

# Outline Collaborative Contracting Strategy for Highway Maintenance Services



### Background and context

The current government has confirmed a significant commitment to capital funding on infrastructure, with major projects such as HS2, Thames Tideway and Crossrail heading the investment programme. In the field of highways there is similarly encouraging long term capital investment in the strategic road network (Highways England's Road Investment Strategy – RIS) and a better outlook for local roads with £6bn capital investment promised over the next 5 years.

This positive news is, however, set against a backdrop of continuing constraints on revenue spending. In the area of local highways this is resulting in pressure on both public sector clients and private sector providers. Already slight profit margins are being further squeezed and signs are emerging of potentially detrimental changes in the client / provider relationship balance. This imbalance is beginning to manifest itself in a number of ways;

- Providers, whilst willing to stand by their original commitments, are reluctant to extend their contracts;
- Providers are beginning to shift their focus to clients with whom they could develop long term collaborative relationships in a non-confrontational environment;
- Sub-contractors and suppliers are beginning to shift their business to places where they can secure a fair return whilst minimising contractual risk;
- Salary costs are on the increase and both clients and providers are beginning to struggle to retain good staff

In order to counter this change in contractual and market place dynamics, it will be necessary to create a better equivalence between client and provider, and avoid inappropriate and potentially costly risk transference. The key to this is good contracts and procurements, allied to appropriate, collaborative behaviours on behalf of all participants.

Recognising this, a group of experienced market leaders, drawn from both public and private sector organisations, have worked together collaboratively on a project to identify and then address the major factors which give rise to the detrimental symptoms described above. It is intended that the project will result in a practical Toolkit, for use by local authority clients involved in highway maintenance contract procurement and delivery.

The development of this Toolkit was planned in 3 phases;

Phase 1 - a Scoping Document was developed in September 2015 by the Steering Group identified below.

Phase 2 - this interim guidance which HMEP wished to develop in advance of the final Toolkit to raise the awareness of the issues under consideration together with some outline principles for dealing with those issues.

Phase 3 – the final phase of this important work is to complete the final Toolkit which will act as guidance for practitioners within both clients and providers to satisfactorily address the issues that have been raised.

The topics under consideration are included as a table in Section A and address the lifecycle of delivery including;

<b>Procurement</b>	<b>Effectiveness of procurement processes</b>
	<b>Structure of quality submissions</b>
	<b>Contract term</b>
	<b>Clarity on risk allocation and pricing structure</b>
	<b>Tender assessment models</b>
	<b>Alternative solutions at tender stage</b>
	<b>Use of efficiency discounts</b>
	<b>Mobilisation</b>
	<b>Behaviours</b>
<b>Operational</b>	<b>Bid team – continuity</b>
	<b>Silo working</b>
	<b>Facilitating collaboration</b>
<b>Commercial</b>	<b>Incentive and reward mechanisms</b>
	<b>Maximising the benefits from target cost</b>
	<b>Issue resolution</b>

Section B contains a commentary on each of the topics which identifies the reasons for their importance and an outline solution of how they can be resolved. At the end of each topic 'Additional Considerations' describes the future work necessary to complete the Toolkit which should be available in the spring of 2017.

These outline solutions have been developed by a Steering Group consisting of a cross-section of executive leaders from both the public and private sector and hence represent a balanced view of the problems and proposed solutions. The individuals are listed below;

- Steve Kent (chair) – Board member HMEP
- Geoff Allister – Executive Director HTMA and Board member HMEP
- Matt Sweeting – Divisional Director Highways Agency and Board member HMEP (now Service Director Kier Highways)
- Dave Wright – MD EM Highways (now Executive Director Kier Highways)
- Bill Taylor – MD Ringway
- Andy Rowley – Commercial Director Contracting - Tarmac
- Andy Best – Head LoHAC Contract Management Team TfL and ADEPT representative
- David Farquhar – Assistant Director Northamptonshire and HMEP Challenge Group member (now retired)
- Martin Duffy and Jim Towey – appointed consultants for this work

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 Collaborative Contracting Strategy is most effective if applied alongside the HMEP products identified above where referenced in Section B Commentary below.

# SECTION A

# TOPICS

**Procurement**

Item	Topic	Risk	Impact	Mitigation	Reference
1	Effectiveness of procurement processes	Lack of alignment and clarity between client and tenderer at bid stage	Latent ambiguities emerge post tender with potential for breakdown in relationships and commercial dispute	Ensure appropriate guidance in tender documentation	P.1.1
		Past performance of tenderers not adequately addressed	Tender submission does not correlate with likely future performance	Greater emphasis to be placed on evaluating past performance	P.1.2
		Imbalance of skills in procurement teams	Procurement exercise doesn't fully meet the required service outcomes	Balanced cross-functional teams with both procurement and service delivery experience	P.1.3
2	Structure of quality submission	Lack of consistent processes and formats for quality submissions	Wide variances in tender returns leading to wide variances in marking from tender assessors	More effective format for quality submissions	P.2.1
3	Contract term	Inappropriate contract duration	Higher cost to client and reduced potential to develop effective relationships	Guidance about the appropriate term and extensions	P.3.1
4	Clarity of tender information provided	Lack of clarity on risk allocation and pricing structure doesn't reflect work requirement	Tender prices based on assumptions leading to commercial arguments post tender and potential breakdown in relationships	Improve pricing mechanisms with better allocation of risks	P.4.1
5	Tender assessment	Tender financial	Lowest cost tender not	Accurately predict the	P.5.1

## Outline Collaborative Contracting Strategy Toolkit

	models	comparisons may be modelled in a manner that does not reflect the true nature of the work to be undertaken.	identified	volume of work in conjunction with revised quality submissions and pricing mechanism	
6	Alternative solutions at tender stage	Procurement restrictions precluding providers suggesting alternative solutions – deemed to be variant bids	Lack of innovative solutions with potential lower cost/better value at tender stage	Develop process for capturing innovation at tender stage	P.6.1
7	Efficiency Discounts	Ineffective discount mechanisms built in to contracts	Tenderers build in the discount by inflating prices and real efficiencies are not generated	Greater emphasis on assessing process for generating efficiencies at time of tender	P.7.1
8	Mobilisation	Lack of clarity about programme and cost for mobilisation activities	Inability to effectively and efficiently manage and control mobilisation	Improved criteria for mobilisation process and include a risk assessment	P.8.1
9	Behaviours*	Inappropriate behaviours on both client and provider side	Loss of the benefit that is possible from joint working	Develop standard approach to assessing collaborative competencies and behaviours and ensure inclusion in tender	P9.1

\* Behaviour cuts across the entire process from procurement to operational and commercial delivery

**Operational**

<b>Item</b>	<b>Topic</b>	<b>Risk</b>	<b>Impact</b>	<b>Mitigation</b>	<b>Reference</b>
1	Bid team does not follow through to delivery	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	Promises made at tender stage misinterpreted or not delivered	Transition plan to ensure continuity of client management team and provider bid team	O.1.1
2	Silo working	Work fragmented across multiple organisations and/or functions	Impaired performance due to hand offs and lack of accountability	Integration to be addressed in organisational structures as part of quality plans	O.2.1
3	Facilitating collaboration	Lack of formal operating mechanisms for collaborative working	Loss of opportunity to create new value by working together that would not have been created by the organisations working alone	Adopt standard approach to BS 11000 including Alliance arrangements	O.3.1

**Commercial**

Item	Topic	Risk	Impact	Mitigation	Reference
1	Incentive/reward mechanisms	Lack of robust mechanisms built into the contract. Inappropriate pain/gain share ranges in some contracts	Potential non-generation of cost saving	Develop standard suite of incentive/ reward mechanisms and link to contract extension	C.1.1
2	Target cost	Failure to maximise the benefits from target cost	Expensive service and lack of pressure for the provider to be efficient. Lack of assurance about performance and efficiency. Inefficiencies where target cost used for low value work	Revised pricing mechanisms and better use of cost capture	C.2.1
3	Issue resolution	Lack of process for dealing with issues in a structured and disciplined manner prior to formal dispute	Protracted debates often about misunderstood positions. Inertia and delays due to lack of effective escalation mechanism. Significant senior management time wasted. Breakdown of relationships	Develop issue resolution process	C.3.1

# SECTION B

# COMMENTARY

PROCUREMENT TOPICS

P.1.1, P.1.2, P.1.3 – effectiveness of procurement processes

**Guidance;** .1.1 – achieving alignment between client and provider should be undertaken with the following considerations;

Ensure clear and specific tender documentation;

- Provide robust tender instructions about pricing e.g. the tenderer must not;
  - Price any item or activity within another item or activity;
  - Cross subsidise any item or activity within any other item or activity;
  - Make any assumptions regarding the use or relevance of any item or activity.

Clients should consider making their 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’.

What clients will be aiming to achieve is to identify any item or activity where the price does not reasonably reflect the actual cost of carrying out the work;

- Utilise HMEP Form of Contract for Highway Maintenance Purposes including Price List and Method of Measurement that describes items and activities in a manner that allows tenderers to insert prices that reasonably reflect the actual cost of carrying out the work.

**Additional considerations;**

Develop a clear process with guidance on the best methodology for dealing with ‘outlier’ rates.

**Guidance;** 1.2 – greater emphasis on past performance;

Many tender processes provide for an approach supported by past evidence of successful delivery of that approach. At the operational level the successful delivery of a task, 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.

When clients obtain references on past contracts they should validate the less tangible provider competencies, which will go some way to demonstrating the culture of an organisation, and may include;

- Communication;
- Customer focus;

- Commercial behaviour;
- Collaboration and teamwork;
- Flexibility and responsiveness;
- Staff competencies.

It is suggested that this review of past performance is undertaken at the prequalification stage.

In any event clients should implement a robust prequalification process which should ensure only tenderers with the capability and capacity to deliver expected quality are invited to tender.

### **Additional considerations;**

Develop client process for an evidence based approach to tenderers past performance.

### **Guidance;** 1.3 – effective procurement teams

It is understandable that 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 final service delivered may be different from the service 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 valuation of the work.

There should be balanced accountability between the procurement and industry experts within the team.

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 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.

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.

### **Additional considerations;**

No further additional considerations over and above that already suggested elsewhere in this document is required.

### **P.2.1 – structure of quality submissions**

#### **Guidance;**

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 a consistent and repeatable process to address the above issues effectively. However, in broad terms for each tender opportunity clients should

endeavour to ensure that;

- For all key operational processes they establish what aspects they require the tenderer to cover in his submission e.g. what key elements of a winter service process does the client want to see the providers address in their quality submission including the information to be provided;
- They should require tenderers to use statements that can be contractualised using terminology such as 'we will...' rather than 'we may...'

### **Additional considerations;**

Develop standard guidance to assist client tender assessors to identify the key service areas and the attributes that are important to be covered in a tender submission. This will also include a structure and format for tenderers to follow when submitting quality responses.

### **P.3.1 – contract term**

#### **Guidance;**

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

- There are 3 primary options to consider;
  - A fixed term;
  - A fixed term with options to extend based on performance (by one-off extension or incremental);
  - A longer fixed term with the option to reduce the term based on performance.
- The option to achieve a long term relationship should be 'designed in' when defining the contract term at the 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 costs;
- In order to keep the appropriate control on performance it is suggested that incremental extensions/reductions are utilised (e.g. in units of a single year);
- 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;
- Whether extensions are given or removed this 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 unenforceable metrics will demotivate both client and provider in pursuit of extensions;
- It should be recognised that all extensions are by mutual consent – there must be a will 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 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.

### **Additional considerations;**

Develop a process to manage incremental extensions and reductions together with a framework for extension/reduction metrics.

### P.4.1 – clarity on risk allocation and pricing structure

#### **Guidance;**

There are two key aspects of the contract where greater clarity on information provided by clients at the tender stage would help to avoid post tender commercial arguments and potential breakdown in relationships;

1. Clarity on risk allocation;
2. Clarity on pricing structure.

#### Risk allocation;

Under current arrangements it is suggested that clients are generally unaware of the tendered cost of the risk they are placing on providers through their tender requirements, and there is no mechanism for providers 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 revert to them or remain with the provider e.g.;

- Use of RPI for indexation – often providers consider RPI to under-recover their cost and make an allowance for this in the tender;
- Changes in law;
- 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;
- Pension liabilities – inaccurate pricing of pension liability through speculative assumption of risks – 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 they should be given a commercially informed choice. Furthermore 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.

#### Pricing structure;

Under current arrangements there is a risk that pricing mechanisms in tender documents do not reflect the nature of the work to be undertaken e.g.

- Items included in SoR are too excessive and in some instances outdated and do not relate to the actual 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 providers 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 1.1 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.

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 providers 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.

**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.

**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 the provider to price the activities in a way that reflects how he intends to carry out the work and both the client and provider to regulate the scope and timing of work in order to provide best value for money.

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 and quantity related cost;
- Clients need to be accurate in the information provided in terms of the quantities in the SoR and the quantities in the 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.

### **Additional considerations;**

1. Produce a guidance manual in the format described above i.e 'change', 'why done' and 'implication' – this work should be done in conjunction with the HTMA Service Delivery Working Group;

### P.5.1 – tender assessment models

#### **Guidance;**

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 providers at tender stage be able to predetermine the likely lowest 'outturn' cost.

Where SoR's contain items that don't reflect the actual work to be undertaken, and tendered rates are distorted such that they don't reflect the actual cost of carrying out work, and lump sums contain variable assumptions about quantities of work required in different timescales – the creation of a robust and equitable tender assessment model that fairly compares the true 'outturn' cost of different tenders is, it is suggested, virtually impossible.

If the guidance above is adopted in terms of;

- A revised approach to structure of quality submissions;
- Adoption of HMEP Method of Measurement and Price List including Minor Repair Service Information Summary;
- Adoption of guidance in 1.1 above regarding tender instructions on cross-subsidising rates etc.;

then the creation of a robust and equitable tender assessment model will be far more achievable.

#### **Additional considerations;**

No further additional considerations over and above that already suggested elsewhere in this document is required.

### P.6.1 – Alternative solutions at tender stage

#### **Guidance;**

It is suggested that in addition to having a well-structured quality submission together with a greater awareness of past performance, all as covered above, then a tenderer should also be assessed against the innovation that they can bring to the table with

their tender.

Currently our procurement methodology of simply evaluating price and quality doesn't necessarily encourage innovation.

Clients should consider as part of the quality submission inviting ideas in relation to proposed innovations/alternative solutions.

**Additional considerations;**

Develop a process whereby innovative approaches could be submitted and assessed as part of the tender quality submission together with an explanation of the appropriate funding and share mechanisms.

**P.7.1 – Use of efficiency discounts**

**Guidance;**

Firstly, 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;
- Innovation – alternative solutions to what's been asked for in the tender.

It's important to assess a tenderer, in part, on their approach to generating efficiency savings throughout the term of the contract.

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 provider's methodology/process by which they intend to deliver quantifiable future efficiencies the level of which would 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.

**Additional considerations;**

Provide guidance on how the efficiency process can be assessed as part of the quality submission, including share mechanisms, and the structure of a relevant extension metric.

### P.8.1 - Mobilisation

#### **Guidance;**

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. In addition to the requirement to have a detailed programme with milestones, considerations for the mobilisation process should include;

- 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;
- 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 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;
- The possibility of linking payment to achieving milestones during mobilisation.

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.

#### **Additional considerations;**

Create a risk register covering the key risks that could adversely affect mobilisation.

### P.9.1 - Behaviours

#### **Guidance;**

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

The need to exhibit appropriate collaborative competencies and behaviours is also an intrinsic part of BS 11000 Collaborative business relationships, a standard (shortly to become an ISO) 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 that behaviours form part of tender requirements and are assessed as part of quality submissions;
- Ensure they form part of the assessment of past performance (refer 1.2above);
- Ensure that behaviours are measured and this forms part of the contract extension metrics.

## **Additional considerations;**

Create standard description of collaborative competencies and behaviours including measurement mechanisms that can be included in tender documentation but also used to monitor the behaviour of both the client and provider operational and commercial delivery teams.

## **OPERATIONAL TOPICS**

### **O.1.1 – Bid team – continuity**

#### **Guidance;**

This issue falls under two categories;

1. Lack of involvement from the providers bid team in mobilising the contract and beyond;
  - 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.
2. Insufficient handover from the clients' management team directly involved in the procurement exercise to operational managers who are responsible for day-to-day delivery;
  - 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.

It is suggested that the following be considered;

- A transition plan should be jointly agreed for both client and provider teams that allows for an adequate level of continuity between the procurement, mobilisation and operational phases. There is a greater necessity for this when there is a large amount of dialogue during the procurement phase.

### **Additional considerations;**

Development of a generic outline transition plan structure.

### **O.2.1 – Silo working**

#### **Guidance;**

No matter how well the contract documentation has been developed by the client and understood by the successful provider, implementation may be impaired if the organisational structure within both the client and 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 this flawed performance can be as follows;

- Handover of work between teams causes delay and rework resulting in additional (albeit hidden) cost;
- 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.

Clients should consider requiring providers as part of the production of their quality plans to address the integration of work at the client/subcontractor 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.

#### **Additional considerations;**

Develop protocols for integration at the typical touch points between clients and providers.

## O.3.1 – Facilitating collaboration

### **Guidance;**

The advent of BS 11000 Collaborative business relationships 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 BS 11000. 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.

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 BS 11000 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;
- 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.

### **Additional considerations;**

Guidance for client implementation of an Alliance arrangement for BS 11000 in highways maintenance.

## COMMERCIAL TOPICS

### C.1.1 – Incentivisation and reward mechanisms

#### **Guidance;**

The typical pricing mechanisms for a highways maintenance contract are;

- For design – fixed fee percentage or cost reimbursable;
- For schemes/capital works – target cost;
- For routine and reactive maintenance – lump sum;
- For elements of undefined work - cost reimbursable.

There are of course variations and derivatives of the above including contracts that are entirely cost reimbursable.

The main incentive mechanism for schemes is the use of pain/gain share ranges (see C.2.1 below for the importance of getting this right) and beyond this there is a wide range of incentive/reward mechanisms across our industry.

However, the effectiveness of these is in part at least questionable – are we realising the true potential benefits available across the entire supply chain by doing things better and differently?

Issues to consider when developing incentive/reward mechanisms include;

- 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 sharing;
- 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 a recipient of part of the share;
- It is not necessary for all savings to translate into cash and be shared between the parties i.e. it may be that 100% of the saving is reinvested as additional work from which the client benefits and the provider generates additional turnover and margin.

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 P.3.1 above.

### **Additional considerations;**

Develop a suite of incentive/reward mechanisms for clients to choose from to suit their circumstances and include in their tender documents.

## C.2.1 – Maximising the benefits from target cost

### **Guidance;**

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 P.4.1 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 P.7.1 and C.1.1 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 need to be clear on whether the cost capture requirements are for

invoicing, or to gain cost intelligence against the series 'buckets' for use in the generation of efficiencies. Great care should be taken to avoid a situation where the requirement is to capture and allocate cost at the detailed series/activity level and the data only to be used for invoicing purposes;

- 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.

### **Additional considerations;**

Identify the real key cost drivers and develop guidance on an appropriate cost capture mechanism and how this should be used to drive efficiencies.

### C.3.1 – Issue Resolution

#### **Guidance;**

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 from the point at which they recognise they are in disagreement (for example about a new rate, different interpretation of the specification etc) and the commencement of the formal contract mechanism for dispute resolution.

There is no recognised issue resolution process that allows for a collaborative approach to the equitable settlement of disagreements. Indeed BS 11000 Collaborative business relationships, 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 quantum disagreements;
- Prioritisation and programme;
- Mechanisms to maintain compliance with contract i.e. the 'off-line' approach doesn't affect either parties contractual rights;
- Escalation;
- Performance metrics for the process.

### **Additional considerations;**

Develop an issue resolution process with appropriate guidance.