
**ACHIEVEMENT OF AND FUTURE PLANS FOR IMPROVING
CONSTRUCTION PROCUREMENT**

Report of the Chief Finance Officer & Service Director (Property)

1 PURPOSE OF THE REPORT

- 1.1 To inform Cabinet on the plans for 'Improving Construction Procurement', in line with modern best practice.
- 1.2 To seek Cabinet approval for a pilot Framework Partnering Agreement.

2 BACKGROUND

- 2.1 In October 1997 the Construction Task Force chaired by Sir John Egan was commissioned by the Deputy Prime Minister to advise on the opportunities to improve the efficiency and quality of the whole of the UK construction industry service and products, and to make the industry more responsive to the needs of its customers. The task force reported in 1998. In 2002 a further review of the UK construction industry was undertaken entitled 'Accelerating Change'.
- 2.2 The key conclusions of both these Reports was that industry needs to move away from traditional client/contractor relationships in Construction, which tend to be adversarial, to greater use of partnerships and sharing of risk. Significant savings are envisaged from such a change.
- 2.3 The Corporate Procurement Improvement Plan (which arose from a previous Best Value Review) Key Task 7 aims to achieve the target set in "Accelerating Change" that 20% of construction projects should make use of such partnerships, although it is unlikely we will achieve the target date of 2004.
- 2.4 An Officer Working Group has been was set up to deliver this agenda.

3 SUMMARY

3.1 The role of the Group was to:

3.1.1 Look at the issues raised in the reviews and to recommend solutions by:

- Examining the improvement drivers and expected outcomes as addressed in the task force reports;
- Proposing a pilot Framework Partnering Agreement for the Schools' Mobile Classroom Replacement Programme which is explained in Section 1.4 of the Supporting Information.

4 RECOMMENDATIONS

Cabinet are recommended to:

4.1 Improving Construction generally.

4.1.1 Endorse the work taking place to improve our construction procurement practices;

4.2 Pilot Framework Partnering Arrangements

4.2.1 Approve the use of most economically advantage tender (MEAT) evaluation criteria, waiving Contract Procurement Rule 8.1.

4.2.2 Authorise the Corporate Director, Education & Life Long Learning, to undertake a competitive tender in respect of the Schools' Mobile Classroom replacement programme to source the most economically advantageous contractor bid;

4.2.3 Authorise the Corporate Director, Education & Life Long Learning, to finalise the terms of the contract documents.

4.2.4 Grant authorisation to the Head of Legal Services to enter into the necessary contracts.

5 FINANCIAL IMPLICATIONS (MARK NOBLE)

5.1 Improving Construction should, it is envisaged, save the Authority money.

5.2 The Local Government Taskforce states that by adopting "Rethinking Construction" principles Councils could save 10% on their annual spend. This process is also intended to deliver better value for money in terms of quality, design and whole life costs.

5.3 However, the process of 'partnering' with contractors is in its infancy both nationally and locally and there is no guarantee that such savings will be realised.

- 5.4 An initial (rough) estimate of the Council's construction spend is circa £100 million for 2003/4. Spend on the Schools' mobile classroom programme is £10 million over five years and with the addition of other similar school extension projects, the value could be c£20 million.
- 5.5 One aspect of the evaluation of the Council's "Building Schools for the Future Bid" will consider the Authority's ability to evidence strategic alliances with contractors. The schools' Mobile Replacement Partnering Agreement will provide such evidence

6 LEGAL IMPLICATIONS (JOANNA BUNTING)

6.1 Risk Transfer

- 6.1.1 Unlike traditionally procured contracts, forms of contracts such as the New Engineering and Construction Contract (NEC) share risk between the Employer and the Contractor rather than transferring the risk onto the Contractor.
- 6.1.2 This will place additional responsibilities onto the Employer/Client who will have to consider and resource them.

6.2 EU Procurement

- 6.2.1 Because the mobile classroom contract is subject to the EU Procurement Rules, a mechanistic process will have to be devised to arrive at a target price for each call-off contract under the main Framework contract, to avoid the necessity of retendering each new job.
- 6.2.2 The NEC cannot be used in isolation for this contract and will require an overarching Framework Agreement to encompass the ability to call-off.

6.3 Shared Savings

- 6.3.1 The NEC provides for shared savings, as a method of incentivisation for the Contractor.
- 6.3.2 What this means is that if the contract comes in on time and under the Guaranteed Maximum Price, the Council will have to make percentage payment to the Contractor based on a pre-agreed figure.

6.4 Cost Certainty

- 6.4.1 The NEC does not provide for the same cost certainty from the outset that traditionally procurement methods provide, although obviously if more risks are managed out at the beginning then cost certainty is more likely.

6.5 Finance and Contract Procedure Rules

- 6.5.1 Finance and Contract Procedure Rules do not, in their current form, allow the award of partnership agreements – a waiver for this pilot project has been sought (as at 4.2.1 above).
- 6.5.2 A fundamental review of Finance and Contract Procedure Rules is to be undertaken to enable the improvement of construction procurement and indeed, the improvement of all areas of procurement.
- 6.5.3 Contract Procedure Rules will require that consideration is given to partnering in any procurement project, and that the project objectives are established.

6.6 Standard Contract Forms

- 6.6.1 Partnering means a sharing of risk and reward and working towards certain mutually agreed outcomes.
- 6.6.2 The traditional forms of standard contract do not apply and a form of partnering contract would be used such as a PPC2000, the NEC form with Partnering Option or the JCT Standard contracts with partnering preliminaries developed by Legal Services, would be used.
- 6.6.3 Strategic partnering involves a form of long term relationship with the suppliers.
- 6.6.4 Project partnering is project specific, for example the pilot project recommended by this report.
- 6.6.5 Framework contracts can be either traditional or (with care) partnering. The terms of each “job” called off have to be ascertained through a pre-set mechanistic process (for example, rates, cost plus).

7 REPORT AUTHOR/OFFICER TO CONTACT

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Financial Implications

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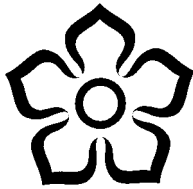
Legal Implications

Joanna Bunting
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DECISION STATUS

Key Decision	No
Reason	N/A
Appeared in Forward Plan	No
Executive or Council Decision	Executive (Cabinet)



Leicester
City Council

CABINET

24 NOVEMBER 2003

**ACHIEVEMENT OF AND FUTURE PLANS FOR IMPROVING
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SUPPORTING INFORMATION

1 REPORT

1.1 Introduction

1.1.1 Over a period of years Central Government had perceived problems within the construction industry which needed a shift away from traditional construction methodologies.

1.1.2 At the heart of the issue lies the relationship between the Client (the person or organisation needing a new building or alterations to an existing one) and the Contractor.

1.1.3 Although there are many fine examples where the traditional construction process has produced satisfactory results, it is noticeable that over time the relationship has developed into an arena of conflict, adversarial attitudes, and missed opportunities to reduce costs in the construction industry. These are symptoms of the entire construction industry and are not identified as purely public sector or local authority issues.

1.1.4 Under the traditional construction procurement process:

- The Client fully designs the project independent of the contractor.
- The design is tendered and the lowest price accepted for the work, with the contractor having minimal input into the quality or non-economic values of the scheme.
- There are often long lead-in times between acceptance of the tender and starting work on site, since the contractor has an unpredictable workload and has to gear up for each individual project

- As work progresses, adversarial relationships may develop as the contractor can potentially make greater profits from alterations to the original design.
- As the scheme nears its end, projects tend to overrun on time, because the contractor did not input into the original design process.
- Claims are made from both parties for additional costs and damages.
- Defects are common.
- Customer and end-user satisfaction can be poor.

1.1.5 Other Issues

- 1) At the City Council, there are other issues which, when added to the above, can exacerbate problems eg lack of resources or attention to the initial project feasibility has led to tenders being higher than budget and increased problems with project delivery towards the end leading to extended timescales for delivery. Both of these are impacting detrimentally on our performance indicators.
- 2) Another issue is the rotation of contractors through the Select List, whereby currently a contractor may only be used once every few years, and therefore does not have the opportunity to build a long-term relationship with the Council. The Egan Report proposes building such relationships and tying contractors in to share the same aims and objectives of the Council, together with profits and risks.
- 3) In the last two years, Councils have been required to report performance indicator information as part of the Asset Management Plans. These have indicated that our performance in managing projects is generally within expected cost parameters and timescales compared to national benchmarks (mid-quartile). However, there are opportunities for improvement, and the benchmark results perhaps best illustrate that Leicester is not alone in its performance against what may be achieved. Discussions with an authority who are currently top-quartile performers in the group suggest that a key factor in their improved performance was the gradual introduction of supply chain management and the Egan principles.

1.2 **Construction Task Force Reports**

- 1.2.1 The Task Force published their report 'Rethinking Construction' in July 1998 and this outlined their ambition for improvement in the industry. The conclusions were modified in 2002.
- 1.2.2 The 2002 review 'Accelerating Change' stated that the vision of 'Accelerating change' was for:

The UK construction industry to realise maximum value for all clients, end users and stakeholders and exceed their expectations through the consistent delivery of world class products and services.

1.2.3 National strategic targets were set:

- By the end of 2004, 20% of construction projects by value should undertaken by integrated teams and supply chains.
- By the end of 2007, 20% of client activity by value should embrace the principles of the Clients' Charter.
- By the end of 2006, to recruit and retain 300,000 qualified people.
- By the end of 2007, to see a 50% increase in suitable applications to built environment higher and further education courses.

1.2.4 Rethinking Construction identified five "drivers for change", 4 areas for improving "process" and 7 "targets for improvements".

1.2.5 5 Key Drivers for Change:

- Committed Leadership.
- Focus on the Customer.
- Product Team Integration.
- Quality driven agenda.
- Commitment to people.

1.2.6 4 Project Process Improvements:

- Product development.
- Partnering the supply chain.
- Project implementation.
- Production of components.

1.2.7 7 Targets for Improvement:

- Capital Cost -10%.
- Construction time -10%.
- Predictability +25%.
- Defects -20%.
- Accidents -20%.

- Productivity +10%.
- Turnover and Profits +10%.

1.2.8 The City Council needs to respond to this Agenda as other Authorities are doing.

1.3 Improving Construction Procurement Group

This internal Group was set up in 2003 and includes representatives of all Departments except Chief Executive's (who do not directly procure construction).

1.3.1 The overall aims of the Group were agreed in March 2003 being:

To create the expertise and flexibility to enable the use of a range of procurement mechanisms, to provide value for money and optimise project delivery in terms of quality and cost. Its scope includes all buildings and civil engineering contracts.

1.3.2 Current performance indicators used by each Department have been discussed – a consistent minimum set of performance indicators will be agreed to enable measurement of the Task Force Targets for Improvement.

1.3.3 The Group is establishing the Authority's current annual spend on construction. This will enable specific measurement towards achieving the national strategic target of 20% of construction projects by value being undertaken by integrated teams and supply chains.

1.3.4 The achievement of this strategic target, evidencing a strategic partnership with contractors and the ability to resource delivery of substantial projects, is believed to be an important future element in the evaluation of Authority bids for Government funding.

1.3.5 Identify and recommend amendments to Finance and Contract Procedure Rules to enable the sourcing of compliant partnering solutions. Draft proposals required by end of financial year.

1.3.6 Change managing the implementation of the revised Construction Procurement principles and procedures.

1.3.7 To develop the internal guidance on procurement to include specific reference to inclusion of appropriate new contracts, to include Joint Contracts Tribunal (JCT) major projects contract and NEC form of contract to enable partnership working.

1.4 Pilot Framework Partnering Agreement

1.4.1 A pilot Framework Partnering Agreement has been chosen for the Schools' Mobile Replacement Programme where old 'mobiles' are being replaced by permanent classrooms in the City's primary schools.

- 1.4.2 The purpose of undertaking a Pilot is to enable the Group to closely follow the Project, identifying all measurable improvements to the target set.
- 1.4.3 The Pilot will enable the establishment and testing of the necessary contract management processes and controls to support the partnership principles. Once these are confirmed, they will be included into revisions to Council processes. The framework of the NEC contract form is proposed as the most appropriate for use in this pilot scheme for the classroom replacement programmes.
- 1.4.4 Additionally, the scope of the contract has been widened to allow for the possible inclusion of other appropriate schools' projects up to a value of £2 million per annum.
- 1.4.5 The proposed contract will be of 3 years' duration (with provision for a possible further 2 year extension), at a total value of £2-4 million per annum.
- 1.4.6 The contract has been advertised through the Official Journal of European Union and interested contractors are currently being vetted.
- 1.4.7 The proposed programme is to seek tenders in October 2003 and select the appropriate contractor in December 2003/January 2004.
- 1.4.8 This report seeks the necessary approvals to proceed with the programme.
- 1.4.9 A full contract evaluation methodology will need to be written. The Contractor will be selected by the application of this pre-determined Quality/Price matrix, with the emphasis on the quality of the proposals rather than the lowest price.
- 1.4.10 An agreed set of Key Performance Indicators will monitor performance, especially with an aim to increased cost and time certainty and improvements in quality, higher customer satisfaction and fewer defects.
- 1.4.11 A mechanism will be developed for the agreement of a reasonable cost of a project rather than lowest price; the establishment of a Guaranteed Maximum Price, together with financial incentives for the Contractor to suggest and share savings below that figure,
- 1.4.12 The contractor will have early involvement to assist in the development of the Brief, suggesting alternative methods of construction, adding "buildability" into the design, involvement in the establishment of the programme and enabling shorter lead-times,
- 1.4.13 Continuity of work at a reasonable profit for the Contractor will lead to improvements in his planning, employment and training opportunities; the development of Supply Chains with principal sub-contractors and suppliers leading to efficiencies and savings.

1.4.14 A “team” approach to problem-solving rather than a “blaming” approach will lead to early resolution of problems rather than a confrontational approach.

1.5 Other Improving Construction Procurement Work Being Undertaken Across The Authority

1.5.1 The Highways & Transportation Best Value review includes an improvement objective for modernising procurement.

1.5.2 To this end, a Procurement and Programme Management Team has been established within the Highways & Transportation division.

1.5.3 This team will focus on modernising procurement for civil engineering works arising from the Local Transport Plan and other capital and revenue budget streams.

1.5.4 It is intended to review and implement newer forms of contract and framework agreements to provide synergies by closer working arrangements with contractors pursuant to the ‘Rethinking Construction’ agenda.

1.5.5 This work will run in parallel and complement the pilot project.

1.6 Resourcing

1.6.1 These benefits will only be achieved if investment is made by authorities to develop individual frameworks to deliver construction procurement in line with the Egan Principles. This is currently being resourced from existing budgets.

1.6.2 To achieve the potential benefits of increased customer satisfaction, decreased cost and time delays, investment is needed at the front end of the project to undertake detailed option appraisal and feasibility studies. It is essential that clients make financial provision for this as part of their financial planning.

2 OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph References Within Supporting Information
Equal Opportunities	No	
Policy	Yes	1.2.5
Sustainable and Environmental	Yes	1.2.5
Crime and Disorder	No	
Human Rights Act	No	
Elderly/People on Low Income	No	

3 RISK ASSESSMENT MATRIX

RISK	LIKELIHOOD (PROBABILITY)	SEVERITY (POTENTIAL IMPACT)	CONTROLS – How will risk be minimised?
Cost overruns *	L	M	Pain/Gain incentivisation. The integrated team approach will allow for early Contractor involvement in establishing a Guaranteed Maximum Price. Using incentives to meet Key Performance Indicators. Maintaining a Risk Register. Using Integrated Team approach to solving problems.
Time overruns *	L	M	Early Contractor involvement in establishing a realistic Programme. Using incentives to meet Key Performance Indicators. Maintaining a Risk Register.
Low client satisfaction *	M	H	The integrated team approach will enable high Client involvement from earliest stage. Establishment of clear brief and good communications. Brief to be “owned” by whole partners. Using incentives to meet Key Performance Indicators.
Building defects *	M	H	Early Contractor input into design development stage to give maximum “buildability”. Using incentives to meet Key Performance Indicators.
Use of new contract form/ arrangements *	H	M	Use of Standard Form of Contract. Use of Facilitator and workshops on new Contract. Appropriate Cessation clauses.

* These risks would all be expected to be higher with the use of a traditional approach.

L – Low
M – Medium
H – High

4 BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

Modernising Construction Procurement - 11.2.03, 26.3.03 etc.
Corporate Procurement Improvement Plan - 2.9.03 vb0749dn(AL)
Corporate Procurement District Auditor's Report - 20.5.03
Byatt Report – Delivering Better Services for Citizens – June 2001
Best Value Inspectors' Report - August 2001
Latham Report 'Constructing the Team' - 1994
Egan Report 'Rethinking Construction' - July 1998

5 CONSULTATIONS

<u>Consultee</u>	<u>Date consulted</u>
Vivien Bolland, Corporate Procurement Manager, RA&D	}
Trevor Braines, Property Officer, SC&H	
Anthony Carter, Head of Property Management, RA&D	
John Garratt, Head of Planning Property and Procurement, E&LL	
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Jonathan King, Senior Accountant, RA&D	
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Sue Oliver, Procurement Officer, RA&D	
Gervase Smith, Asset Strategy Manager, RA&D	
Pete Stephens, Technical Manager (Services) , Housing	
Rob Thomas, Acting Head of Corporate Resources, CS&NR	
Andrew Turnbull, Senior Quantity Surveyor, ER&D	
Geoff Organ, Head of Corporate Procurement, Support & Income Services, RA&D	
Corporate Procurement Group	8.9.03
Departmental Management Team	7.10.03
Directors' Board	15.10.03
	21.10.03

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