achieving continuous improvement in construction procurement. It was described in the study as 'a continuing process of establishing critical areas for improvement within an organisation, investigating the extent to which others carry out the same or similar tasks more efficiently, identifying the techniques that give rise to better performance, implementing them in the manner suitable to the organisation and measuring the outcome'. RSLs have a wealth of information which it could be beneficial to share in a manner similar to that adopted by benchmarking clubs.

8.32 Performance Indicators are an accepted element of RSLs' performance management frameworks. Benchmarking in respect of procurement should similarly become part of their corporate processes.

8.33 The benchmarking process can be summarised as:

- define objectives.
- share information.
- analyse data.
- identify good practice and poor performance.
- implement best practice.
- disseminate to other participating organisations.



### **When should it be used?**

8.34 Communities Scotland's Modernising Procurement Policy addresses issues of process and product improvement. The measurement of performance – for example using Key Performance Indicators (KPIs) - the dissemination of best practice and the ability of RSLs to demonstrate continuous improvement provide the rationale for benchmarking as an activity.

Benchmarking subjects might include:

- quality clients.
- investment programmes.
- partnering.
- off site fabrication.
- predictability.
- accidents.
- cost per m<sup>2</sup>.

8.35 To measure performance in key areas and to demonstrate and disseminate best practice and continuous improvement, examples of benchmarking subjects might include:

#### **for the process**

- the relevance, benefits and delivery of 'added value' services from consultants and contractors.
- performance of consultants (see also 'Raising Standards in Development: Selection of Consultants').
- performance of contractors (see also 'Raising Standards in Development: Selection of Contractors').
- Health & Safety.
- minimising waste.
- project briefs.
- life cycle costs.
- environmental performance/sustainable development.

#### **for the product**

- unit costs and timescales for construction.
- energy efficiency.
- post completion performance evaluations/client satisfaction surveys for the product.
- design quality.

### **What are the benefits?**

8.36 Benchmarking is a vital part of any programme of continuous improvement in which all organisations seeking to increase efficiency, quality and their competitive edge should be involved. Benchmarking should act as a catalyst for change. Measuring and studying the way

an organisation works often reveals and quantifies otherwise unidentified weaknesses. Benchmarking should become an everyday activity and a routine part of effective management.

8.37 Benefits include:

- better understanding of user needs and the activities of competitors and/or other similar organisations.
- fewer complaints and more satisfied users.
- reduction in waste, quality failures and reworking.
- further awareness of important innovations and how they can be applied effectively.
- achieving and demonstrating continuous improvement.
- better value for money.
- meeting “best practice client” criteria.

#### **How is it used?**

8.38 In practice, successful benchmarking needs:

- a strong commitment from top management to act on any major opportunities for improvement as they are revealed.
- training and guidance for employees who will have to gather the information needed to identify, analyse and communicate best practice.
- authorisation for employees to spend some of their time on benchmarking activities.

8.39 The principal benefit of benchmarking is in stimulating constant improvement in key activities. This can be achieved by:

- setting new standards for the performance expected, communicating and explaining these to all involved, and motivating people to achieve them.
- making someone in authority responsible for devising an action plan to reach new standards.
- providing the resources for employees to carry out additional research.
- monitoring progress and measuring results.

8.40 One of the best techniques for introducing Benchmarking into the procurement process is through the use of Key Performance Indicators (KPIs)<sup>3</sup>. KPIs for contractors have been developed by The Department for Trade and Industry (DTI). KPI packs are available from the Construction Best Practice Programme. Each year a KPI pack is published providing guidance on the use of KPIs and an analysis of the ways in which KPIs are being used to

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<sup>3</sup> KPI packs are available from the Construction Best Practice Programme (Tel: 0845 605 5556)

monitor and measure performance across the industry. Individual KPI guidance is provided for a range of sectors, including Public Sector New Housing and Repair, Maintenance and Refurbishment. KPIs for contractors have been established for a number of years, and meaningful analysis is now available to track progress (or regression) in key performance areas. These are:

- client satisfaction: service.
- client satisfaction: product.
- defects.
- predictability: cost
- predictability: time
- construction time
- construction cost
- safety
- profitability.

8.41 Most RSLs will recognise a number of these areas as crucial to measuring the success of their own projects and programmes. Individual clients can of course develop the general principles established by the DTI to identify specific KPIs for a particular project or programme. This is described in detail in 'Raising Standards in Housing Development – Section 2: Selection of Contractors' (SFHA).

8.42 More recently, KPIs for consultants have been developed by the DTI, along similar lines to those for contractors. These address:

- client satisfaction – overall performance.
- client satisfaction – value for money.
- client satisfaction – quality.
- client satisfaction – timely delivery.
- productivity.
- profitability.
- training.
- client satisfaction – Health & Safety awareness.

From this list, it can be seen that consultants must undertake self assessment in a number of areas, combined with feedback from clients, to identify their overall performance and year on year improvement.

8.43 RSLs should be alert to the availability of these tools and should expect to see evidence of their use by contractors and consultants who are committed to all aspects of quality and continuous improvement. The Construction Industry Council (CIC) is piloting an initiative

(July 2002) to introduce Design Quality Indicators (DQIs). This will be the subject of an update to this guide when results are available.

**Where to find more information**

Visit the 'Pulling Together Scotland' website [www.pullingtogether.co.uk](http://www.pullingtogether.co.uk).

## 9 VALUE BASED SELECTION OF CONTRACTORS

Key issues:

- The principles of best value should be applied to contractor selection as well as consultant selection.
- Quality should be measured by setting and monitoring improvement targets.
- Key Performance Indicators (KPIs) have been established as a toolkit for achieving and measuring continuous improvement.

### Why do it?

9.1. The principles of quality based selection in the appointment of consultants, described in Section 6, should be extended to the appointment of contractors as key members of the procurement supply chain. The traditional tendering procedures for contractors, through which the lowest tender is invariably accepted, may be more difficult to deviate from as contractors' prices are more detailed and capable of like-for-like comparisons than those for consultants' services. This is particularly the case when detailed bills of quantities are used for tendering, following detailed design. Most RSLs will already apply a quality element to contractor selection when establishing restricted tender lists. The concept of accepting a tender other than the lowest submitted may be new to the social housing sector, but if best value can be demonstrated through its use it should have a place in future procurement strategies.

9.2. Contractors have much to offer in three key areas of increasing interest to RSLs:

- achieving better value through option appraisal and "buildability" advice.
- meeting sustainability targets through the sourcing of materials and labour and reducing waste, for example.
- bringing their expertise in managing the supply chain to the project team.

These benefits can be best exploited if the contractor is introduced earlier into the procurement process, but safeguards will be necessary to ensure that quality improvements compensate for any relaxation of price constraints in the final selection process.

9.3. Quality based contractor selection can be used:

- to pre-qualify long lists of contractors down to an appropriate length for competitive tendering, followed by acceptance of the lowest tender.
- to introduce a quality/price formula into the selection process whereby the lowest tender may be rejected in favour of another which can be shown to represent best value.

- to select a preferred contractor with whom to negotiate a tender.

The last two uses provide the greatest opportunities for innovative procurement and partnering arrangements. Negotiation may be the only option when a contractor owns a site but, even in these circumstances, a quality assessment based on this guidance may be beneficial to establish the contractor's acceptability in terms of the high standards required by RSLs.

#### **How is it done?**

9.4. The simplest form of quality based contractor selection has been operated by most clients as a matter of course, in that tender lists are drawn from contractors who meet basic criteria such as:

- experience of projects similar in value and complexity.
- previous working knowledge of the client and/or consultants.
- references from satisfied clients.
- financial and other viability checks.
- 'market intelligence' generally.
- awareness of Rethinking Construction.

9.5. In connection with the last criterion, the research report 'Rethinking Construction in the Scottish Housebuilding Industry' assessed the Scottish construction industry's awareness of Rethinking Construction (the Egan Report). The research findings included the Egan implementation matrix below. Each of the five Egan drivers for change is scored on a scale 0-4 and summed to produce an Egan implementation rating. In compiling and reviewing their contractors' lists, RSLs may find it useful to invite contractors to complete this matrix to gauge their awareness of, and response to, Rethinking Construction principles.

**Egan implementation matrix**

<b>Committed Leadership</b>	<b>Focus on the customer</b>	<b>Product team integration</b>	<b>Quality driven agenda</b>	<b>Commitment to people</b>	<b>Rating</b>
Fully committed senior management driving change	Fully flexible customer choice in both design and components	Fully integrated project teams and supply chains working collaboratively	Products are consistently achieving zero defects	Exceeding Investors in People (IIP) requirements	4
Committed management with some personal involvement to implement change	Range of choices available in design and components	Most project teams and supply chain partners working collaboratively	Feedback and measurement systems in place to work towards zero defects	Recognition through Investors in People (IIP) status	3
Nominated champions reporting to senior management	Some customer choice in design and/or components	Some project team and supply chain integration	Senior management commitment to working towards zero defects	Commitment to training and development for all	2
Individual champions, but no senior management involvement	Limited customer choice in design and/or components	Limited evidence of supply chain integration and collaborative working	Recognition that defects and re-work need to be reduced	Consistently good Health & Safety and site conditions	1
Little or no initiative for change	No customer choice in design or components	No evidence of collaborative or integrated working	Acceptance of some defects or re-work	Adherence to minimum Health & Safety standards	0

9.6. 'Raising Standards in Development – Section 2: Procurement of Contractors' (SFHA) sets out an approach to selection based on a balance of quality and price. It suggests that quality based contractor selection can be introduced in stages, with the emphasis on quality issues increasing over time until full quality/price ratios are used in the final selection calculation. As with consultant selection, continuous improvement must be a principal criterion in any move away from price competition. The use of Key Performance Indicators for Contractors (KPIs) is becoming well established, with many contractors using KPIs to good effect to improve their internal performance and to demonstrate to clients that they take quality, safety and other criteria seriously and are committed to achieving and demonstrating continuous improvement in all key areas.

9.7. The DTI Key Performance Indicator Pack is issued annually, with analysis of the previous year's results from contractors who provide feedback (see Section 8 – Benchmarking). Initially, a number of the Indicators suffered from negative 'progress', but as the process has gained momentum there is increasing evidence of its success in tackling many of the construction industry's weaknesses.

- 9.8. Individual RSLs and projects are likely to have specific and unique criteria for performance enhancement and measurement. 'Raising Standards in Housing Development – Section 2' (SFHA) includes a wide range of ideas in respect of indicators, and suggests ways in which performance against each can be used to demonstrate continuous improvement.
- 9.9. Targets can be set with incentives for meeting or exceeding them, although caution must be exercised when assessing the resource implications to the RSL, consultants and/or contractors relative to the potential for adding value to the process and the result. As with all new and developing best practice techniques, there is a risk that targets could become counter-productive or open to manipulation if not well structured and controlled. The application of partnering principles should reinforce the team spirit necessary to success. In most cases, partnering would also be a prerequisite to the implementation of quality based contractor selection which should lead to the use of performance measures, with or without subsequent incentives.
- 9.10. RSLs are encouraged to move towards a greater emphasis on quality in the appointment of contractors at a pace that is relevant to their needs, experience and understanding. The longer term goal should be to embrace value-based selection when appointing the contractor and to implement performance measurement linked to incentives.
- 9.11. Incentives can be a feature of so called 'pain share/gain share' agreements through which the contractor agrees to benefit from, or be penalised by, the results of target monitoring. Longer term arrangements can be negotiated on the basis of measurable continuous improvement from which both the RSL and contractor benefit in respect of subsequent projects, or phases of a single project.
- 9.12. As with the selection of consultants (Section 6), the procurement of a contractor may be subject to EU procurement rules if the works value exceeds the appropriate threshold of around £3.8m (as at January 2002). This requires advertising in the Official Journal of the European Community (OJEC), followed by a selection procedure similar to that for consultants described in Section 6.

### **Where to find more information**

'Raising Standards in Development – Section 2: Selection of Contractors', SFHA provides a detailed description of the procedures for quality based contractor selection, together with examples of Performance Indicators, questionnaires and scoring matrices.

'Selecting Contractors by Value' (CIRIA: 1998) is also a valuable source of guidance.



## **FEEDBACK QUESTIONNAIRE**

One of the primary purposes of Communities Scotland's Procurement Guide is to make a significant contribution to our commitment to best practice through continuous improvement. This can be best achieved if RSLs share knowledge and experience.

In this questionnaire we seek users' views on how useful and effective the guidance has proved to be in practice. Your co-operation in providing feedback in this way is encouraged and appreciated.

**Please photocopy the questionnaire and return, as often as necessary to:**

**Ian Walker  
Communities Scotland  
Thistle House  
91 Haymarket Terrace  
Edinburgh EH12 5HE**

We will use the information received to update the guide and we will undertake a major review in **December 2004**.

**QUESTIONNAIRE**

**SECTION 1 – USING THE GUIDE**

1.1 In what circumstances did you refer to the guide?

1.2 Which sections of the guide did you use?

1.3 How comprehensive was the information in the context of your needs?

1.4 Did you find the layout and language clear ?

**SECTION 2 - IMPROVING THE GUIDE**

2.1 What guidance was missing in the context of your needs?

2.2 What guidance was weak?

2.2.1 How would you like to see these weaknesses addressed?

2.3 Please add any other information you believe to be relevant to improving the guide.

Name.....  
Position.....  
Organisation.....  
Address.....  
.....  
.....  
Date.....

Please return this questionnaire to:

**Ian Walker**  
**Communities Scotland**  
**Thistle House**  
**91 Haymarket Terrace**  
**Edinburgh**  
**EH12 5HE**

## APPENDIX A

### PROCUREMENT OPTIONS DESCRIBED

#### Traditional procurement

Traditional procurement (or single stage competitive tender) requires the completion of full detailed design drawings and the preparation of bills of quantities prior to inviting contractors to bid through selective competitive tendering.

The lowest tender is normally accepted.

When the full design is completed before the tender documents are issued, this form of procurement offers:

- fully co-ordinated and detailed trade interfaces prior to the work starting on site.
- design solutions resolved in advance of the works being implemented on site.
- post contract changes kept to a minimum reducing the likelihood of variations with resultant additional costs.
- cost certainty achieved prior to construction with an accurate contract sum established on the basis of a completed design.

The potential disadvantages of traditional procurement can include:

- increasing the time taken before works start on site as design and construction are consecutive processes.
- little flexibility for introducing major variations and amending the programme without generating claims for additional costs and/or delay.

#### Alternative forms of traditional procurement

Alternative forms of the traditional procurement process can be used to achieve such benefits as the early involvement of a contractor and/or the overlap of the design and construction stages.

Under a two stage selective competitive tender, the main contractor is appointed on the basis of a tender which incorporates a pricing document related to preliminary design information. At this first stage, there will inevitably be a large number of provisional sums. Cost certainty cannot be achieved until the second stage tender is complete when a firm design and accurate quantities are available.

The sequence of the tender processes will be determined by the optimum timing for the contractor to join the team and provide pre-construction advice on buildability, life cycle costs, sustainability, value engineering, risk management, etc.

A balance must be struck between early contractor appointment when only limited information is available for competitive pricing, but maximum buildability advice can be provided, and later appointment when the former criterion is strengthened but the latter weakened.

If properly managed, two stage tendering provides most of the benefits of the traditional procurement route, in addition to:

- early contractor advice on buildability, programming, planning and construction methodology.
- improving contractor/design team/client relationships using partnering principles to allow early working relationships to be established on a teamwork basis. (see also Section 5).
- contractor consultation on, and involvement in, the selection of specialist contractors thereby overcoming the disadvantages of using nominated sub-contractors.
- giving the client greater flexibility, within limits, to introduce variations or amend the brief later in the process with less risk of contractors' claims.
- allowing some design decisions to be deferred until later in the programme.

### **Design and Build**

Design and Build procurement provides single point responsibility : the contractor is responsible for both the design and construction processes. These can overlap to achieve an earlier completion date.

This form of procurement is generally accepted as appropriate for fairly simple building types where few changes are anticipated during the design and construction stages. The 'Employers Requirements' can be almost fully established at the outset and can be issued to contractors for tendering purposes. Employer's Requirements are generally prepared by a quantity surveyor, acting as an Employer's Agent, to describe the conditions under which the design and build contract will be let.

Design and Build offers a guarantee on cost. However, this form of procurement can result in the Client having less control of the detail of the project and less control over time, cost and quality if changes should be required.

Many RSLs are obliged to consider the Design and Build procurement route when a contractor or developer owns all or part of a proposed site for development.

A hybrid of the Design and Build route occurs when the client appoints a design team, with the intention of transferring their contracts to a Design and Build contractor at a pre-determined stage of the design process (usually Stage D: Scheme Design). Under this arrangement the design team is novated from the client to the contractor, a process which can involve insurance pitfalls. Another disadvantage can be the risk of weakening the consultant/contractor relationship. However, advantages include control of design team selection and of scheme design, by the client. Where there is a Design and Build agreement with design team novation, the quantity surveyor appointed can subsequently assume the role of client representative and, as such, be bound by the terms of the contract while the client would be independent.

The most vulnerable aspect of Design and Build contracts is quality control. There can be an incentive for the contractor to reduce design and/or build quality as there is only limited input from the architect/contract administrator. There is often little control of the changes made to a scheme on site due to a requirement to maintain a guaranteed maximum price. The contractor may also seek to maximise his profit on what may have been an excessively competitive tender. A robust brief and clearly specified Clients Requirements must accompany any Design and Build contract to overcome these potential weaknesses.

### **Management contracting**

This form of procurement meets many of the criteria associated with early contractor involvement. The overlap of design and construction activities can bring earlier completion than traditional forms of procurement.

Management contractors' tenders are fee based using a cost plan and a description of works. The management contractor is employed directly by the client and contracts with the works package contractors for the construction works.

The early appointment of the management contractor enables them to:

- provide construction knowledge to the design process with advice on effective and economical building methods.
- work with the design consultants to select packages suitable for specialist sub-contractors.
- advise on programming.
- become part of the project team at an early stage, avoiding the adversarial relationships for which the construction industry is notorious.
- continuously update the construction budget to account for variations as each trade package is let; this provides flexibility by enabling amendment of the work content in future packages to constantly adjust the cost plan in line with the budget.

Advantages must balance against potential disadvantages such as:

- management contracting can be more expensive.
- cost certainty is achieved later in the process as financial control relies on a cost plan and the contract sum cannot be accurately predicted until the final works package is awarded
- if the management contractor has a financial interest in works contractors' final accounts there may be a conflict of interest in acting effectively as a consultant to the client.
- the management contractor may have no contractual liability for defects in workmanship, only an obligation to use best endeavours to instruct works contractors to remedy defects.
- a high level of knowledge and skill must be applied to the selection of the right management contractor. (see also Section 9).

It is important that the design team has an understanding and experience of meeting information flow requirements under a management contract route.

### **Construction management**

Construction management is a similar form of procurement to management contracting, with the principal difference being that the construction manager has similar professional status to the design team and each of the works package contractors has direct contract with the client.

The construction manager is appointed on the basis of a competitive fee based on the quantity surveyor's cost plan and the design team's description of works.

The advantages in employing this form of procurement are very similar to management contracting (earlier site start; buildability advice at design stage) but the construction manager is more closely integrated with the design team.

The disadvantages are similar to management contracting, and there is a larger administration and legal burden on the client due to the direct employment of the potentially large number of works contractors. This also carries greater commercial risk for the client. For these reasons its use by RSLs is likely to be appropriate only in exceptional circumstances when the full implications of its use and benefits are clearly understood and substantiated.

A construction manager has no contractual liability for defects, only an obligation to use best endeavours to instruct works contractors to remedy defects.



### **Guaranteed maximum price**

Under this arrangement, the contractor is appointed along with his design team.

A Guaranteed Maximum Price (GMP) cannot be exceeded, but may be reduced. Reductions to the GMP can be linked to incentive bonuses whereby savings are shared between the contractor and client. This has many of the advantages of management contracting, and offers a guarantee of the final cost sum at tender acceptance, but:

- the contractor is taking a higher risk by guaranteeing the maximum price at the outset and a premium is likely to be charged for this.
- if the client introduces significant variations the GMP will increase.
- with the design team being employed by the contractor, the client loses control of the detail design which can adversely affect quality.
- this procurement route employs complex contractual relationships which require contractors and design teams well versed in this form of contract to ensure successful implementation.

The use of GMP contracts by RSLs is likely to be restricted due to the difficulties in meeting current HAG procedures which require optimum value to be achieved. The concept of paying a premium for price certainty is likely to be at odds with this requirement.

Communities Scotland recognises that current procedures stand in the way of pain share/gain share. The Rethinking Procurement action plan will include this as a priority issue to be addressed.

GMP can be employed on other procurement routes, but the disadvantages outlined above generally remain. This is principally because, if a contractor is to guarantee the contract sum at an early stage in the programme, it will be necessary to include a design development reserve or contingency to accommodate the extra risk, and also to control the output of the design team to ensure this risk is protected. The application of partnering may mitigate this element and lead to a more acceptable GMP arrangement for RSLs.

### **Negotiated contracts**

In some circumstances there may be reason to consider a negotiated contract. These circumstances include situations where:

- the site is owned by the contractor.
- the first phase of a project is immediately followed by a second phase of similar scale and nature.

This must be linked to a robust audit trail which demonstrates value for money. The use of Key Performance Indicators, partnering and benchmarking (all described elsewhere in this guide) ensures that negotiated contracts achieve their objectives in terms of value.

## APPENDIX B

### REFERENCE DOCUMENTS

Constructing the Team – Sir Michael Latham (1994)  
Rethinking Construction – Sir John Egan (1998)  
Procurement Guidance - H M Treasury (supersedes CUP guidance)  
Selecting Consultants for the Team: Balancing Quality and Price – Construction Industry Board  
Modernising Construction – National Audit Office (January 2001)  
PPC 2000-ACA Standard Form of Contract for Project Partnering (2000)  
Key Performance Indicators – Construction Best Practice Programme  
Scottish Executive Client Pack – Construction Works Procurement Guidance (May 2001)  
Selecting Contractors by Value – CIRIA (1998)

### USEFUL WEBSITES

Construction Best Practice Programme – [www.cbpp.org.uk](http://www.cbpp.org.uk)  
Construction Industry Research and Information Association – [www.ciria.org.uk](http://www.ciria.org.uk)  
Development of Environment Transport and Regions – [www.construction.detr.gov.uk](http://www.construction.detr.gov.uk)  
Movement for Innovation – [www.m4i.org.uk](http://www.m4i.org.uk)  
The Housing Forum – [www.thehousingforum.org.uk](http://www.thehousingforum.org.uk)  
H M Treasury – [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)  
Pulling Together Scotland – [www.pullingtogether.co.uk](http://www.pullingtogether.co.uk)  
Scottish Executive – [www.scotland.gov.uk/procurement](http://www.scotland.gov.uk/procurement); [www.scotland.gov.uk/building](http://www.scotland.gov.uk/building)

## APPENDIX C

### GLOSSARY OF TERMS

Benchmarking	A method of comparing performance with industry norms and/or best practice.
Best Value	Replaces lowest cost as the principal criterion for the procurement of works or services. May result in lower life cycle cost or higher quality for the same cost.
EU procurement rules	The application of mandatory procedures for the appointment of consultants and/or contractors where project values exceed relevant cost thresholds.
Key Performance Indicators (KPIs)	A toolkit developed by the DTI to allow contractors and consultants to measure their performance in key areas to facilitate comparison with industry norms, and to achieve and demonstrate continuous improvement.
Partnering	A form of collaborative working between clients, consultants, contractors and suppliers which seeks to avoid the confrontation associated with construction contracts.
Procurement route	The method of entering into a contract for development or maintenance work which defines the relative roles and responsibilities of consultants, contractors and sub-contractors.
Project brief	The description of a project by the consultants appointed to implement a strategic brief. Must be written and communicated in a way that is understood by all relevant parties, including lay housing association members if appropriate.
Risk management	A structured approach to managing the risk that is inherent in all development and maintenance projects.
Strategic brief	A full description of a proposed development or maintenance project, completed in sufficient detail to facilitate a robust value based consultant (or contractor in the case of design and build) selection.

Sustainability	Reducing the adverse impact of construction activity on the environment, both at the time of construction, and throughout the life of the building.
Value based selection	A move away from price competition to a procedure which combines quality with cost to achieve best value in the selection of consultants and contractors. Also known as 'balancing quality and price'
Value engineering	A systematic approach to reducing the cost of a component or element without unacceptable detriment to quality or programme.
Value management	A structured approach to achieving the optimum combination of quality and cost. Often results in re-allocations of cost, rather than overall reductions.
Whole life cost	The total cost of procuring and maintaining a project over its expected life span. An increase in initial capital cost can result in a reduced whole life cost when repair and maintenance timescales and costs are considered.

## APPENDIX D

### LEVEL AND TIMING OF FEE PAYMENTS TO DESIGN TEAM CONSULTANTS BY CLIENTS AND THE IMPLICATIONS FOR THE DRAW DOWN OF HOUSING ASSOCIATION GRANT

The table overleaf gives guidance on the timing of payments for design team consultants. It is designed to help Registered Social Landlords (RSLs) with cash flow planning.

Each key stage at which HAG is approved by the Grant Provider could include professional fees. As the table shows, in some cases, the indicative stage payments have changed from previous guidance but HAG to pay professional fees should **always** be drawn down only when the consultant has completed the relevant work stage and HAG/Payment submissions to the Grant Provider can be supported by approved invoices.

Individual contracts should include a timing schedule which forms part of the contract between client and consultant. The RSL should negotiate and agree the fee and method of payment for the services of a planning supervisor, and Employer's Agent (in the case of Design and Build contracts where the Quantity Surveyor's role changes to Employer's Agent employed by the client when the design team is novated to the Design and Build contractor).

Where the design and build procurement route includes design team novation, the tender documents should advise the contractor of the payments to be included for the settlement of the design team's fees.

Where partnering is a feature of the selected procurement route, the Grant Provider may approve grant to cover fees incurred prior to HAG Cost Plan stage where it can be demonstrated that a formal partnering process is in place. Under a partnering agreement, the issues relating to incentivisation, in particular the treatment of gain/ pain share, should be discussed with and approved by the Grant Provider at the earliest opportunity.

**LEVEL AND TIMING OF FEE PAYMENTS TO DESIGN TEAM CONSULTANTS BY CLIENTS**

Architect <sup>1</sup>	Q.S. <sup>2</sup>	S.E/C.E. <sup>3</sup>	M & E <sup>3</sup>	RIBA Plan of Work Stage completed
Lump sum fee as agreed between Association and Consultant				A Approval B Strategic Brief
20%		15%	10%	C Outline Proposals
20%	15%	20%	10%	D Detail Proposals
15%		25%	20%	E Final Proposals
20%		25%	40%	F Production Information
25%	45%			G Tender Documentation
	5%	15%	20%	H Tender Action
				J Mobilisation
	35%			K Operations on site
				L Completion
100%	100%	100%	100%	

**NOTES****1. Architects**

The percentages payable in respect of architectural commissions are based on guidance issued by the Royal Incorporation of Architects in Scotland in relation to an assessment of the volume of work related to RIBA stages. In a design and build contract with novation to the contractor, it is likely that the registered social landlord will pay architects' fees up to, and including, the conclusion of stage D; after which the contractor will be responsible for payment of the architect under the novation agreement. It is important that this aspect of the transfer of responsibility for the payment of fees is clearly stated and understood by contractors invited to bid for the design and build contract.

**2. Quantity Surveyors**

It is normal for the quantity surveyor to be retained by the RSL client throughout the design and build, even when novation of the design team is undertaken. In this event, the quantity surveyor appointment will transfer to that of employer's agent from the point of novation. The stage payments indicated for quantity surveying fees are indicative and may be subject to variation consistent with the specific characteristics of individual projects and clients.

**3. Consulting Engineers**

The Association of Consulting Engineers (ACE) has been consulted in respect of the percentages indicated, although adjustments may be appropriate to reflect specific characteristics of individual projects and/ or circumstances.

**4. Feasibility Studies**

Where the Grant Provider has agreed to fund a feasibility study, any fee will be paid on the satisfactory completion of the study.