

A GUIDE FROM THE HOUSING FORUM
OCTOBER 2021



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Better Procurement for Better Homes

A Housing Forum guide for housing associations
and local authorities to procuring for best value,
quality and sustainable communities

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About this guide

This guide advocates a set of values and behaviours founded on collaboration between clients, consultants and contractors. It suggests a partnering ethos and builds on it, to provide a procurement framework and behaviours that will result in safer, higher-quality homes and better places to live.

There is no one solution that fits all circumstances. But there is one universal message: clients must set out a clear project vision from the start. With that firmly established, and subsequent monitoring and guardianship through the life of the project, there is every chance of that vision being realised.

There is so much to do in ensuring that we provide the very best places we can for people to live whilst using our money wisely. This guide shows how it can be done.

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About The Housing Forum

The Housing Forum is unique in representing all parties involved across the housing industry supply chain. It provides an independent professional network of commissioners (housing associations, councils, and institutional investors); professional consultants in design and construction; suppliers and manufacturers of components and developers and constructors. Members are involved in a range of partnership working and are collectively responsible for billions of pounds of investment into the sector.

Our focus and ambition are clear - improving the supply and quality of new homes- drawing on the expertise and commitment of members to improve supply and build better homes that are supported by communities.

This membership ensures the The Housing Forum provides insights, market knowledge and analysis to raise standards and the pace of delivery. We work with the Government and its Agencies on the implementation and appraisal of new policies and strategies to ensure delivery.

**If you are interested in joining
The Housing Forum please contact:**

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Foreword



Geeta Nanda, Chief Executive,
Metropolitan Thames Valley
and Chair of the G15.

Trust and vision

At a time when local authorities and housing association are playing an even bigger role building new homes and communities and embarking on extensive refurbishment programmes, this guide could not be timelier – or more needed.

It's a compendium of good advice, practical insight and legal information to help newcomers and experienced clients alike in commissioning the design and construction of housing.

Good procurement can never be about signing a design and build contract and just turning up at a monthly meeting; it's not about selecting contractors on the lowest bid; or endlessly finding ways to mitigate risks by passing them on to the supply chain. All of these things, as housing providers have learnt the hard way, have led to cost overruns, disputes and defects.

Instead, this guide advocates a set of values and behaviours founded on collaboration between clients, consultants and contractors. It suggests a partnering ethos and builds on it, to provide a procurement framework and behaviours that will result in safer, higher-quality homes and better places to live.

What's clear is that there is no one solution that fits all circumstances. **But there is one universal message:** clients must set out a clear project vision from the start. With that firmly established, and subsequent monitoring and guardianship through the life of the project, there is every chance of that vision being realised.

Too often projects start with the best intentions for quality and collaboration but lose direction and revert to inadequate practices. The project vision needs to be clearly endorsed within the client organisation at all levels, from board through the executive, down to the operational level, and then passed on to the design and construction team for delivery.

We all know that the appointment of the right team leader is crucial in so many aspects of our organisations and businesses and procuring construction work is no different. The project sponsor sets the tone of the relationship between team members, and is in the best position to promote collaboration and better understanding. It can be easy to underestimate that.

There is so much to do in ensuring that we provide the very best places we can for people to live whilst using our money wisely. We need also to earn and retain the trust of the communities we serve. This guide shows how it can be done.

Introduction

The importance of a procurement guide now and the role of The Housing Forum, plus a summary of recommendations.

Why a Housing Forum procurement guide now?

The Housing Forum has identified poor procurement as the key cross-industry issue of our time. So much of what we do and the quality of homes we deliver is dependent on how construction work is procured.

Commissioning clients, like housing associations and councils, for whom this guide is intended, set themselves up for success or failure based on how they approach procurement.

There have been inadequate procurement practices for some time now. An all-too-common approach has been to place overmuch focus on least-cost procurement and to transfer as much risk as possible to the contractor, thereby not achieving the right outcomes. Initiatives to try and rectify this have not proved lasting, for a variety of reasons.

However, the quality failures that have come to light across many housing schemes, and tragically in the Grenfell Tower disaster, have galvanised unprecedented determination from industry and government to overhaul quality and safety. At the heart of this new mindset is an acceptance that improved procurement practices are essential to the reforms.

Procurement practices were identified as a problem in Dame Judith Hackitt's 2018 independent review of building regulations and fire safety: *Building a Safer Future*.¹ The Grenfell Inquiry also referenced poor procurement as a contributory factor.

Following on from the Hackitt Review, new legislation is being introduced that will put in place measures to improve safety and ensure accountability. All of this has implications for the way housing is procured, as we highlight in this guide.

In addition, government has launched the National Model Design Code² as recommended by the Building Better, Building Beautiful Commission report, *Living with Beauty*, published in January 2020.³ This new code is intended to put more emphasis on design quality and give more power to planning authorities and communities. This too should inform the procurement agenda.

At the same time, government has made value-led procurement a policy imperative in its procurement green paper, *Transforming Public Procurement*,⁴ which sets out changes that will redefine public procurement law following the UK's withdrawal from the European Union.

The ethos adopted in procurement reform is underscored in the *Construction Playbook*, a blueprint for the development of the construction industry.

The *Construction Playbook*⁵ encourages clients to develop a more sophisticated understanding of different types of value, including social value. Firms bidding for work that are slow to adopt the working practices outlined in the *Construction Playbook* may find themselves lower down the ranks in future public procurement processes.

We certainly hope these government initiatives achieve the momentum previous initiatives have lacked in the past.

During the pandemic, a more collaborative approach to the design and construction process has been the only option as sites have adjusted to the constraints imposed by Covid. What's more, the quality of our homes and neighbourhoods has been shown to be more important than ever.

Where does The Housing Forum guide fit in?

As we've just touched upon, a number of procurement issues have emerged out of both the Grenfell Tower disaster and also the general dissatisfaction with the quality of what is constructed and the processes that have become the sector current norm. We have summarised these as:

- Failures in safety and compliance generally
- Failure in delivering design quality
- Failures in construction quality and errors on site
- Cost overruns
- Poor management of cost and construction risk
- Failure in supply chain management
- Imbalance in the 'time-cost-quality' triangle
- Culture of blame and confrontation.

1 *Building a Safer Future: Independent Review of the Building Regulations and Fire Safety*, Dame Judith Hackitt, May 2018 HM Government https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf

2 <https://www.gov.uk/government/publications/national-model-design-code>

3 *Living with beauty: report of the Building Better, Building Beautiful Commission*, January 2020, Ministry of Housing, Communities and Local Government <https://www.gov.uk/government/publications/living-with-beauty-report-of-the-building-better-building-beautiful-commission>

4 *Transforming Public Procurement*, December 2020, Cabinet Office <https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement>

5 The Construction Playbook, December 2020, the Cabinet Office

The Housing Forum is uniquely placed as a cross-sector organisation to find a more efficient and productive way of delivering housing. The Housing Forum itself was born out of the Movement for Innovation, following the Egan Report,⁶ which promoted collaboration and focused on reducing the waste inherent in constructing buildings and the procurement process. It seems right that The Housing Forum takes the lead in addressing the current problems and promotes best practice drawn from the huge breadth of expertise of its cross-industry membership.

Egan's partnering ethos, which built upon the earlier recommendations of Sir Michael Latham,⁷ was based on adopting a more collaborative construction process. This collaboration was predicated on an 'open book' approach. Although largely endorsed across the industry at the time, its influence seems to have lapsed, with the mainstream reverting to a design and build model driven once again by cost, with damaging consequences for quality.

A survey of our members suggests that partnering became unfashionable on the back of a perceived lack of competitiveness as well as client mistrust of the contractor. Limited input of contractor partners into pre-planning stages and lack of robust processes in design and construction were also flagged up as reasons why it has fallen out of the industry's procurement toolkit.

Now that the shortcomings of current procurement practices have once again become widely apparent, it is hoped that more commissioners and constructors will be persuaded to take a truly collaborative approach that takes on board wider criteria than lowest price.

The approach we are advocating picks up on the partnering ethos and builds on it, to provide a procurement framework and behaviours that we think will result in safer, higher-quality homes and better places to live.

Though design and build has come in for criticism, which we reflect on in this guide, the single point of contractual responsibility it affords will continue to make it attractive to clients. It is not the principle of design and build procurement that is necessarily wrong, it is when and how it has been utilised that has been the issue.

Our guide sets out how, as part of a collaborative approach, design and build can be made to work better by ensuring design information is pinned down before the contract is agreed and by bringing in contractors and specialists at an early stage

For those that are unfamiliar with the common contract terms there is a glossary at the end of Chapter 6.

How the guide can help procurement

Our guide is aimed at clients commissioning the design and construction of housing, such as housing associations and local authorities, but our proposed approach is not intended to be a procurement straight jacket. There is no one solution that fits all circumstances; we acknowledge the need for flexibility.

What we advocate is a set of values and behaviours founded on collaboration between client, consultants and contractors.

And at the heart of this should be the client providing a clear project vision from the start and then subsequent monitoring and guardianship through the life of the project.

The recurring themes of our guide are:

- Promoting value-based procurement
- Setting a vision and delivering the vision
- Improved project leadership / governance / guardianship
- Engagement of a single design team from start to finish
- Promoting project collaboration
- Promoting early contractor appointment and engagement
- Adopting measures to protect and lock in design quality
- Adopting measures to ensure improved quality in construction
- Ensuring residents are involved meaningfully throughout the process
- Procuring to implement the recommendations of the Hackitt Review and the Building Safety Bill making its way through parliament.

We also provide pointers on the contractual tools, including pre-construction services agreements and project cost plans that can underpin a more collaborative approach. There have been numerous efforts over the years to create contractual options that effectively reconcile time, cost, risk and quality. The PPC2000 partnering contract is the closest contract to what we are seeking. Several of our recommendations therefore take their cue from this form of contract. The key is ensuring an unconditional contract is not signed until the design is fully developed and fixed and the majority of the works packages agreed.

Our guide is structured around key themes, based on major gateways within the procurement process. Each chapter provides a commentary on what issues need to be addressed and guidance for moving the project forward.

⁶ *Rethinking Construction*, 1998, Department of Trade and Industry
https://constructingexcellence.org.uk/wp-content/uploads/2014/10/rethinking_construction_report.pdf

⁷ *Constructing the Team*, 1994
<https://www.designingbuildings.co.uk/wiki/LathamReport>

Consolidated recommendations

The approach we are advocating to deliver higher quality, more sustainable and better places to live is based on a more collaborative design and construction process, which harnesses the expertise of the whole team.

These are the steps, processes and behaviours we are recommending clients follow to embrace this approach.

Create a vision

Clients should create a project vision document that the organisation formally endorses and ensure governance procedures are in place to safeguard the project by establishing proper client leadership and advocacy.

The vision should cover:

- Project governance and monitoring
- Cost and programme parameters
- Procurement structure and objectives
- Project lifetime assessment
- Forming the team
- Collaboration
- Design quality
- Construction quality
- Social value
- Residents' voice
- Respect for people
- Sustainability aspirations.

Appoint the right leader

Often the failure or success of a project comes down to the project sponsor, the client representative in charge of the project. The project sponsor sets the tone of the relationship between team members, and is in the best position to promote collaboration and trust.

Foster collaboration and procure on shared values

Be clear about your vision and objectives, including defining 'quality', and procure the team on the basis of a shared understanding and alignment of values. Have clear selection criteria, including a price evaluation model that does not promote a 'race to the bottom', and avoid unnecessary and over-complicated tender processes. These shared values should be embodied throughout the supply chain and not stop at first tier contractors.

Drive quality of design with a clear design brief

Procuring good design on projects has to start with a clear and realistic design vision setting out the degree of aspiration, which is endorsed at senior level. The minimum design standard should be 'excellent ordinary'. The design concept must also deliver future proof homes and help foster sustainable communities.

Appoint the consultants and contractors early

Early appointment of the consultant team and contractor and early engagement with key suppliers is crucial to drive quality, innovation and collaboration and greater cost certainty. It is important to select a form of contract which allows for early appointment and a process for developing design and price collaboratively, for example the ACA suite of alliance forms including, FAC-1, TAC-1 and PPC2000.

Define the product before fixing the price

Whatever the procurement method, the construction contract should be based on a comprehensive set of employer's requirements which include, at minimum, a detailed set of design intent drawings. If design and build is selected then it is important not to fix the price until detailed designs have been agreed. It is also important to agree a strategy with the contractor to consider price increases and decreases.

Give residents a voice

When developing for an existing community, residents need a voice throughout; setting up a project board, with resident representation, is one way of delivering that.

Manage the risk

Onerous risk positions should be avoided (eg fitness for purpose clauses; excessive insurance levels; restrictive intellectual property clauses). These create risks for the contractor and the supply-chain and may undermine the collaborative nature of the contract and add unnecessary costs. It may also constrain bidders because of the growing unavailability of professional indemnity insurance across the sector.

Demand consistency of the team

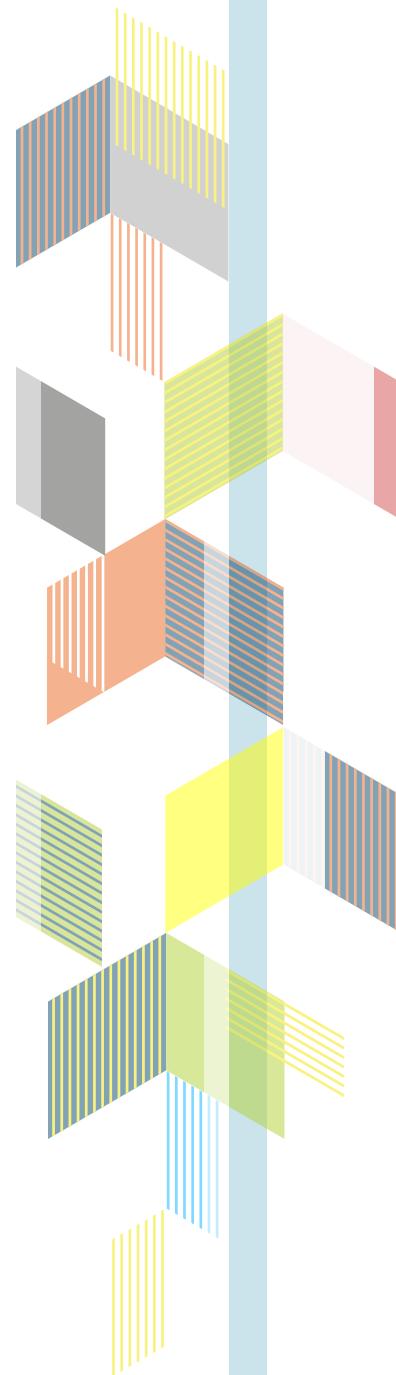
To ensure accountability and responsibility the key design team and other members should be retained in a responsible and influential role from concept to completion and occupation. This will help provide a golden thread of information or prescribed information, as set out in the Building Safety Bill. Real benefits can be realised by keeping the team together, supported by good governance, on a series of projects.

Drive quality with a clearly defined inspection regime

Clearly define contractual roles and responsibilities and the process and protocols to be adopted involving the whole team: subcontractors, main contractor, consultants and client. Clients may want to consider employing a clerk of works, but this appointment must have the necessary authority and put in place rigorous inspection regimes. Quality on site may be further enhanced by setting out 'critical inspections' as 'stop and check points' within the construction delivery process.

Ensure building safety and compliance

Appoint the building inspector at concept design stage. Develop the use of new technology such as BIM and electronic inspection software to support the quality of on-site processes.



1: Project Vision

This chapter outlines how to set up a project properly in relation to its quality, budget, procurement and programme.

It is also about identifying and understanding the priorities and overall aims for the project.

Key ingredients of a successful vision document

A statement of vision or intent is absolutely fundamental to the foundation of good procurement and provides the opportunity for the client to capture all that is important about the project in a high-level way as a reference throughout its conception, delivery and management. It is also the time to think more broadly about the diversity and inclusion aspects - how this will be reflected in the project, both in the team and its impact on local communities.

Too often we observe that projects start with the best intentions for quality and collaboration but lose direction and revert to inadequate practices, characterised by poor design and build procurement, and are generally cost-driven. This can occur for a number of reasons, for example, a change in project personnel or in client priorities and their business case.

To be successful, the project vision needs to be clearly endorsed within the client organisation at all levels, from board through to executive, down to the operational level, and then passed on to the design and construction team for delivery.

This guide encourages a shift to a value-based procurement process and a move away from reliance on minimum cost and minimum standards.

To help define the project and be a continual reference point, we are suggesting the client asks themselves: ***What would mark out success for the project?*** These are then the stated goals for the project that all the stakeholders become focused on delivering.

The aim is to broaden the definition of 'value' beyond technical and cost compliance to include a wider set of goals, such as design quality, construction quality and social value aspirations and then translate these into quality objectives for the project, even if they're sometimes difficult to measure.

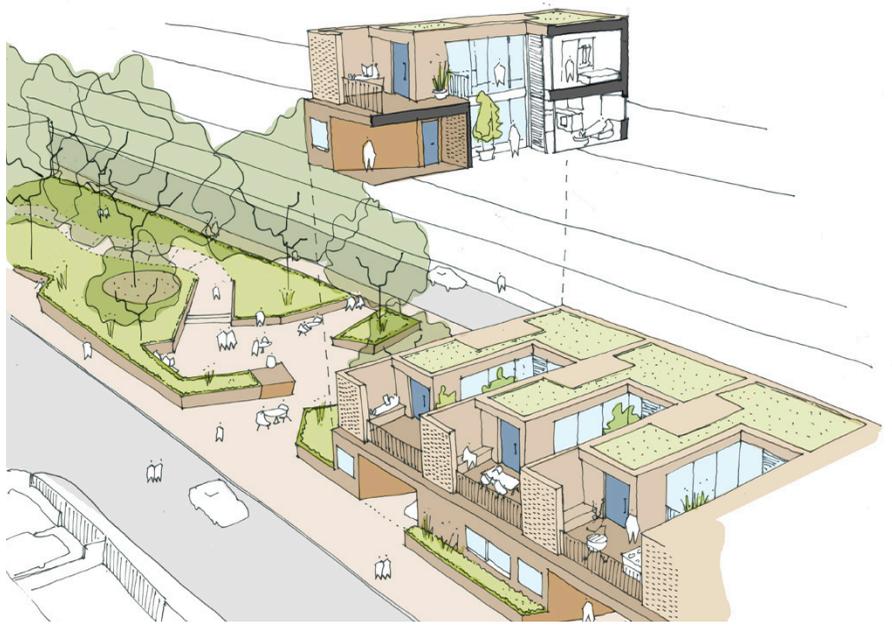
The vision document should set out the client's views and aspiration for encompassing the following important processes, values and outcomes:

- Maintaining the vision with good project governance and monitoring
- Cost and programme parameters
- Procurement structure and objectives
- Project lifetime assessment
- Forming the team
- Collaboration
- Design quality
- Construction quality
- Social value
- Residents' voice
- Respect for people
- Sustainability aspirations.

The vision document should be clearly recorded and preferably have been endorsed by stakeholders.

We expand on these processes and aspirations in this chapter.

Image: Architects' vision sketch for courtyard homes in Manchester. Copyright Levitt Bernstein.



Maintaining the vision with project governance and monitoring

Successful procurement needs real advocacy and continued support over the life of the project, not just at the beginning when decisions are more easily made, but at every gateway stage when the difficult decisions have to be made. Design and construction quality need to be relentlessly championed alongside the other delivery targets of cost and programme.

Some of the feedback we have received in researching this guide indicates that, in some instances, the client organisation can at the highest level lose touch with the project delivery. There is a sense that client management / governance boards instruct officers to deliver on time and on budget, without necessarily understanding what this can mean for project quality and without necessarily monitoring the overall delivery as this becomes delegated. It seems that the closer the senior decision makers are to the project, the better the outcome.

For this reason, we are advocating a structure that will be more hands-on in delivering the project vision, and which includes 'project champions' (drawn from the senior client team and the board) for the life of the project. Their purpose is to oversee at the highest possible level the delivery of the project and its achievement of the aims envisaged.

In the higher education sector, this is often exactly what is done - a senior representative of the client department (user) or faculty (an academic) leads a project board and monitors the project's progress through its life, ensuring the vision is delivered by the estates development team.

This monitoring role should also involve the contractor and consulting teams at a senior level. Best practice procurement needs good leadership from all sides. Forming a senior project steering group (the Core Group in the PPC2000 contract) to monitor the scheme is logical and desirable.

Cost and programme parameters

At project inception there needs to be some indication of what a realistic but viable level of cost looks like. This would normally be based on the project feasibility and indication of the assumptions made (funding etc) that make the project viable. It is also acknowledged that there is a need to move towards a more value-based approach if improvement in quality outcomes is a clear aim. Lowest price does not measure customer satisfaction or life cycle and therefore cannot deliver best value.

A strategic programme will also give an indication of overall intention and pick out the timeline for key approvals and / or funding gateways.

Procurement structure and objectives

As well as a contract, the whole procurement process needs a well-defined structure that clearly illustrates how the project will be delivered, the various approvals and gateways it must go through and at what point and on what basis the contractor appointment is being made.

The overwhelming consensus of opinion in a survey of The Housing Forum's members is for the contractor to be appointed early in the project development process, and this guidance steers towards the post-feasibility stage or after the concept design stage (RIBA defined work stage 2). Although this is not prescriptive, it runs as a key theme for all of the chapters, as the reasoning is well rehearsed. *The contractual options are set out in Chapter 6.*

It is encouraging that those who took part in the survey prefer a move to more collaborative procurement methods and away from processes that could be described as cost driven and risk averse. This methodology can produce unsatisfactory outcomes for design and construction quality, as well as poor cost and programme outcomes.

It is worth noting however that greater collaboration can have time implications for projects, which clients need to acknowledge.

Project lifetime assessment

Within the project vision there needs to be an assessment of the long-term view of the project and the aspirations for its management and maintenance, and how these are to be embraced at procurement stage. Importantly, this should encompass a lifetime costing approach that the stakeholders need to be cognisant of as the project develops.

At moments when the focus is on cost and value engineering, the client needs to be able to make informed decisions on capital cost savings versus long-term investment.

There may also be a statement about the client's defect-free aims and the principles of how this might be achieved that, again, will inform the procurement process and the roles and responsibilities of each team member.

Key to long-term success is a statement about how the project will be monitored post-occupancy, both from a performance point of view as well as customer satisfaction. Across the housing sector, information is sparse in relation to how a building works for its residents, and how it performs in terms of energy use and costs in terms of management and use. These must all be factors for a successful project and ought to be measured.

Forming the team

One of the key principles of this guidance is that there should be a consistent consultant and contracting team from project start to finish, weaving in a golden thread of knowledge with the roles and responsibilities of each team member clearly identified. It may be useful to write job descriptions which can provide clarity for an individual and their colleagues. *This aspect is touched upon across this guide.*

Collaboration

The results from The Housing Forum membership's procurement survey overwhelmingly suggest that collaborative-led procurement produces the best results and is the most desirable.

It is therefore a key recommendation of this guide that there is a statement about the project ethos and the added value that good collaboration can bring.

This will set the basis for the procurement agenda. *This is discussed in more detail in Chapter 2.*

Design quality

The aim is to set an aspiration for design quality and how this might be measured or achieved.

If available and helpful the original site feasibility could be included within the vision document to encapsulate the original design approach.

Parameters and guidance, such as that defined in *Building for Life*⁸ and MHCLG's National Design Guide⁹ or a particular set of standards, are good to refer to, but clients should be specific on which aspects of the guidance they would like to see invoked.

Avoid cluttering the design brief with mandatory design standards or common best practice. Rather, focus on the client's specific aspirations which go beyond what will be required by planning authorities and Building Regulations, for example, in relation to climate change, healthy environments, space standards or sustainable travel. In a larger regeneration scheme, there may also be statements from residents about their aspirations for the development.

How the development will contribute to the wellbeing of its residents and community should also be considered. **Ask yourself:**

Would you like to live here?

This is the place to cover issues such as modern methods of construction and sustainability objectives, which need to be flagged early in any design process.

There needs to be a clear commitment to good architecture, acknowledging the long-term value it brings to residents and the wider community. *More details are provided in Chapter 3.*

Construction quality

Poor construction quality and building defects are high on the agenda since Grenfell and the subsequent more general exposure of defects in major upgrades and refurbishment and in some new build homes.

It is essential that inspection regimes are in place to ensure projects meet quality standards and necessary compliance. These requirements need to be made clear at the outset and to have consequences for procurement, particularly in relation to how the team is set up. *Details are set out in Chapter 5.*

Social value

The social value objectives for the project should be broad and deal with everything from diversity, apprenticeships, local labour and health through to wellbeing objectives. The *Living with Beauty* report of the Building Better, Building Beautiful Commission outlines 45 provisions in this respect and these need to be considered within the overall project vision.

Every project is an opportunity to create enduring positive change by realising the priorities and values of a local area. Needs will vary from community to community and from project to project. Therefore, the social value being aimed for should be established through a comprehensive process of community engagement and consultation throughout the project.

⁸ <https://www.designforhomes.org/project/building-for-life/>

⁹ *National Design Guide*, updated January 2021, MHCLG
<https://www.gov.uk/government/publications/national-design-guide>



Many housing providers will already be stipulating wider social requirements through the Social Value Act, which came into force in 2012. Though this has delivered important aspects such as training and apprenticeships, stipulating wider social requirements as part of a contract, it can fall prone to becoming a box-ticking exercise. Clients need to be clear on targets and how they will be both measured and enforced.

Residents' voice

Residents' desires for their area should carry weight and be considered a goal of the project team whenever possible; residents should be considered one of, if not the, most important stakeholders.

Engagement must be meaningful and we would positively encourage future residents of the project or representatives from the local area to be part of the client project governance structure wherever this is possible. Residents need a voice throughout, and setting up a project board, with resident representation is one way of delivering that.

Where the development is new with no existing residents, we suggest inviting resident groups already within the organisation to become involved.

Respect for people

There is a real sense within the industry that poor procurement and project set-up is creating an unnecessary amount of confrontation, which commonly manifests itself as unacceptable behaviour, even bullying. A 'Respect for people' charter with independent oversight is essential and should be adhered to throughout the life

of the project, underpinned by an emphasis on collaboration between the client, consultant team, contractor and contractor's supply chain.

Best practice procurement should make it clear that all parties in the team must have a voice at the table. All too often the practice of novating architects to the contractor's team, for example, can mean that concerns about quality are unable to be voiced to the client.

Sustainability aspirations

Setting an agenda for sustainability, which is normally embedded within a project brief, benefits from early definition and a clear statement of aspiration.

Clients are increasingly making statements about achieving zero carbon and signing up to declaring a 'climate emergency', and this needs to be reflected within the project from the outset, starting before the tender selection process. Achieving any target needs to be a priority from the beginning. Passivhaus, for example, has many design implications that need consideration from project inception.

There may also be wider agendas that affect the contractor and supply chain appointment. Historically, guidance like the Code for Sustainable Homes might have captured much of this, but a statement within the vision document clearly reflecting organisational, cultural and policy approach will provide an essential direction for the project.

GUIDANCE AT A GLANCE

PROJECT VISION

- Set out the project vision that the organisation formally endorses and publishes covering:
 - Project governance and monitoring
 - Cost and programme parameters
 - Procurement structure and objectives
 - Project lifetime assessment
 - Forming the team
 - Collaboration
 - Design quality
 - Construction quality
 - Social value
 - Residents' voice
 - Respect for people
 - Sustainability aspirations
- Protect the vision with proper governance procedures and by establishing proper client leadership and advocacy.
- Monitor the vision by setting up a senior stakeholder group representing the team.
- Make an early statement on overall procurement strategy that can inform the project development process from the beginning.

Vision plan checklist

This Vision plan highlights the key themes set out in the guide to deliver the project vision.

The Vision plan functions as a starting point for the project, as the principal document for steering the project and as a clear reference point for checking back against the original vision intent.

It should be kept at a high level with only enough detail to define the vision in outline. However, it might also form the basis for a more detailed project execution plan that can be developed with more detail added over time.



Procurement structure and objectives

- Introduction and background
- Project objectives:
 - The scope and assumptions on how the vision will be achieved
 - Include a site appraisal / site feasibility study
- Procurement strategy and process overview:
 - Clearly setting out the aims/critical success factors and why the procurement route was selected
 - Indicating at what stage the contractor will be appointed
 - Procurement stages
 - Roles and responsibilities

Project governance and monitoring

- Project governance:
 - Name project champion(s)
- Key roles and responsibilities:
 - Make up of project steering group – senior team members
 - Project responsibility matrix

Cost and programme parameters

- Budget assumptions
- Viability model including business case
- Funding criteria and programme including gateways
- Programme and cost roles and responsibilities

Project lifetime assessment

- Whole life cost principles – to allow long term value judgements to be made, ie, capital costs versus long-term management and maintenance
- Life cycle cost templates
- Post occupancy evaluation and monitoring procedure to encourage continuous improvement



Forming the team

- Project charter – expectations?
- Appointment strategy for retaining the team
- Time line for appointments
- Contractor selection process and evaluation criteria:
 - Involvement of supply chain
- Project directory
- Job/role descriptions

Collaboration

- Collaboration statement/expectations
- Expected methods of working:
 - Open book
 - Problem solving
 - Dispute resolution

Design quality

- Statement of what's important to maintain the vision
- Mandatory design standards and guidance
- Bespoke/specific project design standards
- Review and sign off process and responsibilities
- Level of detail to be provided during procurement process
- Managing design change and substitution

Construction quality

- Quality management requirements – statement of intent
- Quality management inspection procedures outline:
 - Roles and responsibilities
 - Competence levels
- Quality audit and maintaining the golden thread requirements:
 - Change control
- Continuous improvement practice
- Include the site feasibility study

Social value

- Social value priorities of the community and project
- Social value commitments:
 - Roles and responsibilities
 - Monitoring and reporting regime

Residents' voice

- Stakeholder list/directory
- Engagement strategy
- Resident board:
 - Purpose and governance
 - Participants
 - Roles and responsibilities
 - Communication protocol

Respect for people

- Respect for people charter
- Responsibility for monitoring and enforcing

Sustainability Aspirations

- Sustainability aspiration statement:
 - Sustainability checklist

Case study

Good procurement practice:

Sutherland Road East London

Image right: The combination of forms and materials gives the scheme a bold identity. Copyright Levitt Bernstein.

Sutherland Road has transformed a former industrial site into a new residential community, with 59 affordable homes, a health centre and shared garden.

New homes are arranged around the central courtyard in a series of apartment buildings and mews houses. The robust and simple aesthetic features saw-toothed roofs and brick and red corrugated metal cladding to reflect the local context. The landscape provides a variety of environments for residents, from formal grass to informal seating and children's play areas.

Name of project

Sutherland Road

Location

Walthamstow, Waltham Forest, London

Team

Client: East Thames Housing Group (now L&Q)

Contractor: Higgins Construction

Architect: Levitt Bernstein

Landscape architect: Levitt Bernstein

External architect (working drawings): MEPK

Structural engineer: Kirk Saunders

Services engineer: Synergy

Budget

£14 million

Site size

0.43ha

Start and end dates

2013-2017

Tenure mix

100% affordable

Procurement method

Two-stage Design and Build tender using a JCT contract

Procurement framework

This project was procured using a two-stage design and build tender using a JCT contract and a pre-construction services agreement.

The Employer's Requirements tender information was developed beyond the level of detail that would be adequate for a planning application to clearly define the design intent; in terms of formal work stage, this might be described as RIBA Stage 4a (technical design). This meant that the architectural detailing that locked in design quality was embedded in the contract documents and priced accordingly.

Architect Levitt Bernstein was not novated to complete the technical design for the contractor, but the practice was retained by the client in a quality monitor (also described as design or technical adviser) role.

Working relationship

From the outset, the client wanted to deliver architecture that was fit for purpose and of a high quality. That meant durability and longevity of key components, efficient in terms of operational costs and sympathetic to the surrounding community.

From day one the client took interest in all the key materials used for both the architecture and the public realm. Levitt Bernstein also took them to see other schemes.

The contractor team saw the architect's role of quality monitor as an asset to the project – an extra pair of eyes monitoring the technical design development prepared by their own executive architects, to ensure that it reflected the original design intent clearly established within the Employer's Requirements. Levitt Bernstein made benchmark inspections together with the employer's agent and also attended project progress meetings as part of the core team (which is not always the case for design and build). The practice was also part of the approval process as the contractor's proposals were developed. The contractor was open and shared a high level of detail and ensured there were rigorous sign-off procedures for materials and details.

Early supply chain involvement

Key to the architectural quality of the scheme was the detailing of the distinctive red metal cladding across the project.

The architect developed the design with a particular supplier during planning, and this continued post-planning through the tender



process stage, with the contractor bringing the sub-contractor early to develop the detailed design via a workshop process.

This joint approach and early support from the contractor were key to securing the quality of this significant architectural component.

Why the project was a success

The key considerations that drove the success of this project were:

- Having a good client who is supportive and focused on delivering design quality
- Having a well-developed level of detail within the Employer's Requirements that clearly defined the design intent
- A two-stage tender process that allowed more detail to be developed with the contractor before the contract was signed and price fixed
- A collaborative contractor team that wanted to engage and involve the same architects to deliver the original design
- Early access to the contractor's specialist supply chain to deliver the design intent.

Image right: The mews homes are clad in red corrugated metal. Copyright Levitt Bernstein.



Image right: The larger elevation has a distinctive, saw-toothed roof which references the area's industrial past. Copyright Levitt Bernstein and Tim Crocker.



2: Forming the Right Team for Success

In this chapter we look at the all-important process of getting the right team, with the client leading from the front, ensuring continuity of the team and considerations when selecting a contractor.

Project leadership

In the previous chapter we alluded to the leadership required to deliver the project vision. Often the failure or success of a project comes down to the client's project sponsor.

The importance of getting the client Project Sponsor role right cannot be emphasised enough. The project sponsor sets the tone of the relationship between team members - and it is the right position to promote collaboration and trust. If the project sponsor is adversarial, then this will ripple down to the rest of the team.

In our view the project sponsor must:

- Have a clear vision and be able to articulate this in the vision statement - what does success look like?
- Set the right tone and instil a sense of ownership on each member of the team
- Identify and prioritise critical needs
- Understand risk - and accept that everybody needs to make a reasonable profit
- Take responsibility to ensure waste of resources / cost is kept to a minimum
- When procuring, don't let the 'tail wag the dog'.

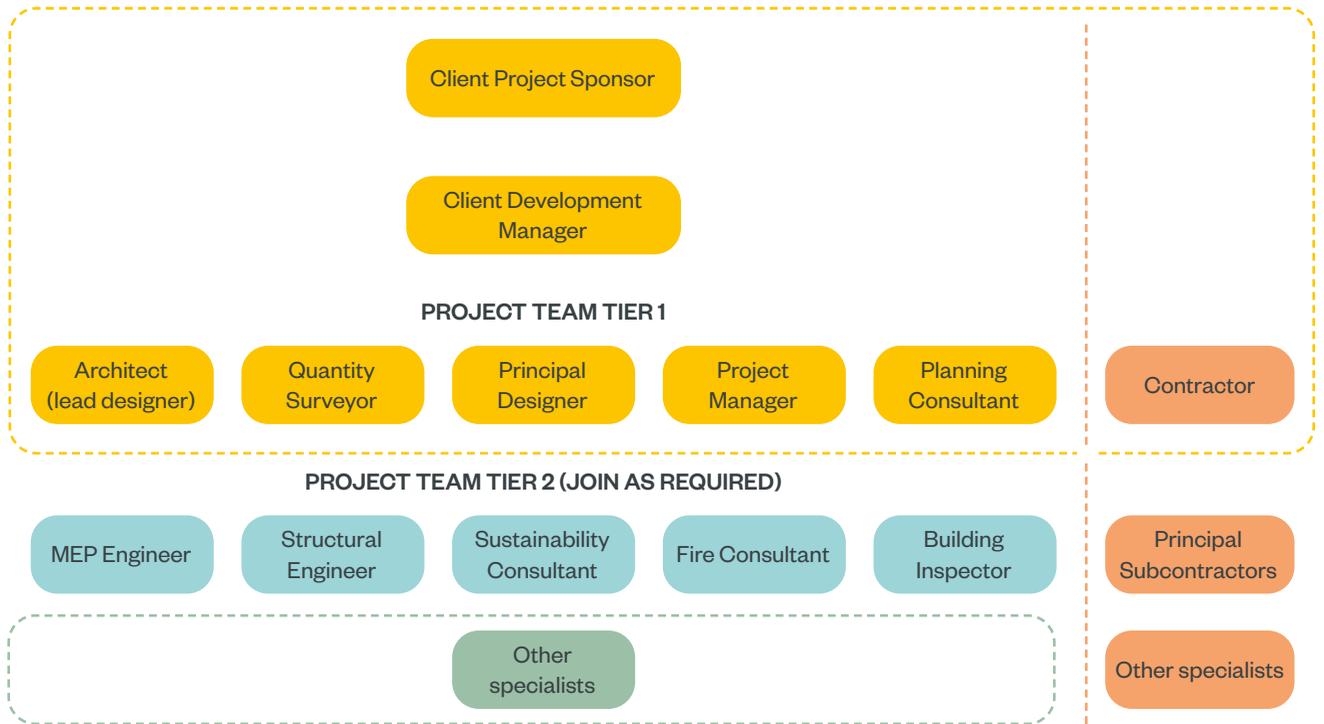
What we mean by this latter point is that client needs to be open to new ideas and to consider which procurement method is right for the project. With pressure to meet housing targets, the temptation is always to adopt the lowest-risk strategy which results in adopting the same procurement and contract used last time without reviewing the lessons.

Project sponsors should not feel constrained by procurement arrangements that act as a straitjacket and are not conducive to innovation, collaboration or better ways of working. We should always be prepared to break rules if necessary. It is perfectly reasonable to adopt a bespoke process that suits the circumstances; in fact, we would encourage this.

Diagram: Copyright Levitt Bernstein.

- Led by the client project sponsor, this is the core group that will monitor the project through its life.
- The contractor joins the team once appointed.
- The architect represents the design team.
- The other consultants can attend when required.

Core team steering group



The procurement process needs to be efficient, clear and realistic in terms of time expectations and submission requirements to ensure contractors are interested and clients attract the right level of interest. Contractors are more likely to submit high quality bids, if there is clarity from the client and strategic alignment for their business.

Every construction project carries risk, but this is not always understood and nor are the ways to mitigate it, which is one of the reasons why so many housing associations and local authorities adopt design and build.

The best-informed clients are open to identifying what the risks are and understanding them better and taking early action to mitigate through investigation and, if necessary, by being prepared to share them. *There is more detail on this in Chapter 4.*

Contract terms are also a key factor in selection. Both contractors and consultants are constrained by what they can do because of the growing restrictions of their professional liability insurance (specifically fire and cladding cover post Grenfell). To attract the right partners, clients need to be cognisant about the constraints of the professional indemnity insurance market.

Completeness of team is another key aspect: assess what skills are required to deliver the project and who can best provide them. Not having a complete team generates project risk. Employing a comprehensive team early on is key to managing this risk.

Lastly, the project sponsor should ensure that asset managers are full stakeholders within the process. Housing managers are ultimately often the 'receiving client' for the scheme so they actually have the biggest stake in it.



Continuity of the team

Another important aspect of team making is maintaining continuity from project start to finish. Continuity of architect, and other key designers and constructors, is also implicit in the Building Safety Bill, with its emphasis on the golden thread of responsibility for health and safety through the three gateways of planning, pre-construction and completion on site.

The adoption of design and build procurement has not always been conducive to maintaining continuity and the industry has grappled with the pros and cons of maintaining the same architect (and other key design team members) through the planning, tender and construction stages.

Some clients strongly advocate and facilitate continuity through novation, some are neutral and leave it to the market, and some support the right of design and build contractors to select their preferred architect from within their regular supply chain. There may be occasions where contractors actively prefer to switch architects for a number of reasons. One of these is a concern that the originating architect may object to changes to the design vision or the way it is delivered. They may also have legitimate concerns about the competence or capacity of the original architect.

An alternative arrangement is for the planning architect to act as quality monitor (QM) for the delivery stages, with the contractor's own design team providing the construction information.

This can be effective, provided that both contractor and client share and respect the QM reports, and that there is a transparent mechanism to discuss and resolve concerns (such as through PPC Core Group).

Employing a single set of consultants, and particularly the architect, from inception to inspection will require clients to consider what mechanism is used so they maintain influence on, and responsibility for, the project for its life.

Image left: Copyright Tom Biddle and Levitt Bernstein.
Diagram below: Copyright Levitt Bernstein.

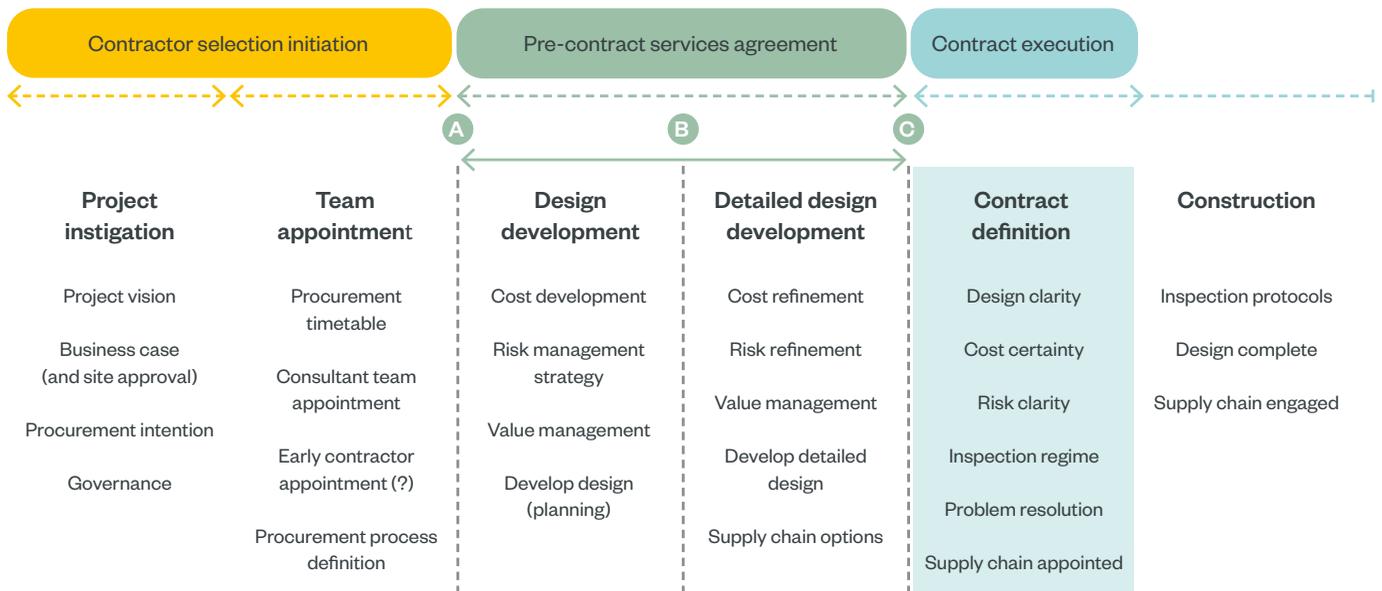
Procurement process

Key ingredients for a good outcome

- Design quality
- Build quality
- Cost and risk management

Contractor appointment options

- A** Pre-planning (RIBA Stage 1 or 2)
- B** Post planning (RIBA Stage 3)
- C** After detailed design development (RIBA Stage 3+ or 4A - Design intent)



Risk reduction profile

Project vision and contractor procurement priorities

It is essential that the procurement approach, along with all of the tender documentation used and the evaluation criteria and methodology applied, are aligned with the client’s vision for the project. This is not a simple ask, and this section sets out the key issues that can arise during a procurement process.

The articulation of the client’s vision starts with identifying the selection criteria required to create a short-list of suitably qualified, quality-driven contractors. In terms of the procurement documents themselves, the client’s vision needs to be underpinned by robust documentation, setting out and clearly describing the detailed design intent, technical requirements and specifications, as well as identifying where the areas for innovation or market-led thinking are welcomed.

The project vision particulars also need to be incorporated into the evaluation framework, ensuring that the client is evaluating the key objectives and priorities, and that the approach to price and quality set out in the evaluation methodology does not, intentionally or unintentionally, emphasise price when quality and safety should be the key determining factors in evaluation.

Further, the pricing document should cover all elements of the project, including for the delivery and audited measurement of additional requirements, such as social value outcomes and environmental measures. It should also clearly identify any risk contingencies built into the price and allow contractors to seek to mitigate or manage those risks in a different way so as to reduce the contingency amounts prior to the project starting on site.

Finally, the contract terms and conditions should be clearly set out in the procurement documents, along with guidance as to whether amendments will or will not be considered. The leader of the project needs to ensure delivery against the contract and that the terms and conditions are accurate and current and keep up with both project changes and any changes in legislation.

Selection of contractors

The emphasis of this guidance is to steer clients towards the right contractor partnership for the project using criteria other than solely price.

Selection usually incorporates two gateways. It generally starts via a competitive tender process or framework to establish that prospective bidders have sufficient capability, financial robustness, good standing and desired technical capacity. The second gateway then focusses on the more detailed bid proposals for the project, the price, quality of construction and service, and the specific methodology for the project's delivery. Further demonstration of more specific relevant experience may also be a factor.

Being clear about selection criteria from the outset is important so that contractors can make an early informed decision whether to participate or not.

Baseline key criteria at prequalification stage commonly include:

- Sufficient turnover and financial stability requirements
- Appropriate quality assurance schemes
- The right relevant experience.

And these might be the first gateway for the contractor.

But equally the more bespoke project expectations that have been defined within the project vision should be clear. These might include:

- Outline procurement strategy
- A statement about the wider team
- Collaborative working objectives (the project 'ethos')
- Pricing and risk sharing strategy - Open-book approach
- Design and construction expectation
- Social value
- Community engagement.

The client needs to articulate what a good contractor fit will look like and a contractor needs to be able to decide whether they can fulfil the full breadth project objectives before making a commitment to tender and to secure a place on the shortlist.

To ensure that the assessment delivers the right outcome, we recommend that the client undertakes a dry run of the evaluation model to test the quality, time, money and safety criteria and how they are assessed, weighted and scored. Construction industry key performance indicators (KPIs), published by Constructing Excellence could be used as the basis for scoring methodology.¹⁰

It should be noted that the tender evaluation model adopted by the client is often key to maintaining the golden thread and vision through the procurement process. Adopting a relative pricing model where lowest price equals highest marks cuts across the messages of quality and safety. This inevitably creates a race to the bottom, where contractors are effectively asked to bid lower than their competitors in order to secure the contract, rather than bid the contract before them - the true cost. The behaviour of those tendering for the work is to a large extent set by the way the tender and evaluation is set up.

If the rules focus on lowest price, bidders will understand that despite the emphasis on the 'vision' and quality and safety in the technical and tender documents, the likely determinant of the procurement is lowest price. This can even be the case when quality attracts the higher weighting (eg 70/30% quality/price) because the lowest price will score full marks, whereas quality questions rarely do and are marked subjectively.

This ambivalence of message in the tender documents commonly introduces uncertainty and conflict into the ensuing contractual relationship and careful thought needs to be given to the evaluation framework.

Considerations to help in the evaluation of contractors

Below are some suggested points for clients to consider that should help them select a contracting partner that will align with their project vision. It can be difficult to evaluate some of these requirements. An approach that can work well is for clients to pose tender questions that are based on how the contractor responds to particular project scenarios. This can help tease out the contractor's approach to collaboration and demonstrate the right ethos. In addition, clients should visit completed projects and active sites to confirm that what is being promised by those tendering is deliverable.

Clients should consider:

- Their social agenda, and whether they are well-placed to deliver the desired social value outcomes
- Their collaborative working ethos including cultural fit
- Their proposed inspection regime and delivery on site
- Their risk and reward strategy and management, including an open book approach
- Their proposals for the principal supply chain and outline procurement strategy
- Their proposal for community engagement
- Key personnel who will be involved in the project
- Their approach to governance, ethics and probity and that any conflicts of interest are declared.

Image: Copyright Levitt Bernstein.



Awarding the contract

As we maintain throughout, we are advocating early contractor involvement so when a client has identified the winning contractor, they should enter into the written contract (or pre-construction services agreement - PCSA) as soon as possible and not enter an unconditional contracting arrangement until the design has been developed and fixed and the majority of key works packages tendered and appointed.

Specialist trades can often be the problem solvers of any project, coming up with ways to align design, budget and buildability. It pays dividends to include the most critical suppliers early on, by asking them to, for example, to attend project meetings, because they are the people doing the detailed design and installation and are able to innovate. *We explore this in more detail in Chapter 6.*

It is worth noting also, that once the client has made a choice there are a number of other protocols that also need to be observed.

If a client is a public sector entity, they are also obliged to tell all of the contractors tendering for the work (successful and unsuccessful) what the results are for all and also, if unsuccessful, the name of the winning contractor and the ‘characteristics and relative advantages’ of the successful bid and observe a mandatory stand still period before entering into the written contract.

Tendering is a lengthy, resource hungry and costly exercise. This should be respected and time allocated to providing full and thorough feedback, which helps all parties by improving bids the next time round. This is where the client can influence and drive up the quality of both future bids and market behaviours.

GUIDANCE AT A GLANCE

FORMING THE TEAM

- **Appoint the right project sponsor** to set the right tone of the relationship between team members and promote collaboration and trust.
- **Appoint the consultants and contractors early** and early engagement with key suppliers is crucial.
- **Involve the contractor’s specialist supply chain as early as possible**
- **Procure on shared values** and be clear about the vision and objectives, including defining ‘quality’.
- **Have clear selection criteria** and avoid over-complicated tender processes.
- **Be absolutely clear on roles, responsibilities and expectations** of each team member.
- **Keep the team together** so that there is a consistent consultant and contracting team from start to finish of the project.
- **Form a senior project steering group** drawn from senior personnel from the client and consulting and contractor teams or company boards to monitor progress and to sense check that the project remains in line with the vision. It is important that this is at the highest level.

Case study

Good procurement practice:

Image right: Copyright Poplar Housing and Regeneration Community Association Limited.

Teviot Estate Regeneration London Borough Tower Hamlets

Teviot Estate lies in the east of the London Borough of Tower Hamlets. There are currently 535 homes on the estate. In 2017, the landlord Poplar HARCA carried out a 'listening campaign' across the estate. Residents raised concerns around the sustainability of the existing estate and wanted to explore options for regeneration but the strong sense of community had to be maintained. A resident steering group (RSG) was established and the listening campaign was built upon by further consultation including with local faith groups, older and younger people and local schools. Baily Garner worked with Trowers & Hamlins to facilitate procurement of a joint venture.

Name of project

Teviot Estate Regeneration - Joint Venture Partner selection.

Location

London Borough Tower Hamlets

Team

Client: Poplar HARCA; latterly Teviot Estate Developments LLP

Developer (JV Partners): Hill Residential

Employer's agent (procurement): Baily Garner LLP

Legal advisor: Trowers & Hamlins

Masterplanner: BPTW

Budget

£425 million

Start and end dates

JV Partner to be appointed December 2022

Build programme

Circa 17 years

Number of homes

1,800 - 2,500

Procurement framework

A series of workshops built upon the listening campaign involving stakeholders to explore options for delivery of regeneration through various JV vehicles. A planning consultant was appointed who produced a comprehensive study including options appraisals and indicative accommodation schedules.

The team followed the 'Mayor's Best Practice Guide to Estate Regeneration' in terms of the consultation process and audit, including:

- Do nothing option - maintain the fabric, repairing to current standards.
- Partial refurbishment and infill - upgrades to the existing stock, landscape improvements and increasing accommodation through infill sites and rooftop extensions.
- Full estate regeneration.

Poplar HARCA worked with the RSG to prepare an offer document and a GLA compliant ballot resulted in an 81% turnout and 86% positive vote for regeneration.

Trowers & Hamlins was engaged to explore procurement routes. The team felt that either competitive dialogue (CD) or competitive procedure with negotiation (CPN) were the most appropriate. CPN was felt to be the most

pragmatic route as the preferred bidder period is not necessary and all bidders should be capable of preparing full and final bids which expedites contract execution. CD also has the reputation for being expensive and time consuming which may have deterred some organisations from bidding.

Baily Garner, Trowers & Hamlins and the client (the procurement team) spent significant time understanding the vision and weighted priorities. The importance of defining the vision and objectives, meant spending a lot of time structuring and carefully crafting the quality questions to directly relate back to the values identified by the stakeholders. This ensured that the partner selected had an understanding of and alignment to the client's vision and objectives.

Based on a core option of 1,800 units, detailed viability models were developed to satisfy the procurement team that the scheme stacked up financially and would be attractive to bidders. The model was then stripped back to basics and the developers were asked only to provide basic financial details such as profit margin, development manager costs and ROCE (return on capital expended) on both affordable and private sales.



The procurement team then allocated 75% of the marks to responses on the quality questions and 25% of marks to cost, which in effect would ultimately be based upon a net open book basis through the JV. In addition, maximum points were awarded to the median cost the bidders submitted for the development manager role.

Early market engagement/soft marketing was carried out with eight potential developers/investors to gauge appetite for the procurement process and pressure test the viability assumptions around funding and delivery before drawing up tender documentation.

Bidders were first shortlisted at the selection questions stage. At the invitation to tender stage the evaluation was executed in two stages, further shortlisting down to three final bidders. We then undertook two rounds of negotiations where we fed back on how their submissions could be improved before best and final offers were submitted.

The first action following appointment, was the drawing up of a 'Partners Charter', which set out the expectations of each partner.

This is monitored to take the temperature of the JV, keeping it on track and holding partners to account. This is included with the larger, more detailed induction documents.

Why the project was a success

The JV is currently still consulting with residents and the local authority prior to submitting the development for planning. But the project provides an exemplar in translating a clear vision into selection criteria. Key steps in the procurement strategy to date have been:

- The identification of and full engagement with the stakeholders
- Developing the vision and prioritising objectives
- Assuring the tender documents reflected the client's intent to prove alignment of the selected JV partner with the project's values
- Considered selection of the most appropriate procurement route in terms of effectiveness and efficiency (conscious of the cost of the procurement)
- Making the offer to the market as attractive as possible by pressure testing assumptions
- Crucially carrying out a soft marketing exercise with potential bidders

- Evaluation weighting clearly in favour of quality rather than cost
- Awarding maximum points to median costs as the client wanted to pay the 'right price' for the right service
- Candid discussion and feedback during the negotiation stage
- Involving the stakeholders in selection interviews
- Acknowledging and ringfencing profit margin
- Utilising median cost evaluation, ie median cost scoring maximum points
- Linking back the bid submission to promises made which can be measured and audited eg commitments and enshrining in the Partners' Charter, unambiguous linkage to meeting of the residents' offer document promises and shaping/guiding social value offers to align with community needs, enshrining this in the contract and measuring it through the HACT social value tool.

3: Procuring Good Design

This chapter addresses the relationship between good design and procurement, and how to achieve quality in the holistic sense with homes that nurture wellbeing and happiness.

What is good design?

Good design does not happen as a discrete part of the process of creating buildings and places, and it is not purely the domain of the designers. It happens because of a continuous commitment to quality from the entire project team, from concept through to occupation.

Therefore, the issues and recommendations in this chapter inevitably and rightly overlap with the other chapters in the report.

We need to understand that good design means different things to different people. We might mean:

- Compliance with regulation, including fire safety
- Lack of defects
- Durability
- Convenience and comfort of the occupier
- Distinctive architecture.

This, however, is not enough. Compliance with published standards and practical performance measures does not equal quality - this is the starting point for quality. Compliant places can also be soulless and utilitarian.

At every stage of every project, we should be asking ourselves:

- Where is the joy?
- Would you like to live here?
- What's special about this place?

We must never forget that every 'unit' will be someone's home. If we can all focus on the user - our customers - then we have a better chance of delivering popular and delightful homes and neighbourhoods.

To create sustainable and popular homes and places we need a holistic understanding of quality, and we need to counter the tendency in our industry to focus only on the measurable outputs - cost, risk, defects etc.

We need to value and protect the things which are harder to measure, but ultimately underpin our whole purpose as housing providers and place makers: health, wellbeing and happiness.

We should also be encouraging innovation in design concepts that help to make it distinctive and special.

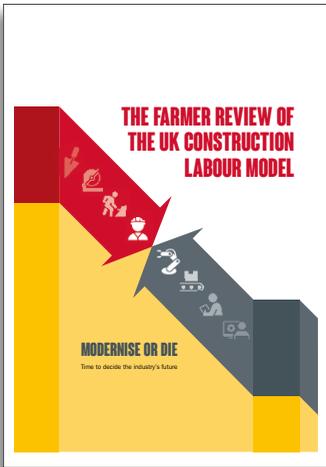


Image far left: The Farmer Review, *Modernise or Die*, published in 2016.

Image left: City Park West, Chelmsford - Pollard Thomas Edwards. See *Case Study* on page 28.

Design quality and design and build

There are certain consequences of design and build procurement which can be hard to reconcile with a commitment to design quality without careful consideration and execution.

Here are just a few of the potential pitfalls:

- Definition of the required housing design is deliberately left imprecise at the time of tender, to enable the contractor to complete the design - after fixing the price.
- Price is nearly always the main factor in winning a contract. This puts pressure on contractors to trim margins and then rebuild them through supply chain competition. At its worst this leads to the substitution (sometimes several times over) of details and products for inferior ones.
- A generation of housing architects has become remote from building sites and as a result is de-skilled in construction. Switching design teams mid-project has led to the emergence of separate planning and delivery practices - the opposite of the golden thread.

It is not just designers who have become de-skilled in construction matters, but also clients, project managers and site operatives. This was vividly exposed in the Farmer Review, *Modernise or Die*, published in 2016.¹¹ Where once we could have relied on crafts people to create decent buildings with relatively little design information, now we are advised to assume total ignorance.

However, while architects should welcome initiatives to restore their expertise and influence at the heart of the building process, many will have some catching up to do - in terms of skills, knowledge and aptitude - to ensure that they are competent to undertake the additional responsibility.

How to procure good design

Drawing up a clear brief

Chapter 1 recommends that clients produce a vision statement at the outset of a project. It lists design quality as a component of that vision.

Clients need to be clear and realistic in expressing their aspirations for design quality. If what you want and can afford is decent but modest accommodation, which meets the minimum mandatory standards and passes through the planning system, then say so. If you want a Stirling-prize-winning project, then be prepared to invest lots of care and time and additional money to achieve it.

It is often said that good design costs nothing, but this is only true up to a point: apart from the true cost of a first-class design service, it does require investment in the fabric of the building - the quality of materials and detailing - which should also provide good long-term value. Let's not pretend that we can create great homes without investing in good design and material quality. Our minimum standard should be 'excellent ordinary'.

Avoid glib contradictory briefs like 'wow on a budget' - the last thing communities need is cheap buildings shouting 'look at me!'.

Long, complex, repetitious documents are worse than useless; within a mass of needless detail they hide what is important or miss it altogether.

The functional and practical aspects of the brief should be captured in a succinct document covering:

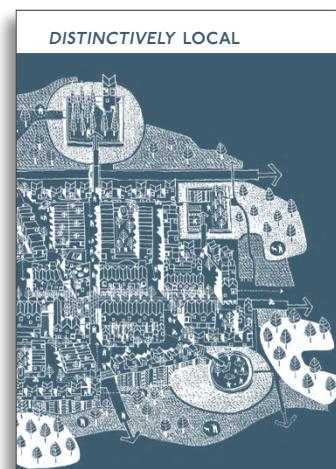
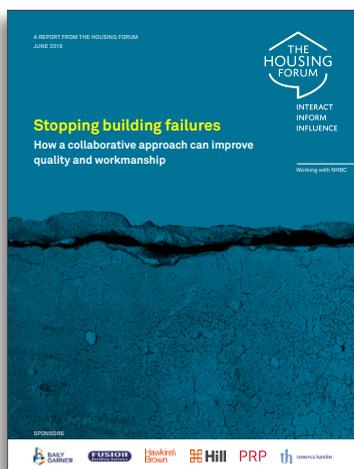
- The client's site-specific accommodation requirements
- The relevant mandatory regulations and standards. These should only be named, not repeated in any detail
- The relevant parts of any discretionary guidance, which the client wishes to see followed. Again, these should be clearly identified, but not repeated in detail. A good brief should also refrain from long, lazy catch-all lists of every conceivable guidance document: such lists inevitably contain obsolete references and the seeds of contradiction and confusion
- Those things which are particular to this client and site, and which are not already covered above.

Design continuity

To procure a well-designed and coordinated project that maintains a consistent thread of knowledge and approach through its life requires a consistent architectural and wider design team. *This is discussed and advocated in the previous chapter and underpins what is said here.*

The aim is always to ensure that what is envisaged by the architect and endorsed by the client at concept design stage is carried through and delivered at completion.

¹¹ *The Farmer Review of the Construction Labour Model, Modernise or Die*, Mark Farmer, 2016, The Construction Leadership Council <https://www.constructionleadershipcouncil.co.uk/wp-content/uploads/2016/10/Farmer-Review.pdf>



Definition of roles and responsibility

Design quality requires absolute clarity about who is designing what. This is best expressed through detailed and transparent schedules of services, summarised in a matrix of responsibilities. Similarly, the role of the lead designer in coordinating the inputs of others needs to be crystal clear. The input of the contractor's in-house design manager should also be clearly recognised: some contractors put significant resources into this role, while others rely more heavily on the external design team.

There has been a trend towards design and build contractors expecting a more comprehensive service from consultant architects, whereas previously they may have carried more in-house capacity for design coordination. This could be a positive shift, but only if the required skill, responsibility and time commitment are properly recognised and rewarded. As with design skills, architects need to cultivate their design team leadership skills, potentially as a separate and distinct role within the practice and the project.

The Housing Forum report, *Stopping Building Failures*¹², includes more timely advice on the practicalities of bringing about this culture change and ensuring project teams come together to design and construct high quality housing that is safe and free from defects.

Balancing time, cost, risk and quality

In arriving at the vision and the brief, clients need to consider carefully and express honestly their priorities. We often refer to the 'time, cost, quality triangle', but this misses a fourth key driver in procurement: risk transfer. If we are seriously committed to quality - even if our standard is 'excellent ordinary' - then we need to recognise that the procurement route needs to award due priority and safeguarding to it, especially when time, cost or risk transfer exert a downward pressure on quality. The phrase 'value engineering' has become a cynical euphemism for cost cutting.

We need to reassert the true meaning of value and place it in the context of whole-life sustainability and the customer experience, including the health, wellbeing and happiness of communities. *This is discussed in greater detail in Chapter 4.*

Defining the design before fixing the price

With design and build procurement, the line between design and construction is intentionally blurred. Definition of the required outcome is, to some extent, left imprecise at the time of tender, to enable the contractor to 'complete the design'.

Clients who wish to fix the price early in the process will typically tender the scheme based on written employer's requirements and a detailed (or even outline) planning permission. Conversely, those who want to control the design closely will typically take the design

to a further level of detail beyond planning to create a more robust tender package.

These more detailed iterations are sometimes called design intent drawings issued with the Employers Requirements documentation in a design and build scenario, and often equate to the old RIBA Stage E, or what is becoming commonly referred to as RIBA Stage 3+ or 4a on the new RIBA Plan of Work.¹³ These are not full construction drawings, and their purpose and limitations must be understood by all parties: they must be rigorously prepared so that everyone can be confident that the scheme is buildable and viable.

Whether a partnering route, two-stage or one-stage tender process is preferred, we recommend that the construction contract is based on a comprehensive set of employer's requirements which include a detailed set of design intent drawings.

Balancing standardisation and local distinctiveness

In response to the many challenges faced by the housing industry, there is renewed pressure from government, clients, constructors and suppliers to adopt standardisation. It is hoped that having fewer, but more rigorously tested solutions will deliver many benefits - less cost and more speed, fewer defects and less reliance on site skills.

Standardisation does not require factory production, but it does neatly dovetail with modern methods of construction (MMC) and its younger sibling design for manufacture and assembly (DfMA).

¹² *Stopping Building Failures*, May 2018, The Housing Forum <https://housingforum.org.uk/reports/quality-and-standards/stopping-building-failures/>

¹³ The *RIBA Plan of Work* organises the process of briefing, designing, delivering, maintaining, operating and using a building into eight stages. It is a framework for all disciplines on construction projects and can be used as guidance for the preparation of detailed professional services and building contracts. <https://www.architecture.com/-/media/GatherContent/Test-resources-page/Additional-Documents/2020RIBAPlanofWorktemplatepdf.pdf>

Image left (middle): At Hazelhurst Court, Levitt Bernstein brought the outside in to create high quality homes for older people. Copyright Tim Crocker and Levitt Bernstein.

At the same time, government is also promoting the importance of local communities and 'locally distinctive' design, through the NPPF and Living with Beauty. There is a clear tension between this and the standardisation agenda, which is explored in the report *Distinctively Local – how to boost supply by creating beautiful and popular homes and places*,¹⁴ which was presented at the 2019 Housing Forum annual conference.

The client's vision and brief needs to be clear about their appetite for standardisation and realistic about the limitations this imposes on the design process. Each site and brief will lend itself to some degree of standardisation: early concept work will help to establish where on the spectrum a project can best be placed. We recommend that, for the right project, housing can be approached more like product design and less like bespoke tailoring.

The challenge for designers is to create distinctive and popular homes and places by conceiving, testing, refining and intelligently replicating standardised components, which can be combined and varied to produce a rich variety of conditions.

Controlling change and avoiding abortive design

We referred above to the main contractor's search for buying margins by seeking quotes for products and construction methods alternative to those indicated in the Employer's Requirements or contractor's proposals. This can bring legitimate cost savings to the project, and potential improvements in quality, but it often results in a loss of quality with no benefit to the client and potential increase in lifecycle costs, or still worse, serious defects. If we genuinely want quality, then clients and their representatives need to be more robust in challenging the substitution of products and details.

The hidden cost of substitution is the delay in fixing the design, which extends the pre-construction programme, leads to abortive work, and distracts the design team from its focus on completing clear high-quality information in good time. Neither the direct nor indirect costs of this wasteful process are properly recognised: if there is a legitimate benefit from change, then the hidden costs also need to be factored in and made transparent.

Empowering the consumer

If we can all focus on the user, our customers, then we have a better chance of delivering popular and delightful homes and neighbourhoods.

In regeneration and co-housing projects we are privileged to have access to existing communities and to engage in a co-design process which genuinely reflects the needs and aspirations of identified future residents. Early engagement with future residents pay dividends. Clients should also evidence their resident engagement for the regulator and others.

With all projects, we need to be more rigorous and energetic about learning from our customers through post-occupancy surveys, covering a wide range of holistic criteria, not just practical questions about defects and heating bills (important though these are).

And we need to expand consumer choice in housing, as encouraged by the *Letwin Review*¹⁵ (October 2018) and subsequent policy. Custom build has great potential to enter the mainstream, especially when married to digital design and construction. Conventional housebuilders and social developers have an opportunity to raise their game and attract customers by offering greater diversity of homes.

GUIDANCE AT A GLANCE

PROCURING GOOD DESIGN

- **Come up with a clear vision and brief** setting out the degree of aspiration and endorsed at senior level. Technical briefs should focus on the special requirements of the client and the project.
- **Balance cost, risk and quality** and include an honest expression of the client's priorities in the brief. The minimum design standard should be 'excellent ordinary'.
- **Ensure continuity of the design team** by retaining key design team members from concept to completion and occupation.
- **Define roles and responsibilities** of consultants, main contractors and subcontractors clearly at the start so as to be understood by all.
- **Define the design before fixing the price**, whatever the procurement method, and base the construction contract on a comprehensive set of employer's requirements including a detailed set of design intent drawings.
- **Balance standardisation and local distinctiveness** by challenging designers to create distinctive and popular homes and places by conceiving, refining and intelligently replicating standardised components.
- **Control change and avoid abortive design** and be robust in challenging the substitution of products and details.
- **Empower and learn from residents** through more encompassing post-occupancy surveys, and offer a greater diversity of homes and more opportunities for co-design.

¹⁴ *Distinctively Local – how to boost supply by creating beautiful and popular homes and places*, Pollard Thomas Edwards, HTA, PRP and Proctor & Matthews, May 2019 <http://www.distinctively-local.co.uk/>

¹⁵ *Independent Review of Build out*, Oliver Letwin, 2018, MHCLG <https://www.gov.uk/government/publications/independent-review-of-build-out-final-report>

Case study

Good procurement practice:

City Park West Chelmsford

City Park West is a mixed-use neighbourhood in Chelmsford of more than 600 homes featuring cafés, restaurants, workplaces, community facilities and public art. Located by the railway station, it features five new brick buildings, including a 14-storey tower, four new public squares and three refurbished buildings, one of which is listed.

The brief from Notting Hill Genesis called for a high-density development with a range of house types from one-bedroom extra care flats to three-bedroom mews homes with rooftop terraces and their own front doors.

Name of project

City Park West

Location

Chelmsford

Team

Client: Notting Hill Genesis

Contractor: Bouygues UK (Phase 1), Higgins (Phase 2)

Architect: Pollard Thomas Edwards

Landscape architect: AREA landscape architects

Structural engineer: WSP Cambridge

Services engineer: Whitecode Design Associates

Employer's agent: Bidwells

Budget

£130 million (construction costs)

Site size

3.1ha

Start and end dates

2008-2019

Tenure mix

Of the 645 dwellings, 60% is for market rent, 20% is shared ownership, 10% is social housing with the rest provide affordable extra-care.

Procurement framework

This complex project involves a complete new urban quarter on the former Anglia Ruskin University site in Chelmsford town centre, next to the rail and bus stations. It involved many challenging planning and technical issues, including historic buildings, rail and highway infrastructure, ground levels and flood risk, strategic open space with pedestrian and cycle links.

In terms of procurement, the project illustrates successful team working between the consultants, local authority and multi-headed client body. The architect was retained from early concept stage to completion on site.

Pollard Thomas Edwards (PTE) won an invited architectural competition for a new masterplan and outline planning permission. The practice was then commissioned to produce detailed designs for reserved matters applications on each successive phase.

The architect and development team worked in close collaboration with the council's planning and conservation officers, stakeholders, and the local community - also with in-house departments covering sales, design and technical compliance, asset management and maintenance.

For example, all homes had to be serviced from the basement level, and the architect organised a series of 'day in the life' workshops to fully test systems and processes for refuse storage and collection, courier deliveries and furniture removal.

The principles for development were established in the Chelmsford Area Action Plan, and the council supported the redevelopment proposals as key to achieving regeneration of the then empty site and to connecting surrounding and isolated existing city neighbourhoods.

Following detailed (reserved matters) planning permission, a main contractor was selected by a competitive two-stage design and build tender process for each of the two main phases of development. This resulted in two separate contractors, with their own different design teams, being appointed in succession to deliver their respective phases.

To provide continuity of project knowledge, and to safeguard the design intent, Notting Hill Genesis directly appointed PTE and the consultant team to provide quality monitoring services, which included a review of all drawn production information and fortnightly site inspections and reports in relation to the





contractor proposals and on-site works. The result is an attention to detail in the final construction which surpasses the client's previous experiences

Why the project was a success

The key considerations that drove the success of this project were:

- The architect was selected through competitive design process, initially for the masterplan, and retained through to completion of construction
- The architect and development team worked in close collaboration with the council's planning and conservation officers, stakeholders, and the local community
- The architect was retained client-side as a quality monitor to maintain design quality and provide continuity of vision and project knowledge
- A detailed design review process was set out in an appendix of the construction stage tender contract which all parties reviewed and agreed ahead of award of the project, ensuring a collaborative and rigorous review procedure throughout the construction period

- Notting Hill Genesis attended all construction stage design review meetings, assisting quality monitors in ensuring the initial design vision was carried through to completion.

Awards

Civic Trust Regional Award 2020

British Homes Awards - Regeneration Scheme of the Year 2020 Winner

RTPI Award for Planning Excellence 2016 Winner

Brick Award 2015 Winner



Images: Copyright Jim Stephenson.

4: Cost and Risk Management

Whatever the contractual procurement route, cost and risk management are always going to be key, and getting this wrong will impact the quality of the finished scheme.

This chapter offers advice on getting it right.

The Housing Forum Procurement Survey

The Housing Forum Procurement Survey (June 2020) showed that design and build procurement is the most used form in the industry.

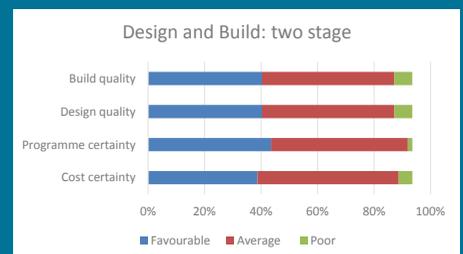
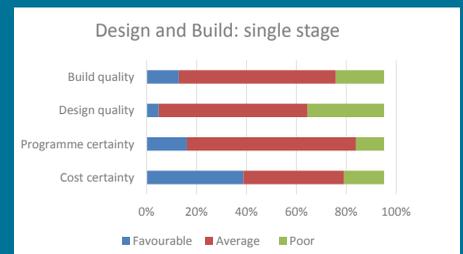
From a client viewpoint, there is a perceived benefit in having a single point of responsibility in the relationship and there is perceived cost certainty through a fixed price lump sum.

Design and build is also intended to provide a very clear delineation of risk from the client's perspective. But the same survey showed - and as we have alluded to in this guide - it can have considerable downsides in relation to controlling quality, cost and programme if not managed correctly.

The key to a better procurement strategy is to retain the advantages of design and build and minimise its negatives so that there is more focus on quality of design and construction.

Those negatives are outlined elsewhere in the report but are largely associated with poor quality of workmanship, poor performance on programme and adversarial relationships leading to dispute. At the same time, the very issue that design and build procurement was supposed to solve, that of delivering to a fixed cost, has also unravelled and cost certainty is not guaranteed.

With a view to managing price realistically with a single main contractor, this chapter looks at cost and risk management, and how they can be improved through more collaborative procurement and behaviours.



Images above: The Housing Forum Procurement Survey (June 2020) asked members to grade various procurement types.

Client perspective

Clients need to accept that if they are pushing risk onto the contractor there is a cost premium and / or uncertainty associated with this strategy, and the management of that cost / risk relationship is key to successful procurement.

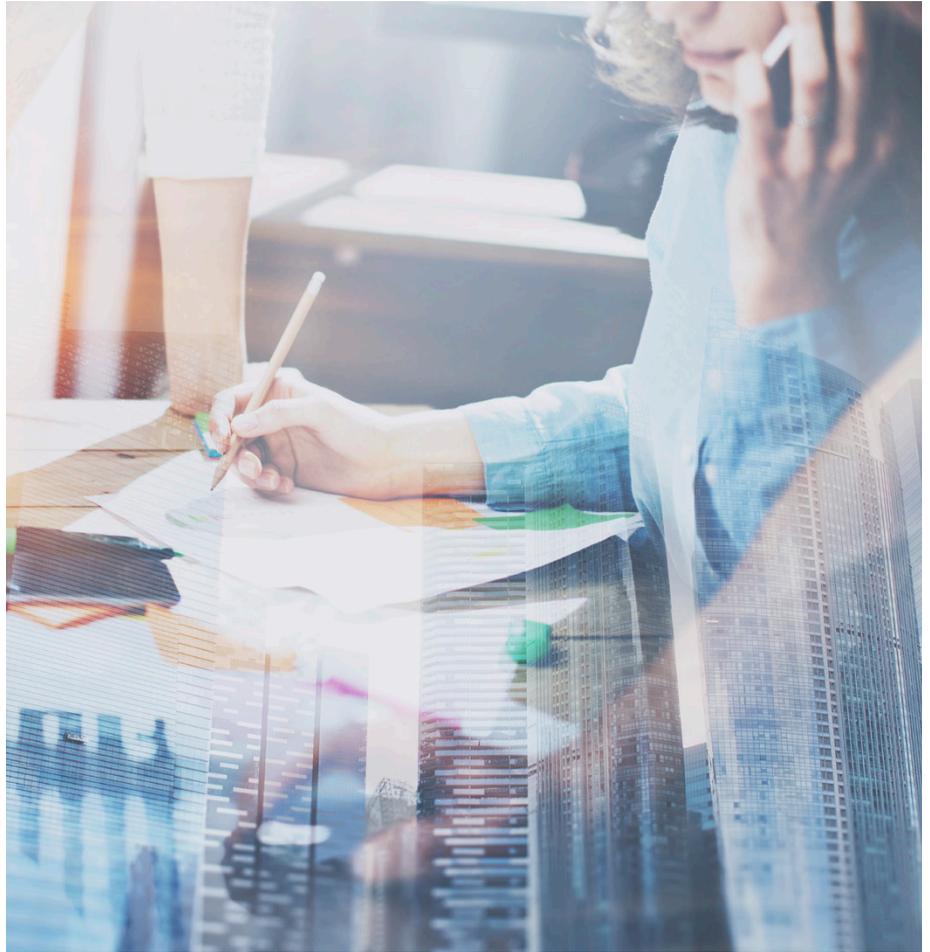
The current single-stage, design and build environment often selects the lowest tenderer, who may have made the most aggressive assumptions based on a limited amount of information. If the price agreed is below the sum it will cost the contractor to deliver, then they may be forced to seek savings which impact on quality and programme.

This demonstrates the problem with lowest-cost fixed-price contracts. Pushing the design and any other residual risk onto the contractor without it being identified, costed or quantified in a proper and detailed manner leads to a decline in project quality. This of course presupposes that all risk is identifiable, which of course it is not.

Clients do understand this, and there has been a drive from larger housing clients in recent years to take design further prior to tender and to engage contractors meaningfully earlier in the project process and have a more open discussion on risk transfer.

Clients have also enjoyed the positive aspects of the recent surge in joint ventures which have demonstrated that with truly converging objectives, contractors and clients can work together extremely well to deliver successful projects.

Increasingly, a more subtle, considered approach to procurement is not just to deliver one project but to deliver sequentially, in what might be termed 'alignment contracting'. If we want to meet our ambition to increase housing supply and raise quality, it is worth considering long-term arrangements which allow contractors to co-invest in supply chains.



Longer-term relationships

Appointing contractors and consultants via framework agreements is not a focus of this guidance, though we acknowledge it is widespread in the sector. However, for clients with multiple projects a more subtle, considered approach to procurement would be to deliver them using an iterative process with a fewer number of framework providers. This provides a way to attract the best contractors and the opportunity to build more collaborative working relationships.

In framework agreements, as the name suggests, the agreement sets the framework for a strategic partnering relationship which can range from a loose arrangement with one or more suppliers that the client likes to work with, to something more formal. For the most part, a framework agreement does not amount to a contract.

If the framework is based on a competitive call-off system, rather than a strategic partnering arrangement, where framework providers compete against each other on a project-by-project basis, the uncertainty of pipeline work remains for the framework providers and they are less likely to invest resource in developing a strategic relationship unless and until they win project(s) under that framework.

If we want to meet our ambition to increase housing supply and raise quality, long-term strategic arrangements, which might be considered 'alignment' or 'alliance' contracting and which allow contractors and consultants to co-invest in supply chains, present a new opportunity for clients. The idea of business plan alignment between partners, whether it is supplying affordable housing, or an alignment of ambition and vision around an individual project is a powerful one.

Image: New Garden Quarter by Pollard Thomas Edwards for Telford Homes and Notting Hill Genesis. Copyright Nick Kane.



Fundamentals - getting it right

There are some fundamental principles that are essential to the success of the best procurement routes; joint venture arrangements, longer-term alignment contracting and joint ventures with a good project set up, a more collaborative approach and sharing the project objectives.

It is desirable that, pre-contract:

- The project business plan and objectives are formed in line with the project vision
- The project cost plan is fully detailed and reviewed, agreed and adopted by all parties
- The project risk strategy is fully detailed and quantified, where it can be, with a methodology of how to deal with the unexpected and an associated method for tracking contingency funds that is open and adopted by all parties.

Project business plan

It is essential that all parties including the building contractor understand and become a partner in the project business plan.

This report has already set out thoughts on the project vision, and that the project business plan should be the commercial and numerical expression of that vision. It should include details on construction, lettings and sales programmes, sales and lettings values and the long-term strategy for the building maintenance and likely costs associated with this.

The project business plan is critical to building trust on behalf of all parties and enables the contractor to understand the client's financial and programme drivers and to contribute to decision making processes.

This typically has greatest benefit in the following areas:

- Programme - understanding deadlines and financial implications of delay
- Opportunities for (and constraints on) value management or value engineering post-contract
- Understanding where the value in design lies
- Early input into technical design and site investigation
- Cost management - as set out below
- Risk management - as set out below.

The procurement process must ensure that responsibility for control over the budget and programme is clearly allocated and understood by the team members. Experience shows that a higher level of detail and understanding of the project throughout the procurement process translates into a more successful transition from design to construction. The contractor becomes knowledgeable about the project and buys in to the project's objectives. All parties can then work closely to ensure that the project delivers on all of its requirements.

Project cost plan

It is critical that all parties 'buy in' to the project cost plan, which will invariably be a fundamental part of the business plan.

The project cost plan must be open and transparent and understood by all members of the project team. This naturally leans towards an open book process during both pre-construction and construction phases. Open-book processes are becoming more common and understood in the residential sector, but not nearly to the level in other government-backed sectors such as healthcare.

Clients need to be confident that they can participate in an open book approach from an informed position, confident that they have the professional advice and capacity to confirm transparency in the information provided by the contractor.

This is important so that, alongside the contractor adopting the cost plan throughout the pre-construction period, they also understand and adhere to it. Typically, the contractor will incur costs through appointments, fees and surveys and these need to be fed back and tracked against the cost plan. *We discuss arrangements for pre-construction service agreements in Chapter 5.*

Incentivisation is crucial with early contractor involvement (ECI). If not managed correctly the contractor can be encouraged to either overspend during the second stage of the ECI period to maximise returns, or more importantly, take advantage of the lack of commercial competition.

Principles of cost-led procurement

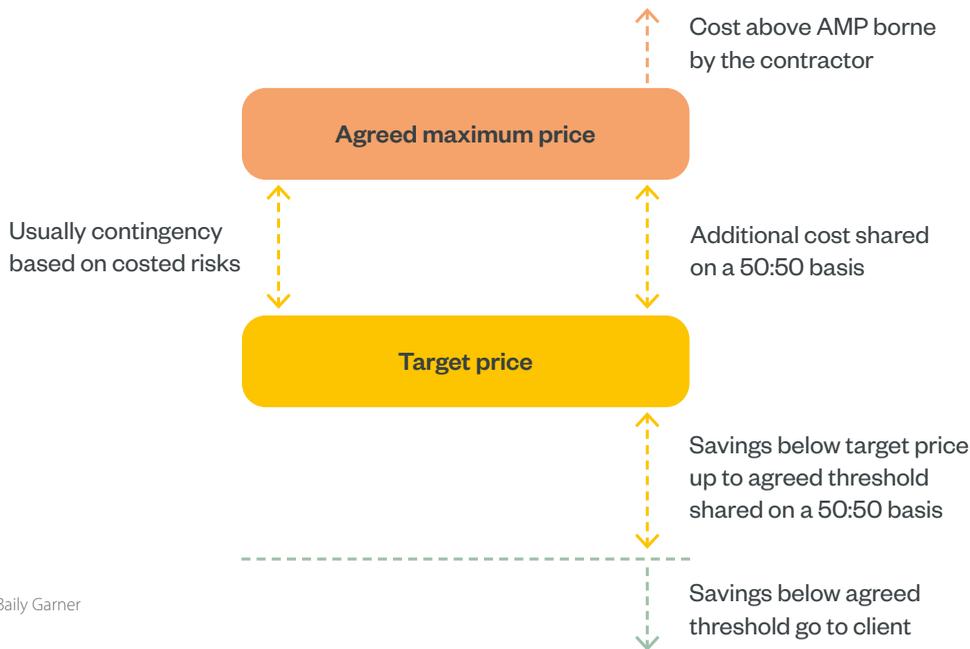


Diagram: Copyright Baily Garner and Levitt Bernstein.

This can lead to contractors overinflating costs when agreeing contract sums. The adoption of the cost plan set out in the contract document is crucial and will help avoid cost inflation. Professional cost advice is also key to demonstrating fairness in the application of incentives.

In other sectors, and indeed reflected in the early days of partnering (use of the PPC 2000 contract) this has been established through the use of 'target costs' and 'agreed maximum cost' mechanisms. These mechanisms typically work through the agreement of cost, based on an accepted level of detail for the project, between the contracting parties, sometimes referred to as cost-led procurement.¹⁶

Typically, not all design information or risks will have been bottomed out, however, it should be possible, based upon the contractor's and the cost manager's experience to agree on the target price. Above the target price will be the 'guaranteed' or 'agreed' maximum price which is usually arrived at taking into account cost allowances against unknowns and risks, which will typically be the contingency.

Any increase between the target price and the agreed maximum price can then be shared on agreed proportions between the parties, or indeed incremental ratios, leading up to the agreed maximum price.

Costs above the agreed maximum price are then reasonably borne by the contractor unless there is a truly exceptional and unpredictable occurrence.

Both parties work to achieve savings below the target price, ensuring that the overall value and quality is not compromised. This being the case, the savings can be agreed on a similar proportional basis usually to an agreed threshold, below which all of the savings go to the client or project sponsor.

There are numerous variations to this model, but it is based upon an 'open book' approach and the agreement of actual cost. Indeed, it needs to be properly managed whereby, for example, the client requests additional or extra works, which would impact the target price and agreed maximum price.

It is also desirable for the cost plan to clearly denote and separate the contractor's profit and overheads from other costs to ensure that any cost savings exercise does not simply erode the contractor's margins, and is reflective of a specific change of scope, specification or design feature.

With these mechanisms in place, contractors should be able to procure successfully to the project cost plan and budget.

¹⁶ Cost lead procurement is one of the preferred procurement routes set out in Government Construction Task Group Report – *New Models of Construction Procurement*, July 2014.

Image right: Brick detailing for Vaudeville Court. Copyright Tim Crocker and Levitt Bernstein.

Assessing whole-life costs

Whole-life costing must be considered in the process and throughout the design. For the client, the success of the building and the project will most likely be determined over an extended period of time as it is occupied, utilised, managed and maintained. This brings a natural conflict to the decision-making process which further reiterates the importance of all parties fully adopting the project objectives.

Thirty-year maintenance plans, service charge estimations and whole-life costing assessments must be used to inform all parties involved in the project. The process should be simple but well informed and should involve identifying the service life expectations for different products and informed estimations of disposal and replacement costs.

This assessment can then be analysed against capital cost and on a net present value basis to provide the client with accurate estimations of the cost in use and to identify where whole-life value can be improved through specification or design changes.

Project risk strategy

Industry consensus indicates that risk management and transfer is a key procurement issue.

How risk is quantified, and who should reasonably be responsible for carrying this risk, needs to be clearly identified in any procurement process. There is an absolute principle as the basis for good practice procurement that the client should not pass unnecessary or inappropriate risk onto a contractor.

This links closely back to the project business plan and cost planning framework set out above. We all recognise that not all risks can be identified but a good risk management process acknowledges this and makes allowance within the risk management plan via some sort of agreed risk-sharing mechanism and a framework of clearly identified risk allowances. If the contractor is being asked to take on 'all risk' there will inevitably be a price premium pay and /or the spectre of aggressive cost recovery and dispute for unforeseen or underpriced risk.

The question of control and responsibility is a key factor in considering the impact of a risk; some risk items which are within the control of the client, such as management of internal approval processes or specification decisions, can be easily managed, with clear solutions and routes for mitigation.

External risks, however, such as planning development control requirements, cannot so easily be influenced and mitigated. The key is to ensure that the responsibility for managing such a risk is clearly allocated; that the project team has carefully planned and contributed as far as possible to resolving any such risk; that contingency planning has occurred to enable a speedy response for all likely scenarios; and that a relevant quantitative figure has been allowed which reflects likely contingency plans and outcomes.

Other risks can be insured against and some will need to be managed and some will be actively closed out. But what must be guarded against is undefined or unknown risk being passed down the contractual chain to the contractor (and indeed to the contractor's supply chain) as this invariably leads to overspend, programme impact and poor delivery of the project

Finally, there must be a process in place for managing the unexpected. Even with the best foresight, unexpected events occur and these still need to be managed. A clear and defined protocol should be agreed between the parties to establish this.

Risk register

It is essential that the project has a risk register and that the risks identified are monitored and managed and mitigation is in place throughout. The responsibility for controlling the risk register must be clearly set out.

Alongside this there are a number of other processes that are vital to consider as part of a risk management strategy:

- Who is reporting on the project and is this role accountable?
- Who is receiving reports on health and safety and other high impact risks?
- Who will monitor major developments during the project's duration, including new products and changes in legislation?
- How will change control be managed?
- Who is managing communications and ensuring this happens?

A photograph of a modern building facade. The building features a mix of materials: a central window with a black frame, a decorative wall of light-colored stone blocks with a grid pattern, and a wall of light-colored rectangular tiles. The sky is clear blue, and there are green leaves visible in the top right and bottom right corners.

GUIDANCE AT A GLANCE

COST AND RISK MANAGEMENT

- Set out a clear project business plan and project objectives that are understood and adopted by all parties.
- Drive value by incentivising contractors to deliver on cost plan and business plan targets, through mechanisms like 'gain-share' or long-term alignment contracting, rather than select on the lowest price.
- Draw up a fully detailed and quantified project risk strategy as a framework for assessing contingency and financial risk. For day-to-day delivery a risk register must be set out and monitored and clear responsibility for this task defined.
- Involve the key supply chain members early to lock in quality and agree their involvement and terms as part of the contract. Subcontractors going out of business is where the greatest risk lies, and it's worth obtaining as much assurance about those in the supply chain to minimise projects being delayed by these sorts of problems.

5: Procuring Quality on Site

The preceding chapters have set out clear methods and recommendations for procuring quality pre-construction, but these will not achieve the desired result unless specific measures are put in place to realise build quality on site, as this chapter explains.

Image: Pollard Thomas Edwards - site inspection.
Copyright Luke O'Donovan.

The need for control

Good design and best practice procurement at the early stages of the project can still be undermined by poor construction controls and lack of focus on quality. Procuring excellent quality on site therefore needs to build on the procurement processes that have preceded it from project set up, through design, to tender and construction.

As we described earlier, if specification and costs are not clearly defined at preconstruction, the quality of what is built on site can be severely undermined and projects can quickly spiral downwards with poor and late material substitutions being made, construction rushed and corners cut to meet unrealistic cost and programme constraints.

We often talk about a zero defects strategy as a desired outcome but we rarely recognise that it has a cost or that it requires a change in approach to procurement. It involves getting the team and design right, selecting the right products and paying the right price.

If we as a sector took lifecycle costing more seriously, we would probably make better and more consistent decisions with better quality outcomes.



Continuity of the team

An important factor in procuring quality on site is continuity of the design team and specialist supply chain through design stages and then during construction - maintaining golden thread of embedded design information from project inception to completion.

As already discussed in Chapter 3, too often a design team is swapped between planning and detailed design / construction, or a specialist supplier is changed during the design process. This is regularly done in the name of value engineering (or cost efficiency) but it runs the risk of compromising design quality or compliance. When teams are restructured, there is a loss of project knowledge which takes time to build up and is sometimes never recovered.

This continuity is also embedded in the proposals contained in the Building Safety Bill. The proposed legislation sets out the requirement for construction duty holders, including principal designers, principal contractors and building safety managers, to create, store and update the golden thread of building and product information through the three design gateways, and maintain it throughout the building's lifecycle.

Another important aspect of the Bill is the early appointment of the building inspector (from concept stage), something that happens automatically outside the housing sector. Again, this will bring consistency to the approach on compliance and underpin construction quality on site.

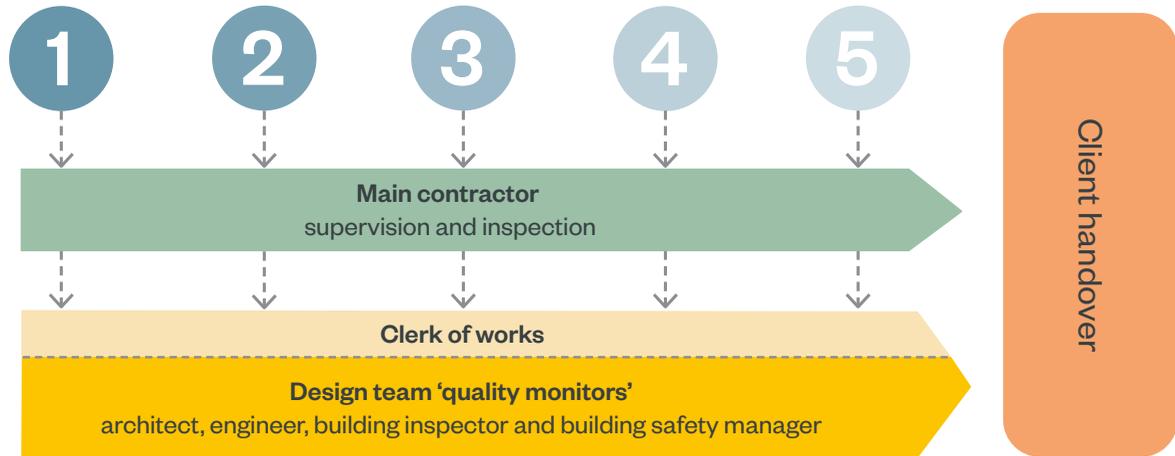
Site inspection regime

The intention is to strengthen the inspection process with a more rigorous process that involves the design team working alongside the contractor team, inspecting the works as they proceed.

The clerk of works and design team act as quality monitors, inspecting the works regularly and at completion of packages.

Diagram: Copyright
Levitt Bernstein.

Subcontractor works



On-site inspection

Once on site, a key issue is the processes adopted for inspecting the works. The traditional three areas that inspection is required for are:

- Compliance with statutory building regulations and published standards
- Checking quality of workmanship and compliance with assurance regimes
- Ensuring the planning approved scheme and detailed design intent is implemented. In a design and build scenario, this is the employer's requirements as developed and interpreted by the contractor's proposals, and in a traditional contract it is the construction issue design information.

The use of digital systems to support this process has significant benefits for both the client and the contractor and should be a fundamental requirement in the recording of building construction.

Responsibility for on-site inspections and checking needs to be clear and the appropriate roles need to be identified across the project team. This includes subcontractor protocols for managing their own work, main contractor trades foremen and site managers supervising the works properly, through to

consultants, building and safety inspectors and clerks of works doing regular inspections, and finally, a knowledgeable client representative accepting the completed project. All of these functions should have a defined role controlling and monitoring the works.

A clear team structure and inspection processes are needed, and this will come with a cost. Those who design buildings, the architect and engineers have an important role to play, alongside the other construction and consultant team members.

The frequent exclusion of the design team from a site inspection role under design and build contracts contributes to poor outcomes and reduces understanding of site conditions, technical detailing and overall construction quality.

Conventionally, the role of inspection under design and build falls to the employer's agent, normally from a QS or project management background, supported by a clerk of works should the client choose to appoint one. While an employer's agent has the skills necessary to run the project and administer the building contract, they do not necessarily have the inspection skills described above or have a detailed understanding of the design

and construction requirements as designers do. The mantra must be to get the skills of the right people in the right place and define clearly what is the right or acceptable standard.

Increasingly common now (particularly since Grenfell) is the emerging oversight role with a separately appointed architect acting for the client as a quality monitor or design adviser, whose function it is to oversee the project's development and construction and advise the client and / or employer's agent on quality and design compliance.

The appointment is made post-contract under a design and build arrangement and is sometimes undertaken by concept design architect (for the planning application) who is retained by the client where the contractor has appointed a new design team to undertake the detailed design and delivery, or by a new architect where the concept design architect has gone forward to work with the contractor team to undertake the detailed design or has left the project altogether.

Image: BIM. Copyright
Pollard Thomas Edwards.

Detailed design and new technology

High quality construction also relies on good quality and detailed design information. Allowing adequate time for designers and specialists to produce coordinated information is a key part of the construction programme. If this becomes compressed and construction starts too early, quality can easily be undermined. Manufacturing is currently under strain and can be slow to evolve with demand.

Working in BIM can improve efficiencies and reduce risk and clashes on site through better design coordination and prototyping. However, working this way requires an allowance for adequate time and resource upfront so these aspects also need building into the design programme. Best value is achieved when decisions are made early on in the design process; later changes are always disruptive and costly.

Modern methods of construction

Opportunities for improving processes, production and quality can come from investing in modern methods of construction (MMC).

There is a lot of reinventing the wheel in construction and while location and brief may vary, there is much about design and construction which is common and replicable.

This may require some additional investment up front, but the benefits increase when costs are spread over the life of the building or used on subsequent repeat projects. Most importantly, long-term construction quality can be improved within a controlled factory setting. Again, The Housing Forum has produced guidance to help public sector housing clients to harness modern methods of construction.¹⁷





Handover and post-occupancy evaluation

Making time at the end of the project to understand what went well and what could be improved will help the whole team to benefit from the experience and inform future projects. This could be a formal post-occupancy evaluation (POE), or a more informal but structured project review to assess if the project vision and specific targets were achieved. It also needs to address what more can be done to reduce operational issues, including training building users.

We need to always evaluate the design, operation and performance of the building, but also understand how the project's procurement and execution have affected the works on site. We need to ask:

- Is the building working as it should?
- Has it been built as per the design intent?
- Was the brief satisfied?
- Were the design and value engineering choices beneficial or did they lead to poor outcomes or unforeseen costs?
- Were design issues or buildability problems addressed holistically by the team?
- Were lessons learned and shared?

Having established relationships and agreed working methodologies, it would be beneficial if the team work together on future projects – this is where longer term framework relationships can really add value.

GUIDANCE AT A GLANCE

PROCURING QUALITY ON SITE

- **Involve the design team**, including architects, engineers, landscape architects and other specialists in the inspection process.
- **Set out expectations for the quality control and inspection regime**, with clearly defined contractual roles and responsibilities and protocols for the whole team. Responsibility for on-site inspections and checking needs to be made absolutely clear in the contracts.
- **Consider investing in a clerk of works** making sure they have official status with the contractor and inspect sites more than once a week.
- **Clearly identify and programme 'critical inspections'** and use these as stop and check points within the construction delivery process.
- **Ensure building safety and compliance** by appointing the building inspector at concept design stage.
- **Develop the use of new technology:** BIM and electronic inspection software can support the quality of site processes.

6: The Legal Framework for Contract Selection and Project Delivery

Having set out the principles for procurement, we now discuss the critical factors to be considered when awarding the contract, selecting an appropriate contract form and the key features contracts should contain to encourage collaborative working and minimise problems with project delivery.

Awarding the contract

The final key ingredient in terms of delivering on the project vision successfully is ensuring it is underpinned with the right legal framework that supports the team to work collaboratively.

As we've maintained throughout the guide, essential to this outcome is early involvement of the contractor and supply chain partners. Early contractor involvement is possible by drawing on a number of legal tools and procedures. When a client has identified the winning contractor, they should initially enter a or pre-construction services agreement (PCSA) as soon as possible, before signing the full contract. This allows the design to be developed in detail (works packages progressed with the contractor's specialist supply chain), cost certainty to be established and there be an agreement on managing residual risk.

Complex construction contracts typically require extensive planning before the construction works can begin on site. These activities often include developing the building design, securing planning consent or conditions and other statutory approvals, assessing the site for environmental risk and remediation works to make the site safe, demolishing existing buildings or structures, securing funding for the project, appointing the supply chain and securing appropriate insurances and securities for the works period.

We would recommend that clients select a form of contract which allows for early appointment and a process for developing design and price collaboratively, for example the ACA suite of alliance forms including FAC-1, TAC-1 and PPC2000 and to reiterate, that parties only enter into an unconditional contract once the detailed contract is defined and costed.

Many standard contract forms including JCT and NEC include a template form of PCSA to allow the parties to agree and price for pre-construction activities.

Alternatively, clients may adopt a two-stage tender process that provides for a contractually binding pre-construction programme that must be completed before the construction phase can begin.

We are strongly recommending that a building contract is not entered into until:

- The design is developed in detail and fixed
- At least 70% of the works (package) costs are tendered and fixed and the associated supply chain named
- There is an agreed strategy for managing any residual risk
- The site inspection regime is defined with all roles and responsibilities identified.

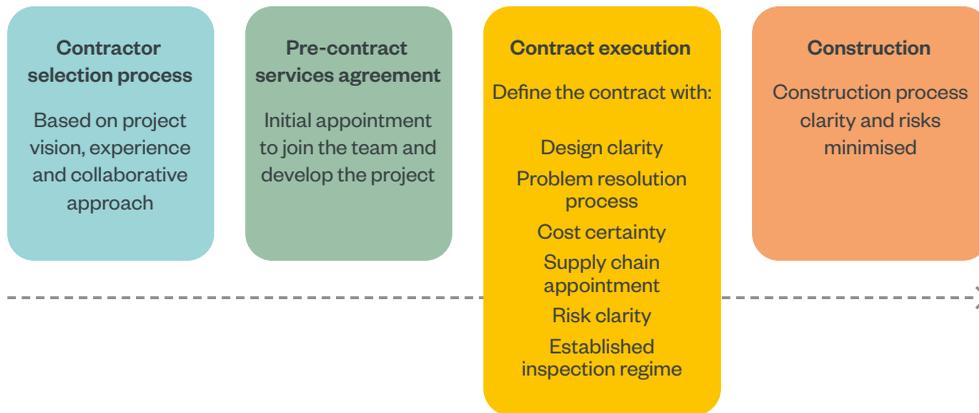
The contract should have all of the vision information, objectives and principles set out within. It will also need a comprehensive set of design, technical specification and pricing documents appended to it so that the starting point and the agreement for the project is clearly identified from the outset.

Whichever contract is selected needs to be equitable and realistic about managing risk.

This guidance is promoting an industry step change that focuses procurement on design and construction quality as much as cost and programme certainty. The contract selected needs to underpin this principle.

Diagram: Copyright
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Awarding the contract



Assurance considerations when awarding a contract

Before signing the contract clients need to carry out or put in place the following assurance processes:

- Due diligence at initial engagement
- On-going monitoring on assurance
- Modern slavery checks
- Other accreditation schemes are being adhered to including the Considerate Constructors Scheme

Choosing a contract to fit the job

Long after the procurement exercise has been completed and the contractor has been selected, the contract will remain as the legally binding record of the project or programme and the parties' legal and commercial obligations in respect of delivery and payment for the project. Therefore, it is important to underpin a project or programme with a contract that accurately captures the client's procurement vision and objectives and that delivers the legal and commercial outcomes that the client seeks to achieve.

In many cases, the choice of contract and conditions it stipulates will be integral to structuring the procurement strategy and identifying the golden thread to be supported through the procurement exercise. Many of these decisions should therefore be made before the project is advertised, to ensure that the procurement strategy and the eventual form of contract are fully aligned.

Some of the key considerations for clients to help them draw up an appropriate contract for the project are:

Scope of works / services:

The type of works or services comprising the project or programme will be of critical importance in determining the appropriate form of contract to be used. For discrete projects as will be the case for many public housing clients, a contract form with an express duty of care from the contractor for the delivery of the project, a timetable of key activities and defined completion dates, and a formalised inspection regime, practical completion and handover process. *Duty of care is explained in more detail below.*

Anticipated value of project / programme:

The value of the project or programme will be critical in determining how much the client wants to spend on drafting and finalising the form of contract. For low-value projects, a client may prefer to adopt a standard form of contract that can be populated easily for the specific project or programme, rather than develop and negotiate bespoke terms.

Number of contracts:

Where a client wishes to appoint a single contractor to undertake the project or programme, only a single form of contract may be required. Where a client wishes to have the project or programme delivered by more than one contractor, they could consider entering into parallel contracts using the same terms and conditions, or alternatively set up a framework arrangement whereby the contractors are 'called-off' the framework when the relevant need arises and will sign up to the same contractual terms (as set out under the framework agreement). *We explain how frameworks work in the glossary box.*

Term / duration of project / programme:

Like the size of the project, the term or duration of the project or programme will affect the type and complexity of the contract to be entered into. For projects or programmes with short terms, clients may prefer a simpler or standard form of contract, whereas longer terms may require more complex terms and conditions to future-proof the project or programme against law changes, deal with cost fluctuations in labour and materials and mitigate long-term risks

in the project or programme as between the parties. For complex projects or programmes requiring considerable financial investment by the contractor, clients may consider more complex contractual arrangements such as joint ventures or the creation of new corporate vehicles to deliver the project or programme.

Liability for design:

For complex construction projects and programmes, clients should adopt a form of contract that reflects the parties' agreed commercial position in respect of responsibility for the design of the project. Design and build contracts are frequently employed for complex construction projects, under which the contractor assumes sole responsibility for design and must manage and be liable for the work of any third-party designers.

The client may want to approve the terms of the appointment of the contractor's design team, or procure collateral warranties to establish a direct duty of care from them for their design work. Alternatively, clients can utilise multi-party or partnering contracts, under which the multiple parties involved with the project enter into the same contract and are subject to the complementary contractual terms.

A further point here is the preference of this guidance of involving the same single design team from start to finish whether this is through the contractor or direct with the client organisation. How this is achieved needs to be considered at the start of the project with a clear strategy for the life of the project. Some key points are:

- Make sure design responsibility is clearly identified
- Ensure the consultant's site inspection responsibilities are clearly identified
- Ensure the contract reflects the requirements for consultants to inspect and report on the works without there being a conflict of duty to the contractor on the one hand and the client on the other.

Continuity of architect, and other key designers and constructors, helps achieve the objectives of the Building Safety Bill's emphasis on the golden thread of responsibility for health and safety through the three gateways of planning, pre-construction and completion on site.

What to include in the contract for successful management and project delivery

Regardless of the form of contract selected for a procurement project, clients should ensure that the contract terms contain workable processes to allow effective management of the contractual relationship and to help the parties achieve both delivery of the project or programme and satisfaction of the client's vision, procurement strategy and key objectives.

Though we've covered this elsewhere in terms of the principles of delivery these elements need to be addressed and specified in the contract. So for completeness, here is final checklist.

Programme:

A clearly defined contractual programme to promote the timed delivery of the project or programme and required completion of key milestones or work stages within defined timescales. Programme is also a key performance indicator that the project and contractor's performance need to be monitored against. There may also be incentives introduced to underpin the programme targets which will also promote partnership working.

Contracts should require the parties to identify any events that may adversely affect the delivery of the project or programme, with an express process to agree any mitigation strategies required. Early warning clauses, although pioneered by the ACA Partnering contract suite, now feature in most standard forms of contract.

Integration of designers and supply chain:

The client should aim to promote collaborative working between the contractor, designers and key supply chain members. This will be particularly important for projects or programmes for higher-risk buildings under the forthcoming Building Safety Act 1, where the client will need extensive input from its contractors and designers to achieve approval of building safety plans.

Contractually binding pre-construction stage:

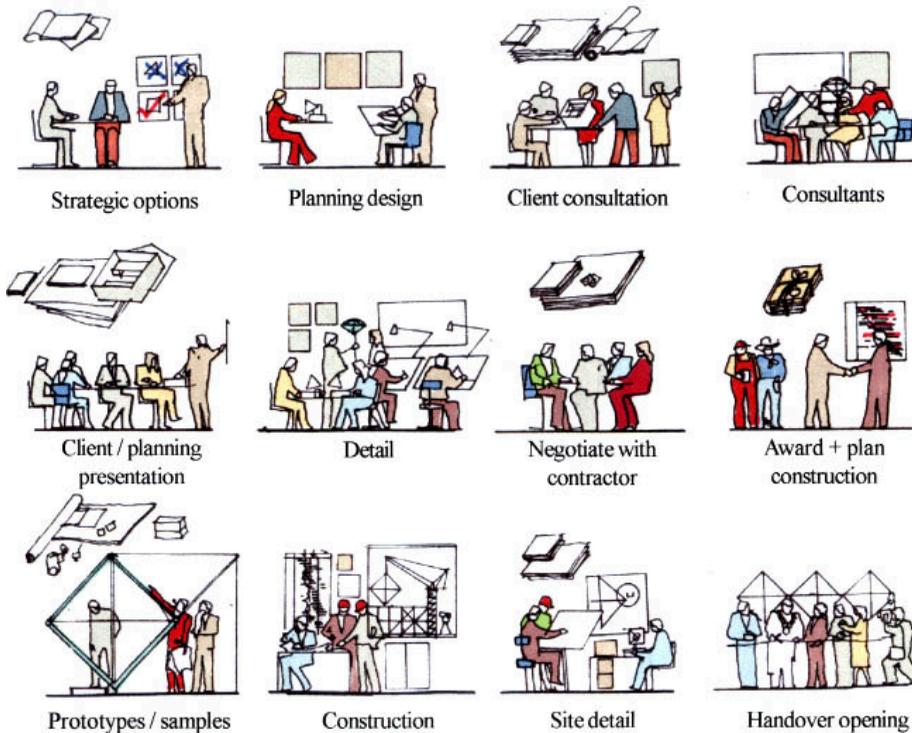
Given the complexity of many construction projects, clients should ensure that key pre-construction activities (especially planning and statutory consents and design development) are undertaken via binding contractual terms and not a letter of intent, involving a properly drafted PCSA.

Alternatively, clients can adopt the ACA contract suite (PPC2000, FAC-1 and TAC-1), which provides for an integrated pre-construction stage. Again, this will be particularly important for projects covered by the Building Safety Act, where both Gateways 1 and 2 will need to be satisfied before the construction phase can commence.

Duty of care and liability

The client should ensure that all parties working on the project are clear about their respective duties of care and liability, especially in respect of design and building safety. Where different members of the project team are appointed under separate contracts or appointments, care must be taken to ensure there are no gaps or conflicts in the parties' respective liabilities. Clients should pay particular attention to any caps or limitations on designers or contractors' liability and the limits of any insurance coverage. Fire safety and cladding work is being routinely excluded from PII cover and there is widespread confusion around poorly worded insurance clauses. Clients will need to learn to live with this and adopt rigorous quality control procedures which minimise the risk of future claims.

Image: Sketch by Colin Muir.
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Management of risk:

Onerous risk positions should be avoided (eg, fitness for purpose clauses; excessive insurance levels; restrictive intellectual property clauses). These create risks for the contractor and the supply-chain and may undermine the collaborative nature of the contract and add unnecessary costs. *This is discussed in more detail in Chapter 4.*

Price control:

Price and payment should be clearly defined, with processes for dealing with change control, delays and additional expenses due to unforeseeable events, and transparency over all elements of the contractor's price. *Again, this together with cost incentivisation is discussed in more detail in Chapter 4.*

Performance measurement and targets:

Construction contracts should contain express processes for reviewing and measuring contractors' performance against agreed targets. These can also be linked to incentives. As well as remedial measures to improve poor performance there can be rewards for good performance for say exceeding targets on say cost and programme.

Engagement with supply chain: the benefits of appointing specialists early can't be emphasised enough.

Even where two-party contracting models are used, clients can structure engagement with the supply chain formally via alliancing agreements or informally via information sharing and benchmarking. Multi-party contracts allow for more advanced collaboration between clients, contractors and supply chain members.

Standard forms versus bespoke

A large proportion of construction projects and programmes in the UK are carried out under standard forms of contract published by established industry bodies.

There are a number of advantages to using standard form contracts, particularly where a project or programme is being publicly tendered, as clients can rely on contractors being familiar with these forms and how they operate. Careful use of standard form contracts should theoretically make procurement simpler and faster, as contracting parties can refer to established contractual terms and avoid extensive

GUIDANCE AT A GLANCE

CONTRACT SELECTION AND AWARD

- Use a contract process to allow for early engagement with the contractor and principal suppliers and a process for developing design and price collaboratively. This may involve appointing the contractor initially through pre-construction service agreements, which are available within JCT and NEC standard forms, or by adopting the ACA suite of alliance forms including PPC2000.
- Only enter into an unconditional contract once the detailed design is defined and costed and principal suppliers have been identified.

negotiations for each new project or programme. Use of standard forms also encourages compliance with relevant legislation such as the Health and Safety at Work etc Act 1974, the Housing Grants Construction and Regeneration Act 1996 and the Construction (Design and Management) Regulations 2015.

Regardless of the form of contract, as we've emphasised it is important that the contract terms align with the client's vision and procurement strategy, and appropriate financial and delivery models. This will usually require clients to make amendments to standard contract forms, which can to some extent undermine the utility of using an industry-standard form. Amendments to standard form contracts should be reasonable, equitable and proportionate so as to not require extensive negotiation with contractors. Contract amendments should be as brief as possible, not unduly onerous, unusual or ambiguous and should place risk with the party best placed to mitigate and deal with it.



Contractual procurement routes explained

Different forms of contracts deliver different relationships and responsibilities which we summarise here by way of background.

Traditional:

This form of contract is typically between two parties, the client or employer who commissions and pays for the works or services, and the contractor or consultant who agrees to undertake the works and services for the agreed payment. Any third parties involved in the project or programme (such as designers, consultants, supply chain members) are dealt with by way of separate or collateral contracts.

Design and build:

A commonly used form of two-party contract is the design and build contract, under which the contractor accepts sole responsibility for the design and construction of the project and the programme. Most of the standard published forms of construction contract available in the UK, such as the Joint Council Tribunal (JCT) and New Engineering Contract (NEC) contract suites adopt a traditional two-party and have separate forms of design and build contract. Where the client adopts design and build we firmly recommend a two-stage tender process

Partnering and alliancing contracts:

Partnering developed in the construction industry practice in response to recommendations by the Construction Task Force in its 1998 report Rethinking Construction. Partnering contracts typically focus on integrating the various parties in a construction project or programme by way of a multi-party contract arrangement and encourage collaborative working between the parties via core groups, early engagement of the contractor and supply chain at the pre-construction phase, early warning for potential delay events and non-adversarial dispute resolution. The PPC2000 contract suite, published by the Association of Consultant Architects, provides standard form contracts for use on construction projects and term programmes. It also has an option for a design and build relationship between the Client and its contractor/its supply-chain.

Construction management:

Under this model, the client engages its own professional team to undertake the design and appoints a construction manager (CM) on a consultancy basis. The CM arranges tenders for individual package contracts coordinates and administers them with the Client appointing them individually. Each package contractor is responsible for their work and any design they've undertaken.



Framework agreements:

A framework is an arrangement whereby a client may award contracts to one or more contractors on an as-and-when needed basis over a period of time, and in accordance with pre-agreed contractual terms and prices. Frameworks are especially useful where the exact quantity or timing of the works or services are not known in advance, such as repairs programmes where services are provided in response to customer demand and fluctuate over time.

Frameworks are heavily employed in the UK in both public and private sectors, as they provide an easy means of awarding contracts without having to run a new procurement exercise for each project or programme. Frameworks in the public sector are regulated by the Public Contracts Regulations, which limit the term of frameworks to 4 years (except in exceptional circumstances, duly justified particularly by reference to the subject-matter of the framework), though individual contracts may be awarded during the life of the framework that extend beyond this period.

Public sector frameworks may also be used by other clients, and the Crown Commercial Service has established a number of national frameworks for use by public sector entities throughout England and Wales.

Dynamic purchasing system:

This is effectively an electronic open approved list and as such, may be joined by new contractors across its lifetime, even if they have applied before and been rejected provided that they meet pre-established eligibility criteria.

... And their most popular standard contract forms

The most commonly used standard form contracts in the UK construction industry are:

JCT 2016:

The JCT suite of contracts is published by the Joint Contracts Tribunal, and was most recently updated in 2016. The suite comprises a set of two-party contracts including a Design and Build Contract, a Measured Term Contract, a Pre-Construction Services Agreement, and a full suite of consultant appointments and sub-contracts. The JCT suite is widely known and commonly used throughout the UK construction industry and should be familiar to most bidders in construction contracts.

The New Engineering Contract 4th Edition:

The NEC 4th Edition contract suite comprises a complementary set of two-party contracts, sub-contracts and professional services appointments, including a Design Build and Operate Contract, a Term Services Contract and an Alliance Contract. The NEC4 suite is widely used for construction and engineering projects in the public and private sectors.

ACA partnering contracts:

The ACA suite of contracts is published by the Association of Consultant Architects and is based on a collaborative approach to construction. The suite comprises PPC2000 which is a project partnering contract; TAC-1, which is a term alliance contract; and compatible forms of subcontract. The suite also includes FAC-1, which is a framework alliance contract. The contracts can be used for traditional two-party or multi-party arrangements, and parties can operate a strategic alliance to work collaboratively. The ACA suite has been used widely in construction projects, particularly with public sector clients, also with uptake from the private sector seeking to contract with their supply chains using collaborative principles and processes.

Concluding Remarks

Industry has learnt the hard way about the deficiencies in procurement – at its mildest, cost overruns, and snagging, through to poor design and terrible defects. And at its very worst the appalling tragedy of Grenfell.

Tougher regulation is on the way which with legal clout will perhaps make clients and contractors think twice about cutting corners and price more realistically.

But it's also about change of attitude, culture and setting the project up for success. Of course, the right team, with the right team spirit, can transcend even an indifferent procurement process to deliver a high-quality development. But getting the procurement right will certainly help set the project in a way that nurtures collaboration and trust. Appointing the right project sponsor will pay dividends in this regard.

As is clear from this guide there is no one magic ingredient but a whole range of steps and processes to line up and consider, from being clear about the aspiration for design, through to making sure that the right level of on-site inspection is carried out to bolster quality and confidence.

The approach we are advocating is drawn from a wealth of best practice and experience from our members. We very much commend it to all of those looking to deliver higher quality, more sustainable and better places to live.

Acknowledgements

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The views in this report are the views of The Housing Forum and drawn from Working Group discussions and surveys of members of The Housing Forum.

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