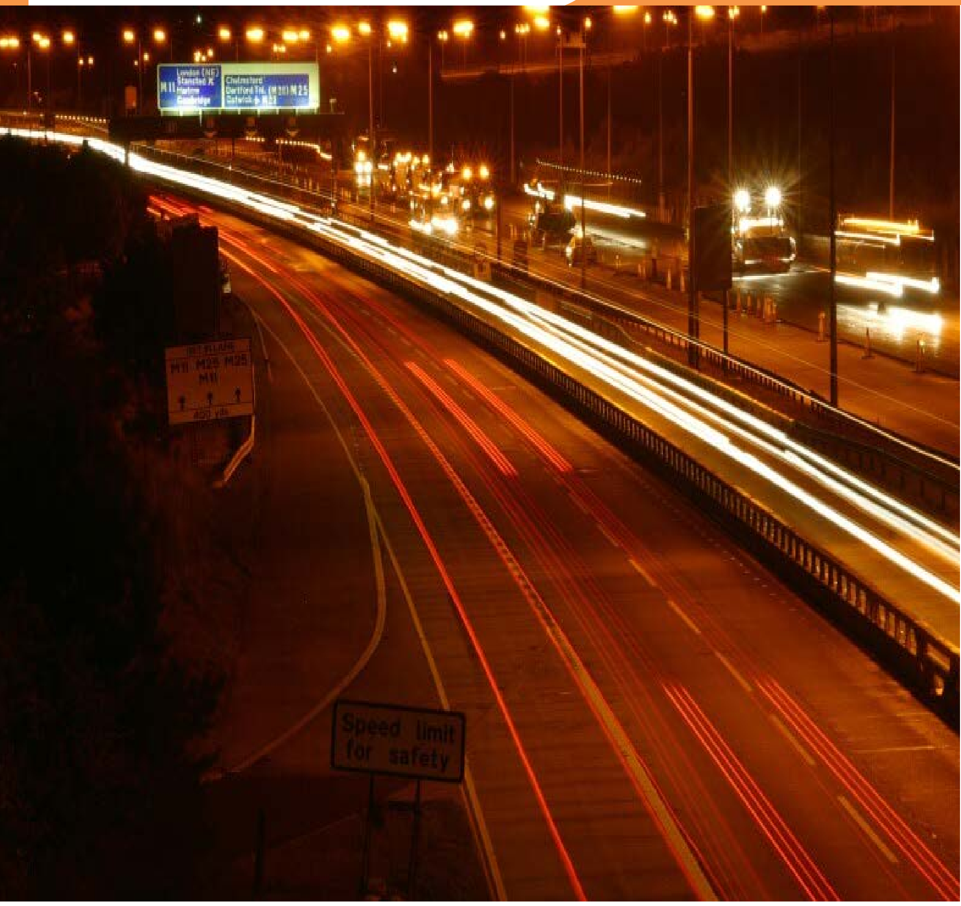
Highways Maintenance Efficiency Programme

# Collaborative Contracting – a Toolkit for managing the risks

Version 1 March 2017





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# REVISION SCHEDULE

| Rev | Date | Details | Prepared by | Reviewed by | Approved by |
|---|---|---|---|---|---|
| 01 | March 17 | Version 1 | Martin Duffy<br>Jim Towey | Steve Kent | Steering Group |

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# Part 1

# Introduction

# 1.0 Introduction

## 1.1 About the Programme

The Highways Maintenance Efficiency Programme (HMEP) is a sector-led transformation initiative that seeks to support the delivery of significant efficiencies in local authority highway maintenance services through progressive service transformation. The Programme started in April 2011 with sponsorship from the Department for Transport. From 2017 onwards it is intended that the initiative will be taken forward by the sector, on a self-sustaining basis. It is estimated that the Programme has already delivered significant returns on the initial investment.

The overall programme has been developed and delivered by a Programme Board comprising representatives of local authority clients, private sector providers, professional institutions and other bodies relevant to local authority highway maintenance. This has ensured that:

- The Programme has truly been driven by the needs of the whole sector ('by the sector for the sector').
- The solutions identified by the sector are relevant, realistic, repeatable, scalable and sustainable.
- HMEP has been benefits-led, driving true transformation of the sector with tangible efficiency gains and a lasting legacy.

The vision for HMEP is to:

**Deliver 15% savings by 2015 and 30% or more by 2020, transforming delivery so that roads and services are improved**

In order to deliver this ambitious vision, it was recognised that efficiencies delivered through incremental improvements within existing delivery models had to be complemented by progressive, transformational changes in the way we deliver highway maintenance. The desired outcome is that, over time, those involved in highways maintenance delivery - the local authorities as clients and their providers, be they from the private or public sector - will adopt an ambitious and longer-term approach which will enable them to deliver increasing efficiencies through:

- Continually finding new and improved ways of managing highway assets and delivering services to highway users.
- Making greater use of collaborative partnerships to improve processes and outcomes.

- Delivering a sustainable balance between meeting the needs of highway users, improving quality and minimising costs.

As the overall programme has grown, four distinct work streams have emerged:

- **Collaboration** – looking at how alliances between clients and their providers can be formed to share procurement activities which can achieve more competitive prices or bolster specialist resource. Also drawing on the experiences from a variety of partnerships between clients and their private sector providers, and renegotiating existing contracts with the supply chain.
- **Procurement, Contracting and Standardisation** – advising on the routes to procurement and the tools which will deliver efficiencies, such as a standardised form of contract and highway maintenance specification.
- **Asset Management** – by providing advice in the form of updated guidance, for both a simplistic and, where appropriate, a more complex lifecycle planning tool to determine whole life asset costs. Thus moving to a longer-term approach for maintaining highway assets and away from a reactive one.
- **Benchmarking & Performance** – collecting, sharing and comparing performance data on cost/quality/customer perceptions, in order to give a better understanding of the issues and show how effective clients are in delivering targeted efficiencies and hence value for money services.

Products and tools have developed within each of these work streams, intended to address specific issues within the sector. Each is designed to stand alone and be of value to users, but greater value can be obtained through the interdependencies that connect many of the Programme outputs.

## 1.2 Reason for developing this Toolkit

The output of the HMEP initiative has been a number of Toolkits and other publications which already have, and will in the future, positively support both clients and providers in more effectively managing and delivering their highway maintenance services against a background of continuing financial pressures.

HMEP has successfully developed and launched standardised contract documentation and practical advice on contract procurement, to support local authorities at the critical time of procurement route decision making and during the contract procurement and subsequent contract management phases.

Prior to, during development of, and indeed post-implementation of this more effective, standardised approach it was apparent that there are a number of recurring issues that are adversely affecting the performance of our industry. The consequences are a number of extremely damaging outcomes that whilst not widespread are sufficiently common to warrant urgent attention. The root cause of these outcomes, it is suggested, is one or more of the risks identified in this Toolkit.

These unintended outcomes are primarily;

**Lack of appetite to extend contracts –** clients become reluctant to extend their contracts, and providers, whilst willing to stand by their original commitments become equally reluctant to extend. In extreme cases, this has resulted in premature termination of contracts, prior to intended completion dates.

**Depleted tender lists** - providers shift their focus to clients with whom they could develop long term collaborative relationships in a non-confrontational environment – this can result in them not wishing to tender for contracts with other clients resulting in turn in depleted tender lists and the consequent risk to those clients of not being able to obtain competitive market prices. This is an extremely unhealthy scenario for the industry as a whole.

**Strategic pricing** - due to the magnitude of some of the contracts in terms of potential turnover and duration, tenderers are tempted to price bids strategically i.e. take advantage of every element of ambiguity in tender documentation with a view to lowering their tender price – this disturbs the market and discourages other providers from bidding, a similarly extremely unhealthy scenario as that described above.

**Unsustainable supply chain** - sub-contractors and suppliers shift their business to places where consider that a fair return can be secured whilst minimising contractual risk thus 'choking' the development of a sustainable supply chain across the industry.

**Good people not retained** - both clients and providers struggle to retain good people due to their reluctance to work in a non-progressive or even adversarial climate.

**Culture of contractual dispute remains** – despite the best endeavours of our industry to minimise the extent of dispute through various initiatives including partnering/collaboration, a shift to target cost reimbursable contracts, a bias towards quality in procurement processes and a contractual obligation to operate in a 'spirit of mutual trust and cooperation', there remains too many potential opportunities where contractual dispute can flourish.

## 1.3 Approach to developing the Toolkit

Against this background and the pressing need to address the root cause of these outcomes a Steering Group was formed, made up of senior representatives from both clients and providers. This mix was purposely designed as the issues under consideration relate to and affect both in equal measures and therefore it was crucial that both viewpoints were obtained in relation to the root cause and solutions to the issues. The Steering Group consisted of;

- Steve Kent (chair) – Board member HMEP
- Geoff Allister – Executive Director HTMA and Board member HMEP
- Dave O'Neil – Head of Supply Chain Strategy and Supplier Development Highways England
- Dave Wright – Executive Director Kier Highways
- Mike Notman – Managing Director Ringway Jacobs
- Andy Rowley – Commercial Director Contracting - Tarmac
- Andy Best – Head LoHAC Contract Management Team TfL and ADEPT representative
- Matthew Lugg OBE – Director of Public Services WSP and HMEP Advocate
- John Reed - Head of Technical Services, Neighbourhood Services Durham County Council
- Andrew Martin – Service Director Highways & Emergency Planning Dorset County Council
- James Bailey – Commissioner for Highways and the Built County Staffordshire County Council
- Martin Duffy and Jim Towey – appointed consultants for this work

In looking for the root cause of the above outcomes the Steering Group identified the following topics;

| | |
|---|---|
| Procurement | Effectiveness of procurement processes |
| | Structure of quality submission |
| | Flexibility of contract term |
| | Pricing structure that reflects actual cost |
| | Tender assessment models to identify best value |
| | Seeking alternative solutions at tender stage |
| | Meaningful efficiency discounts |
| | Effective contract mobilisation |
| | Behaviours that support service delivery |
| Operational | Continuity between procurement and delivery teams |
| | Silo working within and between organisations |
| | Effective collaboration between teams |
| Commercial | Incentive and reward mechanisms to generate value |
| | Realising the benefits from target cost |
| | Resolution of issues that affect delivery |

The purpose of this Toolkit is to identify the risks to collaborative contracting that are contained in the topics identified above, describe the impact and establish mitigation measures. The mitigation measures are not intended to be mandatory as clients and providers will have different, often bespoke, contracting arrangements. It is intended as guidance that will stimulate thought around the risks and offer suggestions about possible solutions that can be tailored to meet exact requirements.

The primary focus of the Toolkit is for use with local highway authority clients and their providers. As noted above a Steering Group was established to identify the risks and advise on mitigation guidance. Input has been given by Highways England as their experience in relation to these risks is relevant.

In addition consultation has taken place with:

- Industry specialist practitioners identified by the Steering Group
- CIHT Procurement and Delivery Panel
- HTMA Service Delivery working group

## 1.4 Structure

This Toolkit is structured as follows:

**Part 1 – Introduction** - including identification of summary risks containing;

Three sections reflecting end to end service delivery;

- Procurement – creating the right contract and selecting the most appropriate provider.
- Operational – creating the right organisational and behavioural environment.
- Commercial – obtaining value for money and resolving issues.

**Part 2 – Outline of risk, impact and mitigation** - an analysis of each risk including the impact and mitigation measures. For each risk there is a flowchart which describes the key activities necessary to implement that mitigation.

**Part 3 – Detail for mitigation activities** - a detailed explanation of the mitigation measures covering each activity on the flowcharts. In certain instances the mitigation suggested in this Toolkit is somewhat substantiated by evidence of similar approaches being implemented – where this occurs a very brief practical example with contact details has been included. However, as a number of the suggestions in this Toolkit are new, the practical examples cited cannot be construed as a validation of all of the points raised in the particular sections.

## 1.5 Implementation

There are a number of important considerations in relation to the implementation of the suggestions given in this Toolkit;

**The need to work together** – both clients and providers contribute to the root cause of the undesired outcomes described above and it is essential that they both contribute to the mitigation of the risks identified within this Toolkit – a collaborative effort is required to deliver a high performing contracting strategy.

**Savings in time and money** – there is a significant amount of non-value adding time and resource in our industry devoted to dealing with issues that arise where the risks identified in this Toolkit are not mitigated or avoided. Adopting the recommendations outlined in this Toolkit including the use of industry standard contract documentation will, it is suggested, avoid this abortive work and hence deliver savings in time and money to both clients and providers.

**There are benefits to be gained from dialogue** – the application of a purely transactional relationship in both the procurement and management of our contracts is a flawed approach which can ultimately lead to degrees of confusion, misinterpretation and conflict. Clients in particular should avail themselves of every opportunity (including, but not limited to, the opportunities made available by the introduction of the Public Contracts Regulations 2015) to have dialogue with providers commencing as early as possible about the strategy and documentation for their contracts.

A practical example is as follows;

***Collaborative procurement in Devon, Plymouth and Somerset***

*The 2015 Contracts Regulations include the Competitive Procedure with Negotiation. Adopting this procedure proved advantageous to the team working on Devon County Council's Highways Term Maintenance Contract. Undertaking a collaborative procurement alongside Somerset County Council and Plymouth City Council, the client authorities wanted the ability to test and refine the three contracts with tenderers, to achieve an optimised solution. The Councils were clear on their service needs but wished to utilise the knowledge of the marketplace to further improve deliverability, innovation and overall service outcomes.*

*The negotiation process created the opportunity to discuss with tenderers the benefits, intentions and risks associated with the contract. Tenderers were then able to offer proposals for the specifications to be adjusted in order to improve the commercial offering and reduce elements of risk. This flexibility brought benefits to the process whereby further efficiencies were achieved between the Initial and Final Tender stages. Ultimately this improved the quality and value for money of each contract, achieving an optimised service.*

*Further information is available from Meg Booth, Devon County Council on telephone 01392 383000 or e-mail meg.booth@devon.gov.uk*

**The Toolkit can be used 'in service'** – although the suggestions in this Toolkit are generally designed to improve the approach and documentation for new contracts yet to be procured, many of the suggestions can equally apply to contracts already in existence that may be experiencing the effects of some of the risks identified.

**Relationship with other HMEP products** - there is a strong relationship between this document and other HMEP products, in particular:

- Procurement Suite including;
  - Standard Form of Contract
  - Method of Measurement
  - Price List
  - Standard Specification and Standard Details
- Procurement Route Choices for Highway Maintenance Services
- LEAN Toolkit for Highway Services

The guidance provided in this Toolkit is most effective if applied alongside the HMEP products identified above where referenced in this Toolkit.

It should be noted that this Toolkit was developed pre-Brexit i.e. in the context of prevailing European procurement regulations.

## 1.6 Summary Risks

| Procurement Issues | | |
|---|---|---|
| **Topic** | **Risk** | **Reference** |
| Effectiveness of procurement processes | Lack of alignment and clarity between client and tenderer at bid stage | P1.1 |
| | Past performance of tenderers not adequately addressed | P1.2 |
| | Ineffective procurement team structure and governance | P1.3 |
| Structure of quality submission | Lack of consistent processes and formats for quality submissions | P2.1 |
| Flexibility of contract term | Inappropriate contract duration | P.3.1 |
| Pricing structure that reflects actual cost | Lack of clarity on risk allocation and pricing structure doesn't reflect work requirement | P4.1 |
| Tender assessment models to identify best value | Tender financial comparisons may be modelled in a manner that does not reflect the true nature of the work to be undertaken | P5.1 |
| Seeking alternative solutions at tender stage | Procurement restrictions precluding providers suggesting alternative solutions – deemed to be variant bids | P6.1 |
| Meaningful efficiency discounts | Ineffective discount mechanisms built in to contracts | P7.1 |
| Effective contract mobilisation | Lack of clarity about programme and cost for mobilisation activities | P8.1 |
| Behaviours that support service delivery | Inappropriate behaviours on both client and provider side | P9.1 |
| | | |
| **Operational Issues** | | |
| **Topic** | **Risk** | **Reference** |
| Continuity between procurement and delivery teams | Disconnect between the bid team who have understood client requirements and the proposed approach to meeting them and the hand-off to delivery teams who derive their own interpretation | O1.1 |
| Silo working within and between organisations | Work fragmented across multiple organisations and/or functions | O2.1 |
| Effective collaboration between teams | Lack of formal operating mechanisms for collaborative working | O3.1 |

| | | |
|---|---|---|
| **Commercial Issues** | | |
| **Topic** | **Risk** | **Reference** |
| Incentive and reward mechanisms to generate value | Lack of robust incentive and reward mechanisms built into contracts | C1.1 |
| Realising the benefits from target cost | Failure to maximise the benefits from target cost | C2.1 |
| Resolution of issues that affect delivery | Lack of process for dealing with issues in a structured and disciplined manner prior to formal dispute | C3.1 |

## 1.7 Comments and Feedback

The HMEP Programme Board would welcome any comments and feedback on this Toolkit so that it may be reviewed, improved and refined to give the sector the best advice possible. If you wish to make a comment, please send an email to highwaysefficiency@dft.gsi.gov.uk with the Header ‘Feedback on the Collaborative Contracting – a Toolkit for managing the risks.

# Part 2

# Outline of risks, impact and mitigation

## Procurement Issues - effectiveness of procurement processes

| P1.1. Lack of alignment and clarity between client and tenderer at bid stage | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Documentation prepared by clients that tenderers base their price on must be clear and unambiguous in terms of the nature and extent of work that is required – otherwise tenderers will make their own interpretation which may be different from the clients' requirements. | Latent ambiguities emerge post tender where tenderers interpretations differ from client requirements and if these are not identified and resolved pre-award then there is potential for this to adversely influence service delivery and affect relationships. | Clear simple tender documentation is essential and also an approach to identifying and dealing with areas of misalignment pre-award. |

Adopt standard documentation

↓

Use simplified schedule of rates

↓

Ensure robust tender assessment model

↓

Provide robust tender instructions about pricing

↓

Identify excessively low or high rates and prices

↓

Identify root cause of any excess and resolve using formal process

## Procurement Issues - effectiveness of procurement processes

| P1.2. Past performance of tenderers not adequately addressed | | |
|---|---|---|
| Detail | Impact | Mitigation |
| There is an over-reliance by clients on written submissions by tenderers at the Selection Questionnaire (SQ) stage without verifying the extent to which similar services have been successfully performed in the past for other clients. | Tender submission does not correlate with likely future performance and may not accurately reflect the true operating methodology and culture of the tenderer. 'Quality promises' are not delivered and enforcement may be problematic. Issues can remain on the agenda throughout the life of the contract. | Greater emphasis to be placed on evaluating past performance. A compliant delivery of a previous contract does not necessarily represent a meeting of client expectations – the manner in which it was delivered is equally important. Clients should investigate tenderers past performance. |

Determine criteria for past performance – softer issues

Discuss softer issues with reference clients

Consider client culpability

Allocate marks for softer issues

## Procurement Issues - effectiveness of procurement processes

| P1.3. Ineffective procurement team structure and governance | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Imbalance of skills in procurement teams. There is not a balanced representation of skills on the team that covers all elements of the service rather than having a bias towards the technical procurement aspects. | Procurement exercise doesn't fully meet the required service outcomes. Tender documentation may not accurately reflect the service required and the tender submissions are not fully understood from an operational and commercial perspective and so may be improperly assessed. | Balanced cross-functional teams working to a closely monitored programme. Teams should have both procurement and service delivery experience and delays to contract start date must be avoided i.e. that could adversely affect mobilisation time. |

Establish balanced procurement team

Ensure joint accountability

Undertake risk analysis

Establish robust programme

Mitigate delays

## Procurement Issues – structure of quality submission

| P2.1. Lack of consistent processes and formats for quality submissions | | |
|---|---|---|
| Detail | Impact | Mitigation |
| There is little standardisation in the way in which quality submissions/statements are invited leaving it open to the tenderer to interpret the clients requirements and the risk that clients may not be asking the right questions in the right way. | Wide variances in tender returns leading to wide variances in marking from tender assessors. Tenderers interpret the documents differently and provide different responses – there could be a lack of a 'level playing field' in the way bids are marked. | More effective format for quality submissions. Greater standardisation across the industry using 'best in class' processes and documentation for inviting and submitting quality approaches at tender stage. |

Identify key aspects to be covered in tender

⇩

Provide clear tender instructions

⇩

Segment the service

⇩

Structure format of quality submissions

⇩

Provide template for stated requirements

⇩

Provide template for continual improvement and innovation

⇩

Provide template for evidence of past performance

## Procurement Issues – flexibility of contract term

| P3.1. Inappropriate contract duration | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Contract term could be too short or long with inadequate mechanisms to extend or exit. | Higher cost to client and reduced potential to develop effective relationships. Procurement exercises are inevitably expensive and so fewer instances will save money. There may be insufficient time to leverage the benefits of a good client/provider relationship. | A well planned strategy together with effective processes for extensions. Extensions should be based on performance but also by mutual agreement. |

Establish contract strategy

Set term and extension arrangements

Consider fixed term

Consider fixed term with options to extend

Consider fixed term with options to reduce

Establish extension metrics

Review and agree extensions

**Procurement Issues - pricing structure that reflects actual cost**

| P4.1. Lack of clarity on risk allocation and pricing structure doesn't reflect work requirement | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Clients may not be aware of the consequences of how risk is transferred under the contract. | Tender prices based on assumptions leading to higher costs and potential post contract commercial dispute. Where tender documents seek to transfer risk that is outside the providers control then inevitably prices can be higher and in some cases providers decline to tender. | Improve pricing mechanisms with better allocation of risks. Tender documents should be clear and unambiguous so that prices can be obtained that wherever possible do not include risks that are beyond the reasonable control of the tenderer. |

Ensure client requirements do not inappropriately transfer risks

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Ensure pricing mechanisms do not inappropriately transfer risks

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Utilise HMEP Method of Measurement and Price List

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Adapt behaviours

## Procurement Issues - tender assessment models to identify best value

| P5.1. Tender financial comparisons may be modelled in a manner that does not reflect the true nature of the work to be undertaken | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Clients use 'just in case' schemes and items as part of the model which may only occur occasionally in practice and hence if priced cheaply by a tenderer could inappropriately influence the outturn comparison. | Lowest whole life cost tender not identified. The cheapest submitted tender does not prove to be the cheapest outturn cost tender and so does not represent best value for the client. | Accurately predict the volume of work in conjunction with revised quality submissions and pricing mechanism. Clients should use future programmes of work rather than historic spend to determine the best model. |

Adopt revised approach to quality submissions

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Use realistic pricing mechanisms

↓

Develop realistic tender assessment model

## Procurement Issues – seeking alternative solutions at tender stage

| **P6.1. Procurement restrictions precluding providers suggesting alternative solutions – deemed to be variant bids** | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Providers restrict their submission to only covering the explicit requirements stated in the contract and do not look at meeting client expectations and outcomes. | Lack of innovative solutions with potential lower cost/better value at tender stage. Clients do not receive best value solutions with tenders and hence will not be able to take advantage of them during the contract. | Develop process for capturing innovation at tender stage. Assess the capability of tenderers to identify and develop better ways of working. |

Ensure quality section makes provision for stated requirements

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Ensure quality section makes provision for alternative solutions

↓

Clarify instructions for tenderers

↓

Describe alternative solution in tender

↓

Explain impact and consequences in tender

## Procurement Issues – meaningful efficiency discounts

| P7.1. Ineffective discount mechanisms built into contracts | | |
|---|---|---|
| Detail | Impact | Mitigation |
| The tender mechanism for efficiency savings does not promote the action necessary by the successful tenderer to generate true cashable savings over the life of the contract. | Tenderers build in the efficiency discounts by inflating prices in tender submissions.<br>Real tangible efficiencies are not generated for the client. | An effective process for generating efficiencies should be assessed at tender stage and its use post tender made a contractual obligation. |

Ensure efficiencies addressed in tender

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Set criteria for efficiency process in tender documents

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Assess process as part of quality submission

↓

Realise benefits

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Measure and improve

## Procurement Issues – effective contract mobilisation

| P8.1. Lack of clarity about programme and cost for mobilisation activities | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Clients may be unsighted on risks that could adversely affect mobilisation of the contract. | Inability to effectively and efficiently manage and control mobilisation.<br>It may take significant time, if at all, for the contract to recover from a shortened or ineffective mobilisation. | Improved criteria for mobilisation process including a risk assessment.<br>Both client and provider need to be clear about risks to mobilisation. |

Ensure detailed mobilisation requirements in tender

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Manage programme post award

↓

Manage risks post award

↓

Ensure quality promises delivered

## Procurement Issues – behaviours that support service delivery

| P9.1. inappropriate behaviours on both client and provider side | | |
|---|---|---|
| Detail | Impact | Mitigation |
| The requirements for desired behaviours are not established from the outset and properly managed. | Loss of the benefit that is possible from joint working.<br>There are two possible scenarios – Firstly there could be a breakdown in relationships that results in conflict and the contract not being administered properly. Secondly albeit that the contract is administered properly the benefits from a collaborative style relationship are not achieved by way of continual improvement. | Adopt a standard approach to assessing collaborative behaviours and ensure inclusion in tenders.<br>Includes monitoring behaviours post tender and taking any necessary corrective action. |

Establish desired behaviours

Ensure collaborative behaviours form part of tender documentation

Incorporate into tender assessments

Measure and improve

## Operational Issues – continuity between procurement and delivery teams

| O1.1. Disconnect between procurement/ bid teams and service delivery teams | | |
|---|---|---|
| Detail | Impact | Mitigation |
| There is lack of continuity between the bid/procurement teams who have understood client requirements/provider proposals and the hand-off to delivery teams who derive their own interpretation. | Promises made at tender stage misinterpreted or not delivered. The providers bid team and clients procurement team will understand the context of statements made in the quality submission and things that are important to delivering the clients requirements – any disconnect in team continuity will have an adverse impact on service delivery. | Transition plan to ensure continuity of client procurement team and provider bid team. Ensure that the tender documents are clear about what is expected and that a transition plan is agreed at the start of mobilisation. |

Understand provider team involvement

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Understand client team involvement

↓

Ensure detailed tender requirements

↓

Develop transition plan

## Operational Issues - silo working within and between organisations

| O2.1. Work fragmented across multiple organisations and/or functions | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Work is fragmented between client and provider and also across multiple functions within each organisation. Impaired performance due to hand offs and lack of accountability at the interfaces. | Delays to programmes of work and additional cost. Cycle time on both client and provider processes increases – can result in rushed/accelerated delivery and poor quality solutions. | Integration to be addressed in organisational structures as part of quality plans. It is difficult to be prescriptive on the required approach to integration until the successful tenderer has been selected as all tenderers will most likely have different organisational structures – should be a commitment to address this in the quality submission. |

Consider provider organisational structure

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Consider client organisational structure

↓

Identify touch points

↓

Manage interfaces at touch points

↓

Manage interfaces within each organisation

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Ensure coordination and communication

## Operational Issues - effective collaboration between teams

| O3.1. Lack of formal operating mechanisms for collaborative working | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Client and providers (including their supply chain) work in isolation of each other and do not realise the benefits from a teamwork approach. | Loss of opportunity to create new value by working together that would not have been created by the organisations working alone.<br>Costs are not reduced through generation of efficiencies and innovation. | Adopt standard approach to collaboration using ISO 44001.<br>This should include greater use of Alliance arrangements. |

Consider benefits of Alliance arrangement

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Establish strategy for collaboration

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Create Alliance

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Engage supply chain

↓

Realise benefits

## Commercial Issues – incentive and reward mechanisms to generate value

| C1.1. Lack of robust incentive and reward mechanisms built into contracts | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Only the originally tendered service is delivered and the provider is not incentivised to add value. | Potential non-generation of cost saving.<br>New ways of working and alternative products/solutions are not introduced into the contract. | Ensure appropriate incentive/reward mechanisms are built in to the contract.<br>The mechanisms may not be restricted to purely financial gain. |

Establish requirements for incentivisation

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Set criteria for shared savings from cost efficiencies/innovation

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Link to contract extensions

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Link to additional turnover

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Investigate opportunities for transfer of process management

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Determine appropriate contract mechanisms

## Commercial Issues – realising the benefits from target cost

| C2.1. Failure to maximise the benefits from target cost | | |
|---|---|---|
| Detail | Impact | Mitigation |
| The benefits from target cost reimbursable arrangements are not realised.<br>True cost and cost drivers are not understood and cost intelligence not used to drive improvements.<br>Lack of understanding about the difference between price and cost. | Expensive service and lack of pressure for the provider to be efficient.<br>Lack of assurance about performance and efficiency.<br>Inefficiencies where target cost used for low value work. | Revised pricing mechanisms and better use of cost capture.<br>Simpler approach to identifying and controlling the key cost drivers that determine outturn cost. |

Establish target cost requirements

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Identify key cost drivers

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Ensure benchmarking undertaken

↓

Analyse variances and root cause

↓

Generate improvements

## Commercial Issues – resolution of issues that affect delivery

| C3.1. Lack of process for dealing with issues in a structured and disciplined manner prior to formal dispute | | |
|---|---|---|
| Detail | Impact | Mitigation |
| Issues remain unresolved and build up over the term of the contract. | Protracted debates often about misunderstood positions which erodes relationships, trust and morale.<br>Inertia and delays due to lack of effective escalation mechanism.<br>Significant senior management time wasted. | Develop issue resolution process.<br>A process that can be adopted by both parties without impacting on eithers contractual rights, but avoiding the instigation of formal dispute mechanisms. |

Agree joint objectives and desired behaviours

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Create schedule of issues

↓

Prioritise and programme

↓

Establish principle and value for each issue

↓

Convene joint meetings

↓

Escalate issues as necessary

↓

Measure and improve process

# Part 3

# Detail for mitigation activities

## P1.1 - Lack of alignment and clarity between client and tenderer at bid stage

### Context

It is important that clients ensure that their stated requirements are as simple and explicit as possible and accurately describe the services required such that tenderers can submit proposals that equally describe the way they intend to carry out the services and that their submitted rates and prices reflect the actual cost of carrying out the work.

### Adopt standard documentation

HMEP have developed a suite of contract documentation specifically tailored to highway maintenance work including:

- Standard Form of Contract
- Method of Measurement
- Price List
- Standard Specification and Standard Details

Use of these documents should assist in eliminating potential misinterpretation, and in particular on the commercial side should be more effective in describing items and activities in a manner that allows tenderers to insert prices that reasonably reflect the actual cost of carrying out the work.

### Use simplified schedule of rates

In particular clients should:

- Avoid excessive items in schedules of rates. Experience has shown that on some contracts there are literally 1000's of items. The HMEP schedule is approximately 1800 items and there have been instances of contracts with as low as 200 items. The fewest number of items that broadly represents the service to be delivered is favoured.
- Avoid including items 'just in case' – tenderers will be aware of items that are rarely going to be used in practice and will be tempted to price low (see below about making assumptions on whether an item will be used or not).

### Ensure robust tender assessment model

Clients should consider carefully whether they declare in advance their tender assessment model to tenderers. Whereas on the one hand this is an open and transparent approach, the stakes are very often so high (i.e. long term high value contracts) there will inevitably be a temptation for tenderers to structure their prices to take maximum advantage of the model, which may result in tenders that do not accurately reflect the true outturn cost of delivering the services. This could result in clients entering into contracts with tenders that do not represent the most economic whole life cost over the term of the service.

## Provide robust tender instructions about pricing

Clients should also seek to ensure a 'level playing field' for all tenderers by providing robust tender instructions about pricing e.g. the tenderer must not…;

- Price any item or activity within another item or activity – only the cost of carrying out the item or activity described should be included.
- Cross subsidise any item or activity within any other item or activity – rates must reflect the actual cost of carrying out the work included in the item or activity.
- Make any assumptions regarding the use or relevance of any item or activity – tenderers must not price an item or activity low or high based on an assumption as to whether the item will be used or not, or the extent to which it may be used – this relates to the importance of clients ensuring that schedules of rates items are meaningful and relevant to delivering the service.

Clients should consider making these requirements clear in tender documentation using phraseology such as 'tenderers who price on any other basis and/or make any such assumptions may have their tenders rejected'.

## Identify excessively low or high rates and prices

Wherever possible prior to entering into contract, clients should aim to identify any item or activity where the tendered price does not reasonably reflect the actual cost of carrying out the work.

There are a number of considerations:

- An analysis should be undertaken across all tenders to identify any 'outlier' rates i.e. those that appear excessively low or high in comparison to the mean. If tenderers have adhered to the rules above and the rates reflect the estimated actual cost of carrying out the item, then in theory there should not be significant variances from the mean.
- Both low and high rates can provoke inappropriate behaviour. Where rates are low the provider may be reluctant to carry out the work, and clients may be motivated to seek to maximise the amount of work carried out at the low rate. The converse applies with high rates – this tension often adversely affects relationships and the effective management of the contract.

## Identify root cause of excessively low or high rates and resolve using formal process

It is important that clients understand the tenderers rationale and assumptions behind what appear to be excessively low or high rates with an apparent misalignment with what should reasonably be the actual cost of carrying out the work involved.

Resolution of any misalignment will depend on the form of procurement being utilised. Contracts where dialogue is allowed have the best options for dealing with outlier rates.

On contracts using the restricted procedure the situation is more difficult:

- There is an opportunity for clients to challenge tenders (and this would include prices that build up the overall tender) that appear ‘abnormally low’. The provisions of regulation 69 of the Public Contracts Regulations 2015 must be complied with in relation to abnormally low tenders and clients can generally only reject a tender where after requiring the tenderer to explain the price or cost that appears to be abnormally low, the evidence supplied by the tenderer does not satisfactorily account for the low level of price or cost.
- There is no equivalent challenge to prices that appear abnormally high. Obviously if the overall tender is high then the bid will probably fail but there may be instances whereby there are excessively high rates and prices within the lowest tender. The way to deal with high rates that were not expected is to ask clarification questions. The client should ask for further breakdown of the rate(s) and in particular any assumptions made in arriving at the rate, in order to hopefully identify the root cause of why the rate is higher than expected. It might then become apparent that the client needs to clarify or supplement the tender documents with some additional assumptions or clarifications to ensure that all tenderers are on the same footing. This can be done at any stage of the tender process. Clients should not simply ask tenderers to adjust or reduce rates, but should only ask for more information.
- Whatever procurement route is adopted clients should have a documented process in place for dealing with both abnormally low rates/tenders and also high rates taking into account the above guidance. In both situations this process should seek to clarify the tenderers assumptions about the circumstances in which the work is carried out, considering the following:
    - Has the tenderer complied with the instructions about pricing covered above i.e. the price or cost is not artificially high or low due to cross subsidising, assumptions about use or relevance of the item or activity etc.;
    - Has the tenderer properly understood the clients requirements;
    - Is the item coverage as expected e.g. has the tenderer assumed due to possible ambiguous wording in the tender information, that others will be undertaking part of the work, for example provision of traffic management services or temporary works;
    - It is suggested that with the exception of owned plant/equipment then most tenderers relative unit costs of labour, plant and material should be similar. What could vary considerably is the assumed output for the activity – this could be artificially low or high depending upon the assumptions made about the circumstances in which the work is carried out – those assumptions could be about the volume/quantity of

work made available in a given period, restricted access, restricted timing (day/night etc.), work that is dependent on the performance of the client or others employed by the client (e.g. inspections, enabling work etc.) – clients should ensure that their tender documents are clear and unambiguous about these matters and do not unintentionally impose restrictions that could unnecessarily inflate the cost of carrying out the work. It can be seen why it is vitally important that the tenderers assumptions are clarified where their rates are high or low.

***Dorset realise benefits from using standard documentation***

*Dorset County Council has recently completed a procurement exercise to secure the services of a Strategic Partner to work alongside our in-house service, as part of our "mixed economy "service delivery model arrangements within highways.*

*Like all highway authorities in recent years, we have seen a significant reduction in our in house resource and we were concerned as to the time our engineering teams would be deployed on preparing the necessary contract documentation, diverting them away from key core activities. In addition, should our in house resource be unable to carry out this work, the Authority faced a potentially costly option should we have the work carried out by a third party.*

*We have been delighted that by using the HMEP contract documentation, we have been able to compile a document suite that fully meets our requirements using our staff in conjunction within their business as usual commitments, in a much shorter timescale that initially envisaged.*

*The evaluation process is clear, easy for both parties to understand and ensures that all salient factors are taken into account in relation to both quality and price.*

*We would strongly advocate the adoption of the documentation and would be happy to share our experience with any commissioning organisations.*

*Further information is available from Andrew Martin, Dorset County Council on telephone 01305 228182 or e-mail* a.j.martin@dorsetcc.gov.uk

## P1.2. Past performance of tenderers not adequately addressed

### Context

Many tender processes provide for a documented ‘approach’ by way of a quality submission supported by evidence of successful delivery of that approach. At the operational level, the compliant delivery of a contract, notwithstanding this is proven by evidence, does not necessarily equate to successful end-to-end delivery of the service from the perspective of the client. There should be greater emphasis placed on evidencing client satisfaction with end-to-end service delivery.

The past experience of tendering organisations and their ability to perform should be evaluated at prequalification stage.

Clients should implement a robust prequalification process which should ensure only tenderers with the capability and capacity to deliver the expected quality are invited to tender – close consideration should be given to the weighting of this element of the SQ as it is a key aspect in determining the appropriate organisations to tender – it is suggested that up to 50% would not be unreasonable.

### Determine criteria for past performance – softer issues

When clients obtain references on past contracts they should, in addition to validating the technical capabilities of the tenderers, validate the less tangible competencies, which will go some way to demonstrating the culture of the organisation, and may include;

1. Leadership;
    - How visible was leadership in ensuring that the contract was given the necessary support.
2. Communication;
    - How well did the tenderer communicate at all levels.
3. Customer focus;
    - To what extent was the tenderers approach focused on delivering satisfaction for the customer (i.e. road-user).
4. Commercial behaviour;
    - How well did the tenderer deal with commercial issues e.g. rate changes, compensation events etc. – was the contract followed and was the approach to negotiation reasonable with any necessary supporting information supplied.
5. Collaboration and teamwork;
    - How well did the tenderer interact and adopt a team based approach with the client and supplier organisations.

- Collaborative behaviours – see section 9.1 below.

6. Flexibility and responsiveness;
    - Was the tenderer 'easy to do business with' and how well did they react to requests for information/action and manage change.

Clients should use the above as a reference point and adapt as appropriate to suit their individual requirements. They must be transparent about what they are looking for i.e. what is being measured and the questions need to be relevant to the requirements of the contract.

**Discuss softer issues with reference clients**

Inform the tenderer within the SQ that when the references are validated the client will discuss the above six (or adapted) 'softer issues' with the reference clients (include list in SQ).

Albeit time consuming it is important that contact is made with the reference clients and the appropriate degree of discussion undertaken.

**Carefully consider client culpability**

Other considerations may include:

- Tenderers will obviously 'put their best foot forward' when providing references – it may be useful to obtain say three reference sites and the client can select say two from the list at their discretion to investigate by discussion with the reference clients.
- Care should be taken to understand whether any negative feedback is solely the responsibility of the tenderer i.e. the reference client may be equally culpable in bringing about a situation where performance in relation to the above criteria is less than desired.

**Allocate marks for softer issues**

Clients should consider allocating say 50% of the marks for this question for the technical response and 50% for the feedback obtained on the six (or adapted) questions above.

## P1.3 – Ineffective procurement team structure and governance

### Context

In addition to a mix of skills on the client's procurement team it is essential that a comprehensive and accurate procurement programme is established and monitored to ensure that the contract commencement date is not jeopardised by any delays during the procurement period. There is a risk that lost time is clawed back from mobilisation periods and albeit that providers will readily agree when close to securing an order, this must be avoided as the adverse implications could be significant and felt throughout the whole term of the contract.

### Establish balanced procurement team

It is understandable that most clients will not necessarily have procurement teams specifically dedicated to highway maintenance. Due to the presence of a technical industry standard contract, complex payment mechanisms and mixed quality/price tender assessments, it is essential that the client's procurement team should comprise not only expertise in procurement, but industry expertise including operational and commercial. This is especially important as the scope and characteristics of the service delivered may be different from the service initially procured e.g. due to budget constraints etc. schemes may be different and quantities of work may vary from those originally anticipated, thus affecting the ultimate valuation of the work. The tender documentation and quality/price assessment mechanisms should recognise this likelihood and this requires broad skills.

### Ensure joint accountability

There should be joint accountability between the procurement and industry experts within the team i.e. it should not be led or dominated by one particular discipline.

### Undertake risk analysis

A risk analysis should be undertaken from the outset that identifies issues that could delay the programme. Based on this a detailed programme should be prepared with key milestones identified.

### Establish robust programme

Another important point is the necessity to establish a realistic procurement timetable and rigorously adhere to it. It is very often the case that the commencement date for the contract cannot be put back and therefore any delays in the procurement programme have to be absorbed. In 8.1 below the significant risk of reducing the mobilisation time to absorb earlier delays has been identified. However, there are also risks in taking time out of the earlier stages of the programme that could result in inadequate periods for tender assessments, potentially resulting in significant time pressures on those client side individuals involved in the process – this could adversely affect the quality and thoroughness of the assessments.

Also with the emergence of clients undertaking joint procurement exercises care should be taken to ensure that the tender submission period reflects the requirement to submit multiple bids with varying specifications albeit as part of a single procurement.

**Mitigate delays**

Where unavoidable delays occur the programme should be re-assessed to ensure the contract commencement date and mobilisation period is maintained.

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## P2.1 - Lack of consistent processes and formats for quality submissions

### Context

There is a high degree of inconsistency in the way clients invite quality submissions, and yet they are consistent in their belief about the importance of quality, which often represents in the order of 70% of the tender marks.

Examples of the various approaches include:

- A topic area with little guidance about what's important to the client leaving the tenderer to describe an approach in whatever style he chooses.
- A topic area with guidance provided on only some elements of the total approach that should be addressed by the tenderer but the remaining approach left to tenderers discretion.
- A prescribed format e.g. swim lane process flows with activity notes and a generic requirement to address certain quality attributes e.g. right first time, behaviours, etc.
- Some tenders require supporting evidence demonstrating how the approach has successfully been used on other projects – some tenders do not require such evidence.

A facet of all of the points above is that the content of the submissions can vary widely even on the same tender opportunity. Because of the lack of guidance about what's important to the client, tenderers can be left to 'second guess' this and include it in an approach using their own interpretation.

There are a number of consequences arising from the above scenario:

- Tender returns may not meet with client expectations i.e. the tenderer has wrongly 'second guessed'.
- Clients may find it difficult to truly identify the best provider which can have serious long term consequences for both parties.
- Wide variances in marking from tender assessors i.e. where they are left to form an opinion on the adequacy of the tender response.
- Frustration from the market when tenderers have spent huge sums and through incorrect 'second guessing' have ended up with a misalignment between their submission and the clients 'unspoken' requirements and a failure to recognise the true capabilities of the tenderer.
- The potential for capable providers to purposely avoid certain tender opportunities due to the uncertainty in the way tenders need to be submitted and the way in which they are reviewed.

There is a lack of consistent and repeatable processes to address the above issues effectively. However, in broad terms for each tender opportunity clients should endeavour to ensure the following;

### Identify key aspects to be covered in the tender

For all key operational processes clients should establish what aspects they require the tenderers to cover in their submission e.g. what key elements of a winter service process does the client want to see the tenderers address in their quality submission including the information to be provided. Obviously this will vary depending upon what responsibilities the client takes vs what is outsourced e.g. inspections and asset management may be retained by the client.

This approach can also be provided for the management/governing processes.

Examples of key aspects could be as the table below – clients will need to amend this to suit their individual circumstances. This covers both the operational work but also the governance arrangements which will without doubt have a significant impact on the successful delivery of the service and hence should be an integral part of the quality submission.

| Work element | Key aspect |
|---|---|
| **Operational** | |
| Mobilisation | • Plan – what it will contain<br>• Resources and continuity between bid/mobilisation and delivery teams<br>• Procurement – needs and method<br>• Systems - description and availability<br>• Key milestones<br>• Risks – how they will be identified and managed |
| Inspections (if by Provider) | • Type and frequency<br>• Resources<br>• How accuracy assured |
| Asset Management | • Approach – how will best solution for client be achieved and proven – delivery of client outcomes<br>• Scheme identification and approach to value management including whole life costing<br>• Integration with routine maintenance activity<br>• Systems<br>• Financial model<br>• Compliance with client asset management systems |
| Scheme development | • Design – approach and assurance<br>• Value engineering – approach<br>• Achievement of 'design to budget' for the original scope |

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|---|---|
| | • Avoidance of scope creep that could affect budget/out-turn cost<br>• Involvement of customer and awareness of their needs |
| Scheme construction | • Resources<br>• Control of quality<br>• Control of cost and programme<br>• Extent of work sub-let and control of operations<br>• Customer communications and needs of community |
| Routine maintenance | • Dealing with safety defects and ensuring s58 compliance – make safe vs permanent repair decisions – avoidance of repeat visits<br>• Response times for repairs – categorise and confirm times where not mandated in Service Information<br>• Resources and integration with other resources on scheme construction/incident management<br>• Frequency of maintenance activities – list and times<br>• Risk based approach to ensure resource is optimised and the correct frequencies are established |
| Incident management | • Response times – state times and what covered<br>• Clear up time – actions to reduce/minimise<br>• Resources and integration with other resources on scheme construction/routine maintenance activity<br>• Use of supply chain<br>• Standby arrangements<br>• Communications – with client and emergency services – structure and systems |
| Winter service | • Preparation for winter period<br>• Resource capacity, capability and resilience – including resource utilisation outside winter period<br>• Use of supply chain<br>• Decision process for treatment<br>• Routes and optimisation mechanisms e.g. route based forecasting etc.<br>• Standby arrangements<br>• Learning and debriefs<br>• Interaction with customer |
| Traffic and network | • Accountabilities |

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|---|---|
| management | • Ensuring compliance with booking and management requirements<br>• Ensuring compliance with Chapter 8 requirements<br>• Ensuring minimum impact on customer |
| Safety | • Approach and compliance with legislation<br>• Accountability<br>• Ensuring the right culture<br>• Dealing with supply chain |
| Environment and sustainability | • Approach and compliance with legislation<br>• Compliance with client policy<br>• Disposal of waste, re-use and recycling – reduction of waste |
| | |
| **Governance** | |
| | |
| Organisational structure | • Key roles and availability<br>• Integration and collaboration internally i.e. avoidance of silos<br>• Engagement of leadership<br>• Office and depot arrangements |
| Programme Management | • Approach and principles adopted<br>• Optimisation of resources<br>• Accountability<br>• How budget fluctuations will be managed |
| Risk Management | • Approach to identification and mitigation<br>• Accountabilities<br>• Risk in supply chain – how managed |
| People | • Training and development<br>• Recruitment<br>• Retention and succession planning |
| Supply chain | • What work is sub-let<br>• Approach to procurement – back-to back arrangements<br>• How will supply chain be managed to ensure integration<br>• Availability of resources and resilience |
| Collaboration | • Approach and process for joint working with client and supply chain<br>• Ensuring appropriate behaviour internally, with the client and with/from supply chain<br>• Working with the community to enhance social value<br>• Working with other stakeholders eg local businesses<br>• Approach to managing change |

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| Quality and performance management | • Approach including use of systems and technology<br>• Reduction in waste – lean approach to efficient management of operations<br>• Capture of data<br>• Accountability for performance<br>• Metrics utilised over and above those prescribed in the contract<br>• Dealing with non-conformance/flawed performance<br>• Benchmarking – within the providers business and with other providers/clients – sharing of best practice |
| Cost management | • How cost will be controlled<br>• Understanding cost of work and outputs including that of supply chain<br>• Use of systems and cost reporting on all activities i.e. irrespective of payment mechanism<br>• How new rates will be established and negotiated |
| Efficiency and innovation ( see also section P6.1 and P7.1 below) | • Process and accountabilities – separate processes for efficiency savings and innovation (latter is change to client stated requirements where acceptance required by client)<br>• Involvement of supply chain<br>• Investment in R&D<br>• Reward/sharing arrangements – how will cost reductions be realised and shared over the life of the contract |

## Provide clear tender instructions

Quality submissions should contain statements that are capable of being contractualised and not aspirational.

Clients should as part of the Instructions for Tenderers require tenderers to use terminology such as ‘we will…’ rather than ‘we may…’ and not to make their quality promises conditional on something being done by the client or others.

## Segment the service

It is common for clients to segment the service into types of work such as the work elements described above, and also highlight aspects within those segments/elements which could be described as ‘risks’ or ‘issues to be addressed’ (covered under ‘key aspects’ in the table above). Whatever approach is adopted it is important that clients make it clear to tenderers whether they want them to describe their approach to the whole of the work segment/ element including the particular issues/key aspects, or just the issues/key aspects. For example if using the above table does the client want to see a quality submission for say winter service that covers the whole of the winter service process but with a focus on the key aspects (i.e. bullet points), or a submission that just covers the key aspects alone.

### Structure format of quality submissions

Also within the framework of a compliant bid, tenderers should be able to put their 'best foot forward' and differentiate themselves from their competitors by:

a) Offering novel approaches to delivering the client's requirements as stated in the tender documents.
b) Offering proposals that may change the client's stated requirements, but will result in added value.

Section P6.1 below covers the rationale behind separating these two facets of the quality submission.

### Provide template for stated requirements

Clients should prescribe a template that tenderers must use to complete their quality submission addressing as appropriate the work element as per the table above. This would also cover the key aspects as per the Instructions for Tenderers. Within this section the tenderers would be free to describe any novel approach that they may propose that would add value for the client and reduce cost. It is assumed that because this is part of a compliant bid the cost savings for the tenderer would be built in to the pricing section of the bid as it does not need a change to the client's stated requirements. Collaborative behaviours would have its own work element and key aspects as per the table above but the way in which that would manifest itself could be covered in each of the other elements.

### Provide template for continual improvement and innovation

Clients should prescribe a template for continual improvement and innovation – the process generally would be described in its own work element as the table above. In all of the other sections of the quality submission the tenderer could include proposals to change the clients stated requirements and suggest alternative approaches – this for example could relate to a prescribed process or a product/specification, or a response time. It would also cover any consequential benefit to the client or others if the proposal was adopted. It would be marked in the quality assessment of the tender and not the price section. However an approximate whole life cost saving to the client could be included in the quality section. In relation to this section the Instructions for Tenderers should clearly explain the mechanism for using ideas put forward from unsuccessful tenderers and the IPR associated with that. There are varying schools of thought on this but it is suggested that in the spirit of collaboration and providing best industry solutions to the customer any ideas put forward should be able to be utilised by the client on the contract going forward whether these have been suggested by the successful tenderer or not. It may of

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| course be a little more straightforward to manage this process where the Competitive procedure with negotiation is used or when using Competitive dialogue |
| **Provide template for evidence of past performance** |
| The client should also prescribe a template where evidence could be provided separately covering where the approach described has been used successfully on previous contracts. |

## P3.1 - Inappropriate contract duration

### Context

Especially in the case of a new provider it can take time to build up effective relationships where trust is established and embedded – when in place this can allow for a smoother running of the contract with less administration and bureaucracy, checking, duplication of roles etc. Short contract terms can mean that clients and providers don't have sufficient time to properly leverage the benefits.

### Establish contract strategy

Clients should be clear from the outset about their strategy for the contract. For example they may wish to consider a number of options including:

a) A short duration contract – it may be that there is a significant impending change in the client organisation that would necessitate a new contracting arrangement in the short term future. Also it is often thought that in an increasingly competitive market clients should take the opportunity to go out again sooner to the market to take advantage of cheaper prices. The rationale of this motive is uncertain – unless costs for providers are reducing or there is a marked trend towards greater efficiency/increased work outputs etc., then it is suggested the primary reason for cheaper market prices is providers tightening their margins or squeezing sub-contractor/suppliers prices or using sub-contractors/suppliers who may not deliver a quality service. If any of these scenarios apply then clients must accept and plan for the possibility that the quality delivered on the contract may not be to their expectations and there could be protracted discussions and possible disputes as providers seek to maximise the commercial benefit from contract changes etc. in order to compensate for the 'market forced' reduction in their margins. It is unlikely that clients will get the best out of their contracts if providers are not returning a reasonable margin, assuming they are working efficiently.

b) A flexible duration contract that can be extended or not by mutual consent. There are strategic advantages in this type of arrangement whereby both parties create the opportunity to maximise the joint benefit from their relationship, where both parties are performing their obligations to a high standard and collaboratively.

### Set term and extension arrangements

In relation to setting the most appropriate contract term clients should consider the following;

There are 3 primary options:

a) A fixed term.
b) A fixed term with options to extend based on performance (by one-off extension or incremental).
c) A longer fixed term from the outset with the option to reduce the term based on performance.

## Consider fixed term

A fixed term unless specifically required by the strategy as described above, would not normally provide the flexibility for both parties to either extend or curtail the relationship – there would be no 'choices' to be made.

## Consider fixed term with options to extend

A fixed term with options to extend based on performance has the following attributes:

- Unless the extension criteria are absolutely mechanistic there is a risk that the client does not choose to extend the contract due to other strategic reasons and this could be a de-motivator for the provider.
- There is an opportunity to build in the potential for a very long term relationship (eg 20yrs +) from the outset but with the option to back away from that if appropriate. This can be done by 'refreshing' the contract with substantial reviews at certain intervals, which is a positive action as opposed to the given term option below whereby the substantial review simply doesn't remove the term already given.

## Consider fixed term with options to reduce

A longer fixed term with the option to reduce based on performance has the following attributes:

- Reducing the term could be seen as a disincentive and de-motivator.
- There is no perception of 'earning' something i.e. an extension.
- Less flexibility if circumstances change and either party wishes to exit the contract earlier.
- There are other mechanisms in the contract that should be used to deal with poor performance.
- There may be a risk of complacency on the part of the provider and possible grounds for contention i.e. the time has already been given and there has to be good defined reasons to remove it.
- There is more likelihood that the provider will use the full term as the depreciation period to write off assets which could result in a cheaper bid.
- If the contract is not a success for the provider then losing time from the contract period may be a preferred option, which could carry the risk of incentivising poor performance.
- The option to achieve a long term relationship should be 'designed in' when defining the contract term at tender stage.

- Short contract terms tend to limit investment and innovation due to limited time to make returns.
- Longer terms reduce the frequency of procurement with associated reduction in costs.
- In order to keep the appropriate control on performance it is suggested that incremental extensions/reductions are utilised.
- The fixed term should be sufficient to allow the development of relationships and also commercially a reasonable write-down period for capital equipment, depots etc.

### Establish extension metrics

In relation to extension arrangements clients should consider the following:

- Whether extensions are given or removed should be based on performance and it is crucial that such extension metrics are simple, clear and unambiguous. There is a high risk that complicated and ambiguous metrics will demotivate both client and provider in pursuit of extensions. The fewer metrics the better.
- The performance metrics should include client satisfaction – it could be that members are involved in assessing the providers performance in this regard.

### Review and agree extensions

- The frequency of reviews and extension granting must be clearly set out in the contract. If for example option b) above is adopted and incremental extensions granted then the arrangement could be that the original term is maintained and rolled forward at all times e.g. if the original term was say 5 years then maintain that by granting a 2 year extension at the end of year 3 and continue in that manner.
- There should be an option built in to defer decisions for say a year in order to allow performance to be improved without losing the opportunity of being granted an extension. Alternatively there should be an opportunity to 're-earn' any extensions not granted at a particular review if subsequent performance improves.
- It should be recognised that all extensions are by mutual consent – there must be intent from both client and provider to continue the contract.
- The maximum permissible incremental extension is somewhat subjective. On the one hand there should be an opportunity to continue with a high performing successful relationship over a long period – on the other hand there is a risk of stagnation and a stifling of the market should one relationship go on for too long.

In summary, it is suggested that a fixed initial term should be established with a minimum period in the order of 5 – 7 years together with options to incrementally extend based on performance and mutual agreement to a suitably long term.

***Extensions based on performance in Walsall***

*Tarmac was awarded the £10m/annum Highway Repair and Maintenance contract for Walsall Metropolitan Borough Council in 2009. The contract includes the provision of reactive maintenance, incident response service, winter maintenance, routine maintenance, planned maintenance and improvements and highways schemes.*

*Originally awarded for a 4 year term the contract included an incentive mechanism in the form of two 2 year extensions to the contact to be awarded based on performance as measured by a suite of contract Key Performance Indicators.*

*Tarmac has been awarded both available extensions to the contract, having demonstrated ongoing improvements to the service and delivering efficiency savings. The extensions have provided a stable working environment for staff and operatives which has allowed them to focus on the delivery of a high quality service, through the collaborative development and embedment of systems and procedures aimed at service improvement.*

*Further information is available from Mark Harriman, Service Manager on telephone 01543 375098 or email* mark.harriman@tarmac.com

## P4.1 - Lack of clarity on risk allocation and pricing structure doesn't reflect work requirement

### Context

Providers take risk as a normal part of their commercial business – some of that risk is insured, and some remains that can adversely affect the profitability of the provider organisation e.g. the risk that the estimated outputs for work were incorrect.

Clients should avoid where possible introducing additional risk when drafting tender documentation. The temptation for clients (especially when there is a tight procurement programme) is that if there is an issue about risks that is complicated to resolve then pass it over to the tenderers. This doesn't solve the issue, merely moves the accountability for solving it, and if that is to whatever extent outside the control of the provider then a tension is introduced into the contract from the outset that has the potential to cause higher tender prices, post tender commercial arguments and potential breakdown in relationships. There are also instances where providers have declined to tender based on the inappropriateness of the risk transfer – this is not a good outcome for the industry.

Costs will always be less for clients when the risks are allocated to the most appropriate party that can best manage it – it is pointless and wasteful for clients to pay providers for the cost of unused risks i.e. where outside the providers control who cannot accurately calculate the cost and therefore understandably may over assess an allowance which may not in fact be needed.

### Ensure client requirements do not inappropriately transfer risk

It is suggested that clients in some instances may be unaware of the cost to them of the risk they are placing on tenderers through their tender requirements, and there is no mechanism for tenderers to inform clients on the amounts built into tenders to cover that risk. Consequently clients may be faced with not having a choice about whether it is favourable from an economic perspective for the risk to stay with them or transfer to the successful tenderer e.g.

- Use of RPI for indexation – standard industry RPI indices often under-recover providers cost and they make an allowance for this in their tender – this is an unknown risk and failure to accurately predict the shortfall could leave providers exposed. BCIS have produced an indexation mechanism that provides a more equitable recovery. Care should be taken by clients when introducing restrictions to RPI e.g. non applicability for the first 12 months of a contract, or a non-adjustable element as again this imposes risks on the provider and it is uncertain where allowances should be made for this in the submitted tender.
- Changes in law – contracts often include a clause that places this risk on

providers – the impact of this is obviously impossible to predict and again could leave providers exposed in the future.

- TUPE arrangements – existing TUPE arrangements cause significant administration during the tender period and inconsistent pricing of tenders – clients need to be more proactive in the tender process to ensure absolute clarity in order to allow tenderers to accurately assess TUPE implications, number of transferees etc. There should be an industry standard process for managing TUPE and to that end HTMA have produced a TUPE Data Template which clients are encouraged to use and consider including in tender documents as part of the demobilisation process.
- Pension liabilities – inaccurate pricing of pension liability through speculative assumption of risks e.g. no cap on liability on defined benefits scheme – potential withdrawal of bidders.

In these instances it may be that the client would not want to take the risk – the important point is that this should be a commercially informed choice – tenderers will have to make sufficient allowance in their tender which may understandably prove to be excessive in which case the client will be paying for unused risk. At worst the risk transfer may discourage providers from tendering for the contract. Wherever a client agrees to take on board the risk they must be satisfied that the provider will manage the work associated with that risk in the most efficient manner.

## Ensure pricing mechanisms do not inappropriately transfer risk

There is a risk that pricing mechanisms in tender documents may contain elements that do not reflect the nature of the work to be undertaken e.g.

- Items included in schedules of rates (SoR) are too excessive and in some instances outdated and do not relate to the actual specification of work that will be undertaken.
- The way in which the items are measured are not aligned to the process by which the work is undertaken, or indeed by which tenderers estimators price that work e.g. quantity banding, unit of measurement (tonnes vs m2), etc.
- Items or activities for cyclical maintenance work are described in a way that is not ‘method related’ and so clients are often unaware of what work is included in the tendered sums.

As noted in P1.1 above the ultimate risk is that the tendered price for the item or activity does not reasonably reflect the actual cost of carrying out the work.

It should also be noted that some clients after having used tendered schedules of rates have gone beyond this and developed arrangements whereby rates for work are built up post tender from first principles based on actual cost and used for either fixed prices or target cost. This eliminates the risk associated with the development and pricing of a schedule of rates that accurately describes the actual work to be done but carries with it different types of risks e.g. how to obtain competitive tenders, consequences for lack of cost control etc.

## Utilise HMEP Method of Measurement and Price List

HMEP with the support of HTMA have produced as part of the new Form of Contract for Highway Maintenance Services a suite of documents to address some of the above issues including a Method of Measurement and Price List. Through these documents the following risks (in addition to others) have been addressed which will significantly improve the alignment between clients and tenderers in respect of the way prices for work are sought and submitted at time of tender.

Some of the key areas of change are included in the table below, together with the rationale behind them:

| SoR items reduced to circa 1800 from typically many thousands |
|---|
| Why done – Traditionally there are far too many items in the SoR many of which will not be used during the contract term because they simply have no relevance to the work undertaken. Unfortunately this can lead to the unintended consequence of providers either not pricing the item (because the specification is no longer available on the market) or pricing the item low because they know that it is highly unlikely to be used in practice – see note in 1.1 above about making assumptions regarding the use or relevance of any item. The approach often taken by clients is to include as many items as possible on a 'just in case' basis, however, the perceived benefit of this approach is unfortunately far outweighed by the confusion, built in redundancy and the creation of opportunities for strategic pricing by providers. |
| Implications – 1800 items reasonably reflects the majority of work on a highway maintenance contract and the use of this SoR will massively reduce the number of redundant items and make the pricing structure relevant to both client and provider. The item descriptions also more closely match actual specifications. Fewer items will allow easier quantification for client's tender financial assessment models. |

| Quantity bandings changed |
|---|
| Why done – traditionally banding of quantities of work have been set with little recognition of the operational work method e.g. from hand work to machine work. |
| Implications – estimators can price items at rates which realistically reflect the method and therefore actual cost of carrying out the work. |

| Greater use of establishment items |
|---|
| Why done – to reflect the true cost of carrying out the work e.g. mobilising resources could be a significant cost which is not recovered through rates when a small quantity of work is ordered. |

Implications – a fair return for the provider where recovery more closely reflects actual cost. More cost effective for clients as they don't end up paying an average – they only pay when it occurs.

| Alternative mechanism for specifying cyclical work |
| --- |
| Why done – to move away from generalised lump sum items where it is unclear as to the volume and method of work. There is a Minor Repair Service Information Summary completed by the client showing quantities against activities with different response times. |
| Implications – it allows all providers to price the activities on the same basis and reflects the way how they intend to carry out the work. Both the client and provider to refine the scope post award in order to provide best value for money. |

## Adapt behaviours

Adoption of the HMEP Method of Measurement and Price List demands a shift in behaviour by both clients and providers, for example;

- Clients who reserve the role of inspection will need to be far more rigorous in managing the way in which work is ordered so as to take advantage of the transparency provided in establishment/mobilisation costs and quantity related cost.
- Clients need to be accurate in the information provided in terms of the asset quantities in the SoR and the assessment quantities for the lump sum activities including where there are different response times in the Service Information Summary.
- Providers must insert rates for items and activities that closely reflect the actual cost of carrying out the work – the approach would not work well if there are distorted rates that do not reflect actual cost.
- Both client and provider need to work closely to proactively manage and improve their knowledge of future requirements and jointly agree an approach which optimises resource utilisation for the provider whilst at the same time generating the best value for money for the client – this will require a high degree of collaboration.

## P5.1 Tender financial comparisons may be modelled in a manner that does not reflect the true nature of the work to be undertaken

### Context

In terms of financial submissions, tender assessment models should accurately predict the volume of work likely to be undertaken during the contract term and by application of the rates and prices given by tenderers at tender stage be able to more accurately determine the likely lowest 'outturn' cost.

### Revised approach to quality submissions

A revised approach to the structure of quality submissions as covered in P2.1 above should ensure that there is less subjectivity in tender assessments and the most likely best value tender in terms of quality is identified – as quality will most likely form a high percentage of the overall assessment then this is an important consideration**.**

### Use realistic pricing mechanisms

The following scenarios should be avoided:

- Schedules of rates that contain items that will most likely not be utilised during the contract.
- The use of 'just in case' type schemes in tender models that will rarely be adopted but for which prices are sought in the unlikely event that they may occur.
- Tendered rates that are distorted such that they do not reflect the actual cost of carrying out work.
- Lack of clarity/detail in the tender documents that result in lump sums that contain variable (i.e. across tenderers) assumptions about quantities of work required in different timescales.

It is suggested that the following approach will help to avoid these scenarios:

- Adoption of guidance in P1.1 above regarding robust tender instructions on cross-subsidising rates etc.
- Adoption of HMEP Method of Measurement and Price List including Minor Repair Service Information Summary as described in P4.1 above.

### Develop realistic tender assessment model

Given the foundation blocks of a consistent and relevant quality submission, together with a realistic pricing mechanism, then a robust tender comparison model has a better chance of identifying the best value tender.

The creation of a robust and equitable tender assessment model will be far more achievable if it correctly identifies the future programme of work which may not necessarily rely on historic spend. Accurately predicting the amount of work on the contract will correlate with the identification of the whole life best value tender.

## P6.1 - Procurement restrictions precluding providers suggesting alternative solutions – deemed to be variant bids

### Context

Providers undergo a considerable degree of self-analysis when compiling bids looking for evidence of innovation etc. on past contracts that can improve their bids – this is a good thing to encourage for the industry as a whole.

Unfortunately, and especially when the open/restricted procedure is used, they can be discouraged from putting forward those ideas into the tender due to the risk of it being rejected as a non-compliant bid.

It is suggested that the degree to which tenderers have the capability to offer such alternative solutions should be acknowledged as part of their approach to quality and assessed at tender stage, even though the adoption of the solution does not form part of the accepted bid, or is assessed as part of the tender price.

The process described below could also apply to the competitive dialogue procedure.

### Ensure quality section makes provision for stated requirements

This is covered in part under P2.1 above that suggests the quality approach in the tenders for all work elements/questions can be in two parts:

Firstly, the tenderers approach (including any novel approaches) to delivering the client's requirements as stated in the tender documents i.e. the traditional compliant bid approach.

Secondly, a section that provides an opportunity to offer changes to the client's stated requirements via alternative solutions (see below).

### Ensure quality section makes provision for alternative solutions

These alternative solutions that may change the client's stated requirements, but will result in added value, provide options for the client to adopt, or not, post tender - this could include a change to a prescribed process or its output/performance requirement, an alternative specification or product etc. Clients must carefully consider how they deal with situations where as part of the contract requirements the provider must work collaboratively with the client to say increase intervention timescales on routine maintenance taking a risk based approach – this may not be construed as an innovation/alternative solution in the sense that there may be no shared savings – situations such as this must be clarified in the tender documents.

Note that P2.1 above also suggests that one of the work elements/questions is specifically concerned with the process of efficiency savings/innovation i.e. the process that will be applied to all of the other work elements.

### Clarify instructions for tenderers

In adopting this approach the following should be considered and clearly explained in the Instructions for Tenderers:

- How Intellectual Property Rights (IPR) will be dealt with – e.g. it could be that all ideas put forward become the property of the client and may be used on the contract even if the proposer is unsuccessful.
- The process should be clearly explained in the Instructions for Tenderers covering at least the points mentioned here including a statement that the client is not obliged to accept any of the proposals post tender.
- A percentage of the available marks for the relevant section should be allocated to this innovation/alternative solutions element – the feasibility of the proposal can be reviewed as part of the quality assessment and tenderers should be discouraged from putting forward unachievable ideas – in which case they should receive a low mark.
- How the proposed alternative solution will be accepted and dealt with post tender e.g. the provider may be required to submit a detailed business case with cost and benefits explained, impact on programme etc. and this may culminate in an agreed compensation event.
- It should be made clear that any alternative solution/innovation offered must be relevant to delivering the clients objectives from the contract.

### Describe alternative solution in tender

The Instructions for Tenderers should also cover what is expected from the tenderer when putting forward alternative proposals including:

- What part of the stated client requirements will have to change and what is proposed as the substitute.
- A description of what design (if any) will be required and who would be responsible for the adequacy of that design.
- Where the alternative solution is generated by a sub-contractor/supplier to the provider, how this will be managed by the provider.
- Evidence of where the proposed alternative has been successfully used on other projects.

### Explain impact and consequences in tender

As part of the tender submission (and again this should be explained in the Instructions for Tenderers) the tenderer should be required to explain the impact and consequences of the proposed alternative including:

- What impact the alternative would have on:

    - The client or other interested parties.
    - Other parts of the service delivered by the provider.
- What reliance/dependency there is on the client or other interested parties to enable the provider to deliver the alternative proposal.
- The benefits generally, but also in terms of approximate (i.e. could be a range) whole life cost savings (the client should prescribe a timeframe over which whole life costs should be assessed in relation to the asset) and the timing of the realisation of those benefits – even though the monetary value of the saving is assessed as part of the financial section of the tender.
- The cost implications including proposed share arrangements and how the proposal will be funded.

Note: this would all be assessed as part of the quality submission in the tender. As noted above clients will need to consider the 'deliverability' aspect of proposed alternative solutions.

***Added value in Devon, Plymouth and Somerset tenders***

*As part of the collaborative procurement of the Term Maintenance Contracts for Devon County Council, Somerset County Council and Plymouth City Council, a series of eight Quality Performance Objectives (QPO's) were developed to draw out added value proposals from tenderers. In addition to various Technical Questions, which themselves measured principal criteria for service delivery, the QPO's were intended to generate added value in relation to specific areas of importance to the Councils going forward.*

*These areas included cultural alignment, efficiency delivery, and innovation and agility, amongst others. Eight objective areas were built in for which tenderers were invited to offer up to five quality undertakings for each, with associated measurement mechanisms. The approach challenged tenderers to think holistically about the Council's overriding objectives and uncovered a variety of added value initiatives which are now being built upon and implemented through contract delivery.*

*Further information is available from Meg Booth, Devon County Council on telephone 01392 383000 or e-mail* meg.booth@devon.gov.uk

## P7.1 - Ineffective discount mechanisms built in to contracts

### Context

For the purposes of this document, efficiency should be broadly distinguished from innovation as follows:

- Efficiency – a better way of doing what's been asked for in the tender – clients must consider the scope of where they require this approach:
    - Target cost reimbursable work – it is reasonable to expect that providers would be looking for better and cheaper ways of undertaking this work and receiving some of the benefit through any gain share arrangements.
    - Cost reimbursable work – the provider should be obliged to look for ways to minimise the cost to clients on work paid for in this way
    - Lump sum work – this is less straightforward as providers. understandably may argue that they take the risk on lump sum work and as the client will not pay extra if the provider is 'in pain' nor should the client be entitled to a share of any gain. However if the provider decides to adopt a different approach to that clearly described in the tender quality submission there may be a requirement that the client needs to agree to this change and that may attract a discussion about shared savings. If the client wishes to include lump sum work in any efficiency saving arrangement then the Instructions for Tenderers should be explicit on how this will be managed and any savings distributed.
- Innovation – alternative solutions to what's been asked for in the tender i.e. changes to the client's stated requirements that have to be accepted by the client – this is covered in P6.1 above.

### Ensure efficiencies addressed in tender

It's important to assess a tenderer, in part, on their approach to generating efficiency savings throughout the term of the contract – see P2.1 above for details of a separate work element/question in tender documents.

One method of trying to achieve this is either to mandate or ask the tenderer to provide a guaranteed percentage year on year saving and use this as part of the tender assessment model. The risk in adopting this approach is that tenderers simply factor in the discounts to the tender prices in order to give back later – this obviously is of little or no value.

An alternative approach is to assess, as part of the tender, the tenderers methodology/process by which they intend to deliver quantifiable future efficiencies the level of which could be a key metric to support extensions to the contract. A key element of this is that the efficiency saving must be shown to be as a result of implementing the methodology/process and not the giving up of a factored-in allowance made in the tender.

### Set criteria for efficiency process in tender documents

The client should set down in the tender documents what is expected from the tenderer in terms of an efficiency process to form a part of the tender quality submission. This may include a requirement that the process must explain:

- Who is accountable in the tenderers organisation for the successful implementation of the process.
- How the supply chain will be engaged and managed.
- What part of the service will be scrutinised in looking for efficiencies i.e. where will the process be applied.
- What are the steps/key activities that will be undertaken to identify and generate efficiency savings.
- When will the process be enacted.
- How will the efficiency generation be funded.
- What are the anticipated cashable cost savings over the life of the contract profiled on a year by year basis – what guarantees are being given.
- What are the share arrangements with the client and the supply chain in order to generate the savings e.g. will rates be reduced when a more efficient way of working is found, will the savings be part of any gain share arrangements on schemes etc.
- How the provider will collaborate with the client in order to achieve the savings.
- What performance metrics will be used to effectively manage the process in addition to the total cost saving.

### Assess process as part of quality submission

Clients can review the process as part of the tender quality assessment and score the submission based on their confidence that the process will successfully deliver the benefits described.

It may be that the client wishes to make the efficiency saving benefits part of the contract such that the provider is obliged to offer up a fixed stated % year on year – this carries the risk outlined at the start of this section, but where a process is required and scrutinised as shown here then this should give more confidence to clients that the savings are realistic and will actually be delivered.

### Realise benefits

In terms of true efficiency generation clients should be mindful of the realistic potential to achieve year on year savings based on contract value percentages. For example a typical breakdown of a contract value might be 60% material, 10% overhead leaving 30% labour and plant. Whereas 2.5% of contract value does not seem high as a target efficiency saving, it should be borne in mind that this will most likely have to come out of the labour and plant cost (which is the resource that does the physical work) and so the real % saving on that cost is actually over 8%.

It is suggested that both efficiency and innovation need to be pursued in order to generate significant levels of savings on contracts.

### Measure and improve

There are some other considerations for clients associated with efficiency savings as follows:

- Delivery of efficiency savings could be linked as a metric to the award of extensions.
- It may be that more work/turnover is made available by the client to the provider if certain levels of efficiency savings are achieved.
- It may be that the provider can undertake a client process more efficiently than the client e.g. identification and collection of green claim money. In cases like this it is not the providers cost that is being reduced by being more efficient but greater income is generated for the client.

## P8.1 - Lack of clarity about programme and cost for mobilisation activities

### Context

A crucial element of mobilisation is to give the provider sufficient time and avoid reducing the period to soak up delays incurred in earlier stages of the procurement process (see section P1.3 above).

### Ensure detailed mobilisation requirements in tender

As covered in P2.1 above the tender documentation should require the quality submission to address:

- Plan – what it will contain - it should include a transition plan between bid/mobilisation team and delivery team (see also section O1.1 below).
- Resources and continuity.
- Procurement – needs and method.
- Systems - description and availability.
- Key milestones - Clients should consider the possibility of linking contract payments (or even contract extension) to achieving milestones during mobilisation.
- Risks – how they will be identified and managed.

### Manage programme post award

Upon award the provider should be required to submit a detailed programme with named accountabilities which should be monitored throughout the mobilisation period with mitigating/avoiding action being taken in respect of any delays/potential delays.

### Manage risk post award

The client and provider should undertake a risk assessment prior to mobilisation in order to determine which of the above and other factors are relevant and agree action and contingency plans.

When assessing the risks to mobilisation the following should be considered:

- Key people – identifying and getting key people in place from the outset is crucial as they will make the mobilisation process work – this should address transition between the teams i.e. if the mobilisation team is different to the bid team and the delivery team is different to the mobilisation team.
- TUPE risks – extent of transfer and timing.
- If there is a new provider rather than the incumbent – this will influence the

degree of change necessary and hence the time it will take. The co-operation of the outgoing provider with the incoming provider needs to be carefully monitored and managed and the client may need to become involved to resolve any issues – these may include access to depots/buildings/people etc.

- Market conditions – is there a shortage of a particular skill e.g. designers or commercial staff that could adversely affect the commission.
- Are new management systems/IT platform planned – failure to have these systems installed, tested and functioning properly at the commencement of the contract could prove catastrophic.
- Is there a need to build new facilities – offices, depots etc.
- Extent of supply chain dependency – can they be procured in time.
- What workload (i.e. schemes on the ground) is likely to be required at the commencement of the contract – this will dictate the degree of readiness required at the end of the mobilisation period.

**Ensure quality promises delivered**

Delivery of 'quality promises' – the promises about approach in the providers quality submission will in part need to be set up/enabled during the mobilisation period – there should be a named accountable person for scheduling these promises and ensuring they are addressed – leaving this to operational/delivery personnel can be a risk as the 'day to day' work could take precedence and these issues left behind.

***Complex mobilisation goes well in Highways England Area 9***

*The combination of a changed contract model (MAC to ASC), change of Service Provider and a complex infrastructure (particularly the elevated Birmingham network) made the mobilisation of Area 9 particularly challenging.*

*As a result of a well-executed mobilisation process and detailed plan, plus a high level of collaboration between Highways England, Kier Highways and their supply chain risks were identified early and jointly mitigated which enabled a successful mobilisation of the contract including delivery of scheme work on the ground on day one of the contract.*

*Further information is available from Andy Butterfield Service Manager on telephone: +44 (0) 300 1235000 or email* Andrew.Butterfield@highwaysengland.co.uk

## P9.1 - Inappropriate behaviours on both client and provider side

### Context

It is suggested that the delivery of the outcomes required from the contract for both clients and providers cannot realistically be achieved without them working jointly towards that goal. There is a high degree of reliance on each other to make the contract effective. This should not be undermined by introspective behaviours from either party that seek to optimise their own individual position.

The NEC suite of contracts requires the parties to act in a spirit of mutual trust and cooperation. The translation of this requirement into Instructions for Tenderers, performance requirements and measurement systems etc. is haphazard.

The importance of collaborative behaviours in addition to addressing integration, leadership and commercial issues, is further reinforced in a document published by the Infrastructure Client Group 'Improving Infrastructure Delivery: Alliancing Code of Practice' which highlights the desired behaviours through all stages of an alliancing arrangement.

There is an increasing tendency for clients in highway authorities to include in tender documentation a requirement that providers contribute to the delivery of the authorities corporate strategic objectives – again this demands a shift in mind-set and behaviours beyond necessarily the strict and narrow interpretation of the stated requirements in the contract.

The behaviours described below should apply equally to both clients and providers i.e. it is not about either party in isolation.

### Establish desired behaviours

Client should establish as set of behaviours that is included in the tender documentation, used as part of the tender assessment and also used as part of the management of the contract.

There is as yet no industry standard with regard to a description of desired behaviours – the table below represents an example:

| Desired Behaviour | Description |
|---|---|
| Delivers on commitments | Clarity on what is being promised (including by whom and by when) and extent to which commitments are delivered from both a quality and timeliness perspective |

| | |
|---|---|
| Responsive | In terms of communications e.g. telephone calls and emails) but also the degree of proactiveness to new/unforeseen situations |
| Trustworthy | A high degree of honesty, openness and transparency |
| Committed to doing the right things | A high degree of focus on the customer. An attitude of selflessness i.e. actions are not biased towards benefiting the organisation itself |
| Positive approach to problem solving and negotiation | Accepts responsibility for issues and works jointly with others to solve problems and negotiate solutions |
| Non-adversarial | Use of the contract is a last resort and the organisation is accommodating and not obstructive |

## Ensure collaborative behaviours form part of tender documentation

The need to exhibit appropriate collaborative behaviours is also an intrinsic part of ISO 44001 Collaborative business relationship management systems (the successor to BS 11000), a standard which is gaining significant traction in our industry and is an important element in the DfT Highways Maintenance Capital Funding – Self Assessment for the Incentive Fund. Clients should therefore:

- Ensure they form part of the tender assessment including past performance (refer P1.2 above).
- Ensure that behaviours are measured and this forms part of the contract extension metrics.

## Incorporate into tender assessments

These behaviours can be reviewed as part of:

a) The assessment of past performance as covered by section P1.2 above under Collaboration and teamwork.
b) The assessment of the quality submission as covered by section P2.1 above under Collaboration. In addition the client may wish to specify that the scoring mechanisms for all of the work elements will include an assessment of the extent to which these collaborative behaviours are exhibited/reflected in the quality approach.

## Measure and improve

Behaviours should form part of the contract performance measurement reporting mechanism.

For example the above behaviours could be measured at regular intervals using a score for each of the desired behaviours:

- By the client on the provider.
- By the provider on the client.
- By the provider on key supply chain partners.
- By key supply chain partners on the provider.

The key outcome is to establish corrective action plans where any particular behaviour does not score well.

***Working on behaviours in Durham***

*Central to the effective management of behaviours is the relationship between our client staff and the supplier which of course is a two way interaction. The development of the relationship starts from the first interaction which is well before the contract is signed and is affected by the personalities and the culture of the organisations involved. The type of procurement process and contract approach including duration also affects the relationship. The longer the contract and the higher the value the more important the relationship and associated behaviours become. We regularly meet with key suppliers to discuss any current issues and share information on our pipeline of work to keep them engaged. We also have processes for escalating issues to senior contacts should this be required.*

*At Durham County Council we find that investing time in developing positive relationships with suppliers is mutually beneficial. There is healthy competition for all our contracts which is hopefully a sign that we are a good client to work for and this helps us to achieve best value. Good relationships also help overcome and resolve any contract issues or unexpected changes in our requirements.*

*Further information is available from John Reed Head of Technical Services, Durham County Council on telephone 03000 267454 or by email at john.reed@durham.gov.uk*

## O1.1 - Disconnect between procurement/ bid teams and service delivery teams

### Context

In relation to both clients and providers it is important for the long term success of the contract that there is continuity on both sides between those people involved at the procurement stages and those subsequently accountable for the delivery of the service. This is crucial in the early handover/mobilisation phases where any lost intelligence, miscommunication or misunderstanding can have serious consequences on the ongoing successful management of the contract.

### Understand provider team involvement

A significant amount of assumptions are made when constructing the provider's bid e.g. interpretation of client specifications, circumstances in which work will be carried out which drives estimated outputs, the way in which the client will undertake his duties, etc. These assumptions eventually find their way into the quality and financial sections of the providers' tender submission.

Where there is a handover from the bid team to a separate mobilisation/operational team there is a risk that those embedded assumptions will be overlooked or reinterpreted – this risk could also extend to the client not being given what was promised at tender stage, or at least ambiguity may be introduced.

### Understand client team involvement

During the compilation of tender documentation many principles are established, often following lengthy debate, and represented in the documents. Often the words which are settled on after the lengthy debate are only fully understood and appreciated by those involved in the debate. Where the management of the contract is undertaken by a different team to that which led the procurement, this can lead to misinterpretation of the original client requirements.

This is particularly relevant where the competitive procedure with negotiation or competitive dialogue procedure is used where there is a large amount of discussion and hence mutual understanding of the client's requirements and providers proposals.

### Ensure detailed tender requirements

The tender documentation should clearly set out the client's requirements in terms of how the provider intends to manage the handover between bid, mobilisation and delivery teams. If there is a separate section/work element within the quality section specifically about mobilisation (see Section P2.1 above) then the information should be provided under that section.

The following may be considered in terms of information requirements:

- Which people involved in the bid team will carry over into the mobilisation team.
- What will their availability be during the mobilisation period (i.e. % involved over what period).
- Which people involved in mobilisation will carry over into the delivery period.
- What will their availability be during the delivery period (i.e. % involved over what period).

The obvious risk is that whatever is committed to by the tenderer in the quality submission there may be events (e.g. people leaving the organisation/transferring etc.) that prevent the provider from complying. The client may wish to consider asking in the tender documents about what guarantees the provider is prepared to offer to ensure continuity of people e.g. resilience and contingency arrangements.

## Develop transition plan

A transition plan should be jointly agreed between client and provider at the commencement of the mobilisation period – it should also cover the client's resource. The transition plan should be included in the overall mobilisation plan.
It is suggested that the following be considered for inclusion:

- Named individuals from both provider and client who have been part of the bid team and will be involved in mobilisation – their availability/involvement and over what period – also cover their carry over into the delivery period.
- A schedule of 'quality promises' i.e. commitments made in the quality submission with named accountabilities and timeframes for delivery.
- A comprehensive list of the finally agreed tender and contract documents – there are often letters etc. which document post tender pre-contract agreements, tender clarifications etc. – any new people not part of the bid need to be working with the correct documents. It should also be made clear which provider tender documents are going to be utilised and who had access – this is obviously a commercially sensitive issue but it is often helpful to clients to know what is available in terms of how the tender has been compiled.
- Details of the tendered sub-contract strategy – it may be that 'back to back' arrangements have been agreed with key sub-contractors/suppliers during the bid phase negating the need to obtain fresh quotes during or post mobilisation.
- Details of training/knowledge transfer to be given to mobilisation and delivery teams about the tender and contract arrangements. This training should cover the commercial structure of the tender particularly to any new commercial teams and those responsible for sub-contract procurement – they need to understand how to derive the net allowances for work included in the final tender after all adjustments in order to properly compare with sub-contract/supplier quotations.

- Details of any tender assumptions that might materially affect delivery of the services.

***Maintaining continuity in Staffordshire***

*In Staffordshire continuity between the client's procurement and service delivery teams was achieved through the establishment of a staff-forum working-group, made up of operational service team representatives that were fully engaged with the management team leading the procurement of their 'Infrastructure+ contract'.*

*This early engagement provided positive challenge and ultimate ownership of the resulting solution amongst operational managers and their teams. It ensured that the Infrastructure+ contract was realistic, achievable and clearly understood within the operational teams, which aided transition and implementation.*

*Post contract award the same continuity is maintained through the Infrastructure+ contract governance structure. Ultimately reporting to the Strategic Partnership Board each operational service area is jointly managed by a Delivery Project Team (DPT), supported by the respective client operational managers. These DPTs have day-to-day ownership of their specific areas of operational expertise, driving forward continuous evolution and improvement in-line with the continuously changing needs of the contract.*

*Further information is available from James Bailey, Staffordshire County Council on telephone 01785 276591 or e-mail james.bailey@staffordshire.gov.uk*

## O2.1 - Work fragmented across multiple organisations and/or functions

### Context

Certain work can be undertaken by the provider in isolation of the client e.g. procurement, internal reporting etc. Other work involves interfacing with each other whereby the output of a client's process (e.g. inspection/work instruction) becomes an input to the provider's process (e.g. defect rectification) and vice versa – these interfaces are referred to here as 'the touch points'.

There are two issues to consider in this regard:

1. How work is managed between the client and provider at the touch points.
2. How work is managed individually within the client and provider organisational structures.

No matter how well the contract documentation has been developed by the client and understood by the successful tenderer, implementation may be impaired if the organisational structure within either the client or provider is not set up in a manner that is conducive to end-to-end delivery. For example where asset management teams are separate from those who develop concepts and designs who in turn are separate from those who programme and deliver the work who in turn are separate from those to whom the work is subcontracted, all of whom are separate from those who measure performance and those who value and pay for the work – the result of this silo mentality is fragmented and disjointed work which inevitably leads to flawed performance. Examples of the causes of this flawed performance can be as follows:

- Handover of work between teams causes delay and rework resulting in additional (albeit hidden/not obvious) cost – there can be miscommunication, misinterpretation and lack of understanding etc. all of which can result in work 'bouncing around' between the teams extending cycle times etc.
- Silo thinking which seeks to optimise performance in one function/team irrespective of the overall picture.
- Lack of accountability as no one is responsible for end-to-end performance.
- Loss of focus on the customer and delivering customer outcomes.
- Loss of trust between the parties and inappropriate behaviours without consequences.
- A supply chain that is distant from contributing to front line operations and generating new ideas.
- Problems with financial forecasting and reporting when programmes of work are not effectively managed.
- Performance metrics that are narrow focusing on one element at the expense of an understanding about the end-to-end performance.

The requirements suggested below apply equally to the touch points between providers and their sub-contractors.

## Consider provider organisational structure

Clients should consider requiring providers as part of the production of their quality plans to address the integration of work at the client/provider touch points/interfaces in order to create end-to-end solutions. For example this is particularly relevant in relation to asset management where clarity of role is required between client and provider and the functions of data collection/storage and use of that data to derive intelligent solutions (see below).

## Consider client organisational structure

Clients should consider including their own organisational structure within tender documentation in order that tenderers can understand more clearly where the interfaces are and address these within their own structures**.**

Clients should also consider how their team might need to change in order to manage their new contractual relationship well. This is in terms of structure, skills and attitude/culture.

## Identify touch points

These will vary according to the role adopted by the client and described in the contract e.g. if the client undertakes inspections/work programmes, or the decisions about which schemes get built, or carries out/approves design work etc.

Below are some examples of typical touch points and things that should be considered:

| Interface/touch point | Considerations |
|---|---|
| | |
| Inspections/works instructions | • What information is required on the work instruction and by whom<br>• How are the works bundled/organised to allow efficient execution |
| | |
| Asset information | • What data the provider is required to produce and by when<br>• Feedback from routine maintenance intelligence into asset plans |
| | |

| | |
|---|---|
| Work programmes | • Contingencies built in to avoid slippage and deal with unexpected events |
| | |
| Design approval | • What is required in the design brief<br>• What is required as part of the final design for approval<br>• Clear process for approval of changes |
| | |
| Early warning notifications | • Structure of notifications showing clarity of potential impact etc.<br>• Proper escalation to and management of compensation events |
| | |
| Target costs | • Extent of information required and demonstration of tie back to tendered rates<br>• Mechanisms for agreement of new rates |
| | |
| Interim valuations | • What information is required from the provider to satisfy the client's systems and by when<br>• What supporting data is required e.g. in terms of costs etc. |
| | |
| Construction activity | • Accountability for quality checks and testing<br>• Clarity on management of public interface |

### Manage interfaces at touch points

The client and provider should jointly agree the important touch points and what is required by both parties in terms of expectations and deliverables. It could be that clients and providers may wish to go further than this and jointly design integrated end to end business processes.

### Manage interfaces within each organisation

Depending upon the nature of the contract and extent of co-location it is possible that clients and providers have different organisational structures that may not be aligned.

It may not be practical or desirable to re-align these structures so that they match each other precisely.

In any event where there are separate functions within either the client or provider then some form of integration should take place within the individual organisations. For example there may an asset team, a programme development team, a design team, a project/contract management team, commercial team, quality team, construction team etc. – these could all be separate functions/teams within the organisation.

**Ensure coordination and communication**

Where end-to-end work (e.g. scheme delivery) involves more than one or even all of these functions there needs to be co-ordination and communication in order to ensure they are all working to common goals. This can be achieved by:

- Co-location – provided the actual work is co-located and not just the people.
- Joint/cross-functional meetings.
- Integrating resources into fewer teams with accountability for end to end work.

***Integrated teams in Transport for London (CS2U)***

*Whilst the initial project was designed using fragmented teams, an integrated project team (IPT) approach was developed to ensure the successful delivery of the projects. The IPT provided clarity of responsibilities, removed man marking and created seamless processes that provided ownership across all organisation's that impacted the project life cycle.*

*Further information is available from Phil Skegg, Operations Director on telephone 020 79604040 or email* Phil.Skegg@ringwayjacobs.com

## O3.1 - Lack of formal operating mechanisms for collaborative working

### Context

The advent of ISO 44001 Collaborative business relationships management systems has seen an upturn in formal collaborative working in highway maintenance. There is little doubt that used properly there are benefits and cost savings to be achieved by those who pursue this approach. This has been recognised by DfT as part of their Highways Maintenance Capital Funding – see question 18 of the Self-Assessment questionnaire for the Incentive Fund.

To date it has predominantly been providers who have pursued formal certification to the standard. Clients and supply chain organisations have generally been partners to these certifications but not certified in their own right. This results in the providers system for collaboration being dominant (as they are the ones being certified) and clients/suppliers taking a more passive role which to some extent undervalues their contribution to the joint effort.

### Consider benefits of Alliance arrangement

It is suggested going forward that an Alliance type arrangement is established for each separate medium to long term contract whereby a common collaborative system is developed and adopted by the client, provider and key supply chain partners and all parties become certified to the standard in their own right.

This approach will ensure that:

- Joint objectives are agreed whereby the entire supply chain pulls in the same direction.
- Contract risks are jointly managed including those to the collaborative relationship.
- Knowledge is shared across the entire supply chain and targeted at delivering client outcomes which could be linked to performance measurement and extensions.
- Joint improvement teams are established to create and develop new innovative approaches, processes and products.
- Expansion of the collaborative relationship as deemed appropriate e.g. adjoining authorities, providers, suppliers and other interested parties.

### Establish strategy for collaboration

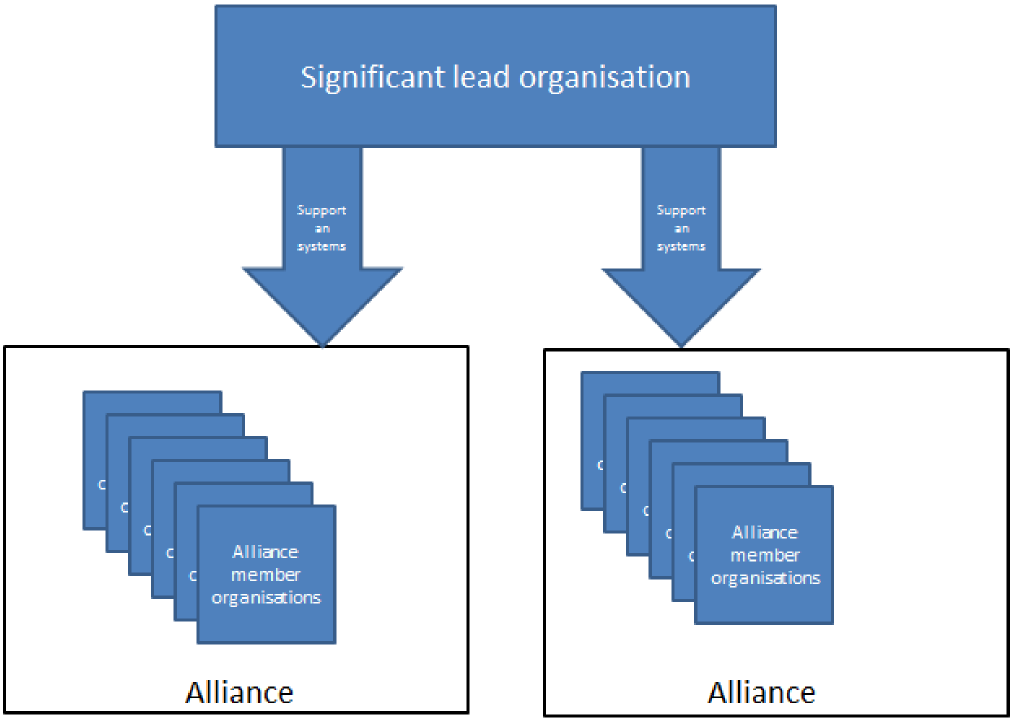
In terms of adopting a formal approach to collaboration capable of being certified to ISO 44001 there are a number of strategic options for clients and providers:

- The client becomes certified in their own right with the provider as its collaborative partner (not certified) – this can be done either for the entire client organisation or a particular division e.g. highways – the scope could be a particular contract with others added later as appropriate.
- The provider becomes certified in their own right with the client and maybe key supply chain organisations as its partners (not certified) – again this could be the entire provider organisation or a division – the scope could be the particular contract with the client with others added later as appropriate.
- An Alliance arrangement is formed whereby all members become certified in their own right for their work as part of the Alliance. The scope of the Alliance could be flexible eg:
    - Client and provider.
    - Client, provider and key supply chain partners.
    - Ditto with adjoining highway authorities as appropriate at client/provider level or beyond.

## Create Alliance

The Alliance arrangement requires a ‘significant lead’ organisation to sponsor and support the implementation – this could be the client or provider.

The lead develops the common system (i.e. that all partners adopt) and drives the certification process.




## Engage supply chain

A significant advantage of the Alliance arrangement is that smaller supply chain organisations (including SME's) can join which will assist in cascading the benefits of collaborative working which to date has been restricted for smaller organisations due to:

- Perceived concerns about large amounts of effort required to obtain certification.
- Worries about implementation costs.
- Worries about certification costs.
- Worries it might bring increased bureaucracy.
- Lack of awareness regarding the benefits to SME's.
- Little or no mandate from clients/Tier 1 providers.

**Realise benefits**

There are significant benefits to be realised in adopting an Alliance arrangement:

- All parties use a common collaborative management system with consistent behaviours.
- The system can be used by each partner organisation going forward in other parts of their business (e.g. beyond the Alliance) by extending their scope of certification.
- There are agreed joint objectives which can be targeted at delivering client outcomes – all parties with a common understanding pulling in the same direction under the one umbrella of the Alliance.
- Can be extended beyond the client boundaries as required.
- Cost savings by removing duplication of effort between the Alliance partners.

***Collaborative Alliance pioneered in Kier Highways***

*Take up to date for certification to BS11000 (to be upgraded to ISO 44001) has focused on larger organisations and not cascaded to smaller tier 2/3 suppliers. The Alliance Model enables these smaller suppliers to become certified in their own right using a common system under the sponsorship of a lead organisation. It is an industry first in terms of the number and type of organisations certified in a single effort, and has the potential to become a global model opening up the benefits of BS11000 to extended supply chains and SME's.*

*A first in industry – 13 tier 2and 3 supply chain organisations under the sponsorship of a lead organisation (Kier Highways) jointly developed and implemented a common collaborative Alliance relationship management system that allows all partner organisations to become certified to BS11000 in their own right. This opens the door for SME's to embrace BS11000, and for lead organisations to leverage the benefits of the standard along their entire supply chains.*

*Further information is available from Dave Wright, Executive Director on telephone: 0161 838 5959 or email* Dave.Wright@kier.co.uk

## C1.1 - Lack of robust incentive and reward mechanisms built into contracts

### Context

Particularly in relation to longer term contracts it is anticipated that the level of service will improve over the term of the contract by a joint effort between the client and provider to investigate and implement new and better ways of working. This ethos should be at the heart of the procurement strategy and vision for the industry. There is a massive amount of talent and ingenuity across the entire supply chain and contracts should contain incentive and reward mechanisms that stimulate this ingenuity in order to deliver better outcomes for the customer.

### Establish requirements for incentivisation

Clients should be clear from the outset about their strategic requirements for incentivising and rewarding their provider on the contract. This may include the following considerations:

- Shared risks – how much risk will be transferred to the provider through the payment mechanisms e.g. lump sums which can be 'off limits' to clients i.e. provider takes all the risks and hence the lump sum work may not be available for shared savings.
- Payment arrangements generally – there are a range of payment mechanisms available, some with their own reward mechanism built in e.g. target cost reimbursable with pain/gain. Some clients have adopted a cost plus arrangement whereby both parties work collaboratively to establish the true cost of work from first principles. It can be argued that this method removes the perverse motivators in connection with the management of predefined schedules of rates as covered in section P1.1 above and allows the parties to jointly focus on delivering operational efficiencies without the encumbrance of an inbuilt commercial tension.
- Generation of margin – consideration should be given by clients within the tender documentation about how they wish to see margin generated by the provider on the contract e.g. should the entire margin be built in from the outset (i.e. included within schedules of rates and/or lump sums) or should there be a prescribed/tendered guaranteed margin at a relatively low level with the opportunity for the provider to enhance this margin (perhaps with no upper limits) by working differently/more efficiently and proposing alternative engineering solutions, including sharing the benefits with the client.

### Set criteria for shared savings from cost efficiencies/innovation

There are a number of methods to incentivise the provider including:

- Shared saving from cost efficiencies – pain/gain on target cost reimbursable or similar arrangement on total cost plus. The share ranges on pain/gain must be fair and equitable and not demotivate the provider by distorting the share percentages in favour of the client.
- Shared savings from innovation – where the provider introduces alternative products and solutions to be accepted/approved by the client who should take an appropriate share of the benefit.

**Link to contract extensions**

It is suggested that one of the stronger stimulants for providers to generate savings is linking it to granting extensions to the contract – it should form part of the extension metrics referred to in P3.1 above.

**Link to additional turnover**

Where applicable clients may also be able to reward providers for improved performance by making additional work available thus increasing turnover and margin for the provider.

**Investigate opportunities for transfer of process management**

It may be that providers have the requisite skill and are best placed to manage client processes in a manner that generates more income for the client – for example by implementing techniques (which often requires additional resource) to improve the level of green claim recovery.

**Determine appropriate contract mechanisms**

In relation to contract mechanisms there are a number of issues to consider including:

- Should lump sum activities be incentivised e.g. where client and provider agree a change in the clients' performance requirements that results in a saving – share mechanisms should be agreed up front.
- Funding – who pays for developing the change – should it come out of the saving prior to being shared.
- Scope of change – extent and duration of how the change applies in terms of sharing benefits e.g. a share of a saving will not be in perpetuity.
- How IPR is dealt with.
- Risk of failure – who carries this – this will be affected by how the change is administered – it may culminate in an instructed compensation event with risk transfer to the client.
- Is the providers supply chain part of the process and receive part of the share.

***Novel incentive mechanism on Olympic Route Network***

*Detailed project analysis of the overall Olympic route network packages identified that the largest programme risk was associated to road markings, even though this represented less than 5% of the project costs. So that the risk was fully mitigated, a review was held with all parties involved to understand the constraints on the road marking provider but more importantly the key drivers and outcomes that they sought. An innovative payment mechanism was developed that covered all project costs regardless of weather impact etc. Profit was removed from the scheme and agreement was made that if the entire project completed on time, profit would be paid, if not, no profit payment would be made. There is a significant amount of detail behind this about how resource was secured in the summer months etc.*

*Further information is available from Phil Skegg, Operations Director on telephone 020 79604040 or email* Phil.Skegg@ringwayjacobs.com

## C2.1 - Failure to maximise the benefits from target cost

### Context

On target cost arrangements there is normally a pain/gain mechanism with share ranges included. These ranges often vary across contracts depending upon how much risk the client places on the provider. The intention is to incentivise the provider to undertake work more efficiently than the rates and prices included in the target (including by the use of Lean Principles described in the HMEP LEAN Toolkit for Highway Services) thus generating a saving from the target which is then shared between client and provider. This arrangement whilst good in principle may also lead to some unintended consequences:

- Where the pain/gain share range is inappropriate the target is inflated to provide a 'cushion' so the provider avoids suffering 'pain' when the share mechanism is applied. This can be done by inflating allowances for risk that are not covered by the SoR – in these instances the client may well be faced with actually paying for unused risk.
- Clients occasionally have a performance metric that scores highly when the variance between target and actual cost is low – this appears to militate against encouraging providers to seek efficiencies and lower their cost.
- Insufficient understanding and control of actual cost – unlike fixed price contracts where providers are motivated to manage and control cost, this may be less so on target cost contracts where the provider recovers whatever he spends subject to the pain/gain mechanism. If the target is generous (as described above) then the focus may be on simply managing the task in order to avoid pain - it is suggested that to mitigate this potential issue:
    - Clients use the HMEP Price List which should ensure that values against items and activities more closely represent the actual cost of carrying out the work (reducing the requirement to have 'star' rates) and through the revised banding arrangements etc reduce the need for providers to add further risk allowances into the target cost (see P4.1 above).
    - On target cost contracts clients inevitably must have a greater interest in the level of the outturn cost - greater than would be the case on a fixed price contract. Using the 80/20 principle, clients and providers should select those key elements of the work that represent the higher proportion of the target cost and adopt a more forensic approach to that work. They should analyse its cost and value and use lean principles to ensure that it is executed as efficiently as possible – contributing to the efficiency agenda covered in P7.1 and C1.1 above. This approach should also include the cost of work undertaken by subcontractors – the potential additional efficiency savings in highways maintenance will not be realised unless we take cost out of the supply chain by promoting improved products and processes.

- Potential ineffective use of cost capture – there is wide variance in the approach and use of cost capture mechanisms:
    - Captured for invoicing purposes only and in the 'buckets' of labour, plant, materials, subcontractors, overhead – easy to administer.
    - Captured against Method of Measurement series numbers or similar – greater work involved in allocating the cost to the various series 'buckets'. It has been known for there to be 90,000+ cost capture codes in a provider's cost capture system! – the administrative burden could be enormous.
- Clients should consider the threshold value for work that is to be let on a target cost arrangement i.e. avoid spending £5k to establish targets and manage actual cost on a scheme worth £10k – consider payment using either the SoR or on a cost reimbursable basis.
- Clients should also consider if they are able to apply target cost arrangement to programmes of work as opposed to individual schemes – this requires a subtly different approach and data sets to inform the target but does help to avoid 'making an industry of setting target cost' which often leads to the erosion of benefits.

## Establish target cost requirements

Clients need to be clear from the outset about their strategy when adopting a target cost arrangement. For example, is it clear how data will become available about the cost of undertaking operations – how this data will be converted to intelligence about the best way to undertake work and those things that ultimately drive the level of outturn costs.

In relation to the collection of this data, clients need to be clear on whether cost capture requirements are for invoicing, or to gain cost intelligence for use in the generation of efficiencies. Great care should be taken to avoid a situation where the strategic requirement is to capture and allocate cost at the detailed series/activity level but the data only to be used for invoicing purposes – this results in a massive amount of wasted effort.

The overall strategy for capturing cost should be for the purposes of improving the service. Where clients capture the total cost of an operation e.g. winter service, it may be that the data at that level is not usable for identifying improvement opportunities. Using the 80:20 principle it may be that one or two elements carry the bulk of the cost, and that may be the cost that should be captured.

## Identify key cost drivers

Clients and providers may wish to also consider an approach that focuses on the key aspects of the service e.g. the cost drivers (i.e. those elements that substantially influence the outturn cost) and calculate/capture the cost of those drivers. This cost does not need to be continually calculated/captured – the primary goal is to use the cost intelligence to improve the service and the cost of doing the work element under scrutiny.

The unit cost of carrying out work will comprise a number of key elements (excluding overhead):

- Labour
- Plant
- Materials
- Sub-contract (which itself could comprise any or all of the above)

In terms of the relative cost of delivering the service across different providers, the materials should be fairly constant and reduction of this cost would require a separate procurement exercise or a reduction in waste. Subcontract costs could vary considerably and to reduce those would require a separate procurement exercise or the sub-contractor to undertake its own cost analysis, efficiency saving and share same with the provider/client.

It is therefore the labour and plant element that can be most influenced by an efficiency improvement (i.e. as distinct from simply lowering the unit cost), and so the typical cost drivers could comprise:

| Element | Cost driver |
|---|---|
| | |
| Labour utilisation generally | % of time allocated to work activity<br>The overall productive time for labour – leads to investigating reasons for down time |
| | |
| Plant utilisation generally | % of time allocated to work activity<br>The overall productive time for plant – leads to investigating reasons for down time |
| | |
| Winter service | £/m labour and plant per total length of gritting routes |
| | |
| Incidents | Total annual cost per call out (excluding repairs) |
| | |
| Defects | Total annual cost per defect – categorised by type of defect |
| | |
| Gully emptying | Labour and plant cost per gully emptied |
| | |
| Grass cutting | Labour and plant cost per m2 |
| | |
| Litter picking | Labour and plant cost per meter route length |
| | |

| | |
|---|---|
| Overall cost of routine maintenance | Total cost per route length |
| | |
| Surfacing | Labour and plant cost per tonne laid |
| | |

## Ensure benchmarking undertaken

The cost driver data on its own is of little use without knowing how it compares with others. On a like for like basis clients and providers should benchmark these with other clients/providers. Additionally that benchmarking information is of little use without knowing how the other organisation is managing, for example, to deliver work at a cheaper cost – this must be investigated.

Care should be taken to ensure that 'costs' are not benchmarked against 'prices'.

## Analyse variances and root cause

Variances will lead to analysis which may raise issues that are the root cause of why work outputs are different and one service is being delivered cheaper than another, for example:

- Working windows – may be restricted and causing lower outputs and therefore higher cost.
- Poor utilisation – may be ineffective supervision.
- Size of scheme – work may be being combined into larger batches where unit costs are cheaper.
- More efficient plant.
- Better designed process.
- Better site access and less disruption.

## Generate improvements

All of these issues can be positively influenced by better management such that ways of work can be changed/adapted and costs reduced and therefore where appropriate prices adjusted. This represents the crucial connection between labour and plant cost and work outputs.

In summary when dealing with information and data about cost the culture and attitude to be taken is 'not simply to know… but to act'.

***Understanding cost in Herefordshire***

*Herefordshire Council's Public Realm Services Contract includes highways, public rights of way, parks and open spaces, street* *cleaning and street lighting. Balfour Beatty Living Places were awarded the contract in 2013.*

*https://www.herefordshire.gov.uk/business-and-employment/tenders-and-contracts/balfour-beatty-contract*

*The contract set out to achieving value for money, facilitated by process improvement and transparency through open book accounting. A range of payment mechanisms are utilised in the contract, this to apportion risk to the party who is best placed to manage it. This approach is aimed at reducing the real cost of delivery.*

*The cost of the services to date is reported to the client team on a monthly basis, this is a requirement of the payment arrangements. The client team also has access to the provider's financial systems to enables costs to be verified as part of the team's audit processes.*

*These mechanisms works together with cost benchmarking to enhance the client team's understanding of both:*

- *The end to end cost of delivery; and*
- *The cost of discrete items of work.*

*Though enhancing the understanding of costs, as opposed to just holding a knowledge of the tendered price, in Herefordshire the client and provider are better placed to drive continuous improvement. This through a focus on:*

- *Areas where cost can be reduced or avoided (using lean and systems thinking processes); and*
- *Visibility of the real impact any changes in approach on the cost of delivery.*

*This approach has enabled Herefordshire Council and Balfour Beatty Living Places to deliver to date (2014/15-2016/17), as part of a whole system of work, a c30% cashable saving in revenue costs.*

*Further information is available from Clive Hall, Head of Highways and Community Services, Herefordshire Council on telephone 01432 261800 or email* cwhall@herefordshire.gov.uk

## C3.1 - Lack of process for dealing with issues in a structured and disciplined manner prior to formal dispute

### Context

The standard contracts in highway maintenance deal with the management of change (e.g. compensation events) and also the process for formal dispute resolution. It is suggested that there is less clarity on how clients and providers deal with issues between the point at which they recognise they are in disagreement, and the commencement of the formal contract mechanism for dispute resolution.
The types of issues that could benefit from a different approach when agreement cannot be reached may include:

- New rates.
- Changes to existing rates.
- Interpretation of the specification or method of measurement.
- Adverse impact on providers due to variances in anticipated budgets.
- Compensation events.
- Non-performance by provider of contract requirements.
- Restrictions (e.g. working times/site availability) imposed on providers that affect work outputs.
- Adverse impact on providers work outputs by a preceding activity undertaken by the client e.g. inspection/task order regime that influences the programme of work.

Under most contracts provider's quality management systems should recognise non-conformances and instigate corrective action – the above examples relate to where the providers do not accept that the non-conformance is of their own making, or at least there is shared responsibility with the client.

Often positions are taken early and submissions/arguments put forward that don't ultimately reflect the root cause of the issue, and much time is spent by both clients and providers deliberating the issue until their final positions are reached, which could result in settlement or escalation – either way the most efficient and timely route to that position should be sought.

The risk in not doing this is that an excessive amount management time (with associated costs) at all levels is devoted to protracted discussion on these issues often to the detriment of the effective management of the service and loss of opportunity to focus on improvements.

There is no recognised issue resolution process that allows for a collaborative approach to the equitable settlement of disagreements that have not reached the position of being formal disputes. Indeed ISO 44001 Collaborative business relationships management systems, rightly calls for such a process to be in place and this should include:

- Establishment of the behaviours to be exhibited and associated consequences.
- Clarity and precision about the issue segregating principle from value disagreements.
- Prioritisation and programme.
- Mechanisms to maintain compliance with contract i.e. the 'off-line' approach doesn't affect the contractual rights of either party.
- Escalation.
- Performance metrics for the process.

## Agree joint objectives and desired behaviours

Agree from the outset a set of joint objectives/principles relating to the resolution of the issues, and the behaviours expected from the teams involved. In respect of the resolution of any issue this should be:

- Auditable.
- Fair - to both parties.
- Fast – in terms of cycle time from first raised to resolution.
- Not damaging to the relationship - ideally neither party should feel aggrieved after the issue has been resolved.

Resolution means withdrawn, agreed and certified, or escalated (if agreement cannot be reached). The agreed objectives should be monitored on an on-going basis, and there should be a joint agreement made up-front about the consequences of non-conformance e.g. if the desired behaviours are not being exhibited what is the mitigating action? When reviewing the behaviours where possible this should not be personalised – it should be reviewed and managed as the behaviour of the entire team that each person should comply with. Clear accountabilities for individuals should be agreed up-front.

It should also be agreed from the outset that this approach does not in any way affect the rights of either party under the contract – it is a mechanism to try and understand each other's position and reach agreement in a collaborative manner. If such agreement cannot be reached then the parties can revert to the contact mechanisms without impediment.

## Create schedule of issues

A schedule of the issues should be jointly agreed using a defined cut-off point e.g. a previous interim valuation – progress can be monitored against this position going forward. The schedule should cover all issues irrespective of whether they have been applied for in the interim valuation. Where items have been applied for, the schedule should show the difference between that amount and the certified amount at the cut-off point. Where they haven't been applied for the schedule should include an assessment (possibly a range of values), again jointly prepared. All items should be individually shown on the schedule wherever possible avoiding groupings into clusters of issues that become difficult to track. For any new issues, prior to entering them on to the schedule, an attempt should be made to resolve them within 28 days of them being raised – it is important that whilst old issues are being cleared that they are not replaced by new ones.

### Prioritise and programme

The schedule should be prioritised giving highest priority to those representing the most value (i.e. gap) or those that are most adversely affecting delivery of the service, and those whose resolution impact on a number of other issues i.e. common themes. A target resolution date and/or or a series of milestone dates should be jointly agreed and a programme produced showing who does what and when to achieve the dates.

### Establish principle and value for each issue

It is important from the outset to separate principle and value. There is little point spending a lot of time debating the valuation of any item on which the principle has not been agreed as to whether there should be a payment or not.

Each item on the schedule should be annotated showing whether the issue has been agreed ‘in principle’ and if the value has been agreed. In respect of the ‘principle’ issues a statement should be prepared showing exactly why the provider believes that there is an entitlement – where possible this should be done jointly with the client’s viewpoint documented alongside. The benefit of this is that it focuses the argument and response, and very often can raise alternative reasons about the issue that should form the true nature of the discussions.

In respect of the value, abstract lump sums with no breakdown must be avoided and all attempts made to assess a fair value in the first instance, but ultimately calculated with the appropriate degree of accuracy. There should also be a jointly agreed format for the presentation of value either for a new rate, one based on a tendered rate or presentation of defined cost.

### Convene joint meetings

Joint meetings necessary to meet the programme must be agreed up- front and entered into people’s diaries – they must be met – there is a risk that both client and provider teams seek to avoid confronting having to clearly explain why they are claiming extra or why they don’t agree – this often manifests itself in the inability to make scheduled meetings.

Agendas should also be agreed up-front stating which issues are to be discussed and whether they are principle or value issues. Bullet points of any meeting should be jointly prepared with actions arising and owners identified (ideally one from each organisation i.e. joint ownership) together with agreed dates for responses. The parties must accept the consequences of agreements, whichever way they flow i.e.

if there is further money payable then the budget must be found, and if there is less, then the issue should be withdrawn or downscaled irrespective of the impact on providers profitability or previously reported positions – this is an important issue as it can often be an artificially imposed blockage to agreement. Where there is any obvious duplication in applications for payment this should be withdrawn by the provider at the earliest opportunity and where there is clear additional money due this should be certified by the client at the earliest reasonable opportunity.

A short progress report should be prepared at the end of each week or appropriate period. Progress must be tracked and reported jointly in order to allow avoiding action to be taken if progress is insufficient to meet target dates. Joint team meetings must be arranged in advance to review management of the process.

All agreements to be jointly documented using pro-formas covering principle and value as described above.

## Escalate issues as necessary

Where agreement (i.e. the issue is withdrawn or resolved) cannot be reached following the above process then it should be escalated in three stages:

- Stage 1 is to named senior management accountable for the project.
- Stage 2 to executive management as potentially the last step before formal dispute resolution. Where escalation takes place the team must prepare a statement describing exactly what aspect is being escalated i.e. what senior/executive management is being asked to decide upon – there should be an agreed format/procedure for this statement which should also include an outline of the matter(s) which are preventing agreement. Only those matters that cannot be agreed upon should be escalated to executive management – it is poor use of their time to have to address the whole issue if indeed there are significant elements that the parties actually agree upon. It may be that the statement should cover the future consequences of reaching settlement in a certain way e.g. it may prevent the client instructing future work or there may be significant financial consequences for either party if the settlement applies going forward.
- Stage 3 is the referral of the issue to the formal dispute resolution mechanism under the contract.

## Measure and improve process

As part of the regular progress reviews it may be appropriate to keep track and set targets using performance metrics which could include:

| Metric | Rationale |
|---|---|
| | |
| % of new issues raised that are not resolved within the 28 day period prior to entry on to the issues schedule | The extent to which new issues are being properly managed using the process |

| | |
|---|---|
| Number and value of issues resolved per month | Settlement progress – value should be the amount in disagreement measured from the start point when the issue was first entered on to the schedule |
| | |
| Number of issues withdrawn | To discourage spurious applications – these should be whole issues from the schedule and not individual elements |
| | |
| Variance between amount first applied for and settlement figure | To encourage more accurate application figures going forward |
| | |
| Number and value of issues escalated | To encourage settlement without the need for escalation – the measure should be to any of the three stages outlined above |
| | |