

Trowers and Hamlins' report to ISSG – Price Evaluation

9th June 2021

1. Context

This paper discusses progress over the last twelve months in addressing critical issues in procurement, and suggests ways in which the ISSG can support further industry-led programmes of change.

As discussed when we met with the ISSG in February, procurement sets the framework for project outcomes. Poor procurement processes and choices can create conditions for failure from the outset.

This includes incentivising risky behaviour which can impact on building safety. Ensuring that the price for works is right and that programmes are realistic is critical in establishing conditions for success, including ensuring that the selected contractor has the capability and capacity to carry out the required works.

Over recent years there have been a number of significant milestones:

i) CLC Procuring for Value

The CLC report in July 2018 laid the foundations for industry to start the journey in moving away from lowest price led procurement models, establishing new models and protocols to deliver more rounded value to society from its built environment procurement activities.

ii) T&H Whitepaper

Trowers & Hamlins has led a working group looking at alternative price evaluation models and how they can be used in the housing sector to secure sustainable outcomes. The findings of the working group have been set out in the *Pricing Models for the Social Housing Sector White Paper* published in December 2020.

The White Paper is designed to act as a "conversation starter" to commence a series of discussions and workshops so that the sector can explore alternative pricing models, decide on their utility and application and obtain an enhanced awareness of their importance and impact in procurement processes.

iii) Construction Innovation Hub - Procurement Value Toolkit

The Value Toolkit published in April 2021 offers clients a structured approach for value-based decision making across the investment lifecycle of a project, programme or portfolio. This means better outcomes from what we deliver and how we deliver it, leading to a more sustainable built environment and a more sustainable model for our industry.

Trowers & Hamlins has been involved in two of the steering groups driving the Value Toolkit forward. It should also be acknowledged that the Playbooks published by UK Government (primarily the Playbooks for Outsourcing (now renamed, "Sourcing") and Construction) also provide guidance on value-led evaluation and emphasise that the lowest price bid does not need to be accepted.

iv) SEC Procurement guidance

Trowers & Hamblins is also working with SEC (South Eastern Consortium) to develop a guidance document for procurement professionals in the social housing sector which will explain the business case and operational strategies needed to support better procurement.

This guidance document is aimed to work from the 'middle out' enabling senior procurement managers to support boards to make necessary changes to procurement policies at a strategic level, whilst also driving better practice down through every level of the supply chain. Once complete the intention is to make the guidance available beyond the SEC membership to maximise public benefit.

2. Taking the conversation forward

In combination these developments represent the first key building blocks in transforming procurement in the built environment. Logically, the next steps must be to put in place mechanisms to drive up adoption of these new approaches and to capture data and evidence to underpin a process of continuous improvement.

To that end we are seeking support from the ISSG for **the establishment of an Industry led procurement taskforce, ideally based within the Construction Leadership Council and tasked with coordinating procurement reform across industry.**

We are already in early stage discussions with senior representative of CLC, but endorsement from the ISSG would be instrumental in ensuring industry, Government and HSE move quickly to support this work.

The procurement taskforce would focus on the following activities which can be expanded as necessary as our understanding improves:

- Building an evidence base through annual reporting and data capture to help measure progress in reforming procurement practice.
- Evaluating procurement practice across different sectors within construction and across other industrial sectors and identifying practices that can improve construction.
- Developing guidance to support industry and Government in reforming procurement.

Facilitating learning to drive continuous improvement, we believe the taskforce should initially focus on three areas concerning price evaluation in the housing sector:

1. Building the evidence base – annual survey of housing providers in England

Building on Elaine Bailey's comments made at our presentation to the ISSG previously: we would like the Regulator for Social Housing/MHCLG/Homes England/GLA (as appropriate) to undertake a survey of housing providers to understand what price evaluation models they are now adopting following publication of White Paper (this does not necessarily have to be limited to the G15 housing associations- who were the primary focus of EB's question). This survey should be repeated annually and expanded to build a baseline statistical evidence base of procurement practice.

2. Capability upskilling

Capacity and capability regarding the conduct of the price evaluation process and its role in overall tender evaluation needs to increase

We would like to see the taskforce set up a Government-backed Trial Project group where clients across the public sector (focussing on local authorities and housing associations but also including some major infrastructure projects as potential counterpoints) are asked to officially trial the evaluation models and feedback set out in the White Paper across a range of housing projects.

This would help drive uptake over and above the optional/voluntary involvement people are leading on at the moment and provide:

- "proof of concept": that the adoption of relative pricing models that award the lowest price the highest marks does promote a "race to the bottom" and detrimentally affect the business models and bidding approach of the bidders in the UK construction and housing sectors;
- a significant body of data to be analysed and used. This data should identify behaviours and structures that increase the likelihood of a safe and quality result being produced via a competitive tender process. These outputs can then be used to update/ provide more detail to the current Government guidance on price evaluation (included in the Outsourcing Playbook and the Construction Playbook via the "Bidder Evaluation Guidance" paper).
- to help publicise procurement reform in order to attract debate and further consideration/research into the issue. It will also raise awareness in both the client and bidder side of the market and hopefully encourage clients to adopt alternative solutions.

3. Exchanging best practice - MHCLG-led/backed price evaluation user group

The Taskforce would also be asked to support an MHCLG-led/backed Group to be set up to explore price evaluation practice in the housing sector and, in relation to higher-risk buildings, what information is needed to be provided at each stage of a procurement and whether there is a need for stand-alone quality assurance standards to create and preserve the required golden thread of information.

The aim of the Group would be to ascertain the cause of/reason for those differences and adopt best practice from other sectors, (acknowledging the need to link the out-of-sector conclusions to different elements of the higher-risk building /design information etc?) - This would build on Ken Rivers' comments made at our presentation concerning best practice that exists in the oil and gas sector that might well be adaptable to the housing sector going forward (or at the very least provide a clear counterpoint).

3. Next steps

We will continue to discuss how industry and government can work together to establish the Procurement Taskforce and take forward the critical work required to embed better procurement practice that places safety at its heart.

We would be grateful for ISSG's endorsement and continued support for this initiative and will keep you in touch with progress.

Rebecca Rees

Partner - Head of Public Procurement, Trowers & Hamlins LLP

rrees@trowers.com / 07920 492655