

Procurement

Item	Topic	Cause	Effect	Potential outline solution	Linkage to key issue
1	OJEU Notices	Poorly drafted OJEU Notices	<ul style="list-style-type: none"> Constrains volume and type of work delivered and duration of delivery (restricts flexibility to develop the contract) 	Phase 2 – OJEU Notice should allow scope for change and development during the contract term. Draft short guidance on how to introduce flexibility into OJEU Notices with examples of best practice	A1
2	Effectiveness of procurement processes	Current methods can be too transactional, insufficient opportunity for clients to articulate their requirements and tenderers to fully understand them such that the ‘invitation’ and ‘offer’ are aligned	<ul style="list-style-type: none"> Potential for unsuitable partner selection especially where complex service is being procured Potential for prolongation and costly procurement Misalignment arising post tender leading to ambiguity and potential dispute 	<p>Phase 2 – explore opportunities to <u>generate</u> face to face discussion during tender stages for Open and Restricted procurement routes</p> <p>Phase 2 – if Competitive Dialogue used produce outline guidance on how to optimise</p> <p>Phase 2 – address the need for client to understand contractors commercial strategy with regards to sub-contractors</p>	A2

				<p>Phase 2 – consider greater emphasis on interrogating and validating evidence of past performance</p> <p>Phase 2 – consider innovative approaches to procurement e.g. member involvement in selection</p>	
3	Structure of quality submission	Lack of robust and consistent processes and formats for quality submissions	<ul style="list-style-type: none"> • Wide variances in marking from tender assessors • Risk of contractors over-promising through statements that are often contractually unenforceable and can also mask high prices 	<p>Phase 2 – investigate opportunity to fundamentally change the structure of quality submissions to emphasise what added value the tenderers bring – what do we mean by quality?</p> <p>Phase 2 – produce a standard outline format for quality submissions and guidance for tender assessors</p>	A4
4	Inappropriate price/quality splits	Insufficient tailoring of price/quality ratios to reflect market environment and extent of service commoditisation	<ul style="list-style-type: none"> • Potential greater cost for clients where perceived high quality can mask high prices 	Phase 2 – guidance to be prepared on rationale for deciding quality/price splits including calculation of cost of quality	A3

			<ul style="list-style-type: none"> • Potentially unsustainable tenders for contractors where tender price is the overriding factor in selection 		
5	Contract term	Inappropriate contract duration	<ul style="list-style-type: none"> • Lack of alignment to depreciation timescales for equipment and depots etc • Limited period to recover any return upon investment. • Constrains long-term innovation strategies. • May restrict relationship development. • Recovery of procurement cost and reducing frequency of client procurement cost incurrence. • Lack of predictability in industry as to when procurement 	Phase 2 – develop guidance for inclusion in the Toolkit about the characteristics of the contract that will influence the appropriate term e.g potential capital investment, requirement for depots/offices addressing the issue of contractors depreciating assets only over guaranteed periods i.e. excluding possible extensions. Utilise KPIs covered in ‘Operational 4’ below to determine appropriate extension mechanism or consider options for negotiated extension including a trigger point, say 1 year prior to expiry of initial term to assess if either/both parties actually wish <u>at that stage to</u>	A5

			opportunities will arise where current contracts have unclear potential for extensions or not.	extend	
6	Extent of tender information provided	<p>Inappropriate risk pricing</p> <p>Strategic pricing – tenderers being silent on and taking advantage of any inconsistencies and ambiguities in the tender pricing documentation i.e. loading and de-loading of rates and moving money across the bid to either generate future additional profit or cash flow</p> <p>Pricing based on assumptions</p> <p>Ineffective TUPE information provided at tender</p> <p>Pensions – inequitable LGPS pension liabilities</p>	<ul style="list-style-type: none"> • Prolonged commercial arguments post tender • Breakdown of relationships • Client potentially paying for risk priced in tender but unused • Emphasis on the whole contract becomes commercial • Higher ultimate cost to clients due to prices increasing post tender • Potential that lowest outturn cost tender is not the one accepted • Existing TUPE arrangements causes significant administration during tender period and 	<p>Phase 2 – produce a generic highways maintenance risk register for procurement (linked to enhanced dialogue covered in point 2 above) including mitigation measures e.g. review outlier rates greater than 20% outside the mean</p> <p>Phase 2 – adopt standard approach to provision of TUPE information building on work completed by HTMA</p> <p>Phase 2 – provide guidance in the Toolkit that addresses pension Entry liability, defined contributions and Exit liability</p>	A6

			<p>inconsistent pricing of tenders</p> <ul style="list-style-type: none"> • Inaccurate pricing of pensions through speculative assumption of risk – potential withdrawal of bidders 		
7	Tender assessment models	Tender financial comparisons may be modelled in a manner that does not reflect the true nature of the work to be undertaken e.g. SoR assumes unquantified single units of work	<ul style="list-style-type: none"> • Lowest cost tender not identified 	<p>Phase 2 – in order to allow a realistic financial comparison to be made based on the work anticipated to be actually completed, develop pricing mechanism that more accurately reflects highways maintenance work covering;</p> <p>a) general maintenance work based on resource schedules utilising asset management plans and realistic cost drivers – embrace work already undertaken by HTMA</p> <p>b) schemes - develop simplified quantity banded SoR (including LPM breakdown) – embrace work</p>	A7

				<p>already undertaken by HTMA. Both of these to involve consultation with supply chain</p> <p>c) consider also the option of using an actual cost contract based on tendered fee and overhead percentage.</p> <p>The above will allow a more accurate tender evaluation model to be created</p> <p>Phase 2 – assess benefits and risks associated with client providing evaluation model at tender stage</p> <p>Phase 2 – emphasise the need for greater integration of quality and price when assessing tenders</p>	
8	Alternative solutions at tender stage	Procurement restrictions precluding contractors suggesting alternative solutions – deemed to be variant bids	<ul style="list-style-type: none"> Lack of innovation with potential lower cost/better value at tender stage 	Phase 2 - Develop simple mechanism whereby contractors can raise innovative ideas as part of quality submissions – this should address the	A8

				opportunity to offer ideas not just related to design or product e.g. it could be an alternative funding arrangement (Note; 'in contract' efficiency items dealt with below)	
9	Efficiency Discounts	Unsuitable discount mechanisms built in contracts	<ul style="list-style-type: none"> • Potentially tenders will be distorted where year on year efficiency discounts are imposed without joint ownership and accountability. • Inability to compare or benchmark across contracts. • Likely 'front loading' of bids to offset potential non achievement of discount as a risk allowance 	Phase 2 – include guidance in the Toolkit that give tenderers the opportunity to set out what efficiency savings might be achieved and the conditions for doing so, including share arrangements of benefits derived. Also ensuring that cost savings are as a result of true efficiencies rather than wholesale rate reduction	A9
10	Mobilisation	Lack of a work breakdown structure for mobilisation activities	<ul style="list-style-type: none"> • Lack of transparency for the Client of the Service Provider's start-up costs. • Distortion of rates 	Phase 2 – create work breakdown structure for mobilisation activities including requirement for programme	A10

			and potential over-payment		
11	Behaviours	Inappropriate behaviours on both client and contractor side	<ul style="list-style-type: none"> • Lack of trust • No common goals • Minimal joint working • Loss of opportunity for joint improvements and efficiency gains 	Phase 2 - develop a set of behavioural requirements for inclusion in contracts that covers both parties	A13

Operational

Item	Topic	Cause	Effect	Potential outline solution	Linkage to key issue
1	Bid team does not follow through to delivery	Disconnect between the bid team who have understood client requirements and the proposed approach to meeting them and the hand-off to delivery teams who derive their own interpretation	<ul style="list-style-type: none"> Promises made at tender stage misinterpreted or not delivered 	<p>Phase 2 – develop an approach that can be included in tender documentation that;</p> <p>a) the effect of the hand-off between bid and delivery teams on the contractor side and procurement/delivery teams on the client side is minimised – consider short term (6 month) interim appointments</p> <p>b) that the right delivery team is selected – this is also linked to the enhanced dialogue recommended in item ‘Procurement 2’ above</p>	A12
2	Silo working	Work fragmented across multiple organisations	<ul style="list-style-type: none"> No accountability for end-to-end processes Lack of true focus on truly generating customer value 	Phase 2 – draft a proposed method that requires contractors as part of the production of their own Quality Plans to address the integration of work at the	B3, B7

			<ul style="list-style-type: none"> • Inefficiencies due to hand-offs between organisations • Lack of joined up approach to asset management • Adverse impact on bringing innovation to market • Lack of understanding by client of cost drivers leading to inability to make informed decisions about specification 	<p>client/sub-contractor interfaces in order to create end-to-end solutions. This is particularly relevant in relation to asset management to provide clarity of role between client and contractor and the functions of data collection/storage and use of that data to derive intelligent solutions</p> <p>Phase 2 – develop brief protocol that could be used in tender documentation that addresses supply chain integration and adopts some of the principles outlined in the HMEP Client/Provider Collaboration Toolkit.</p> <p>Phase 2 – consider also the effect of market capacity in the medium term and the need to create long term commitment from the supply chain considering the levels of work sub-contracted in this sector</p>	
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3	Whole life cost of maintenance	Valuing success on how low the rate is	<ul style="list-style-type: none"> Whole life cost is ignored e.g. in terms of durability of repair – greater cost to the client in the longer term 	<p>Phase 2 – include practical whole life cost guidance tailored to maintenance work in Toolkit. Link also to efficiency savings covered below. Include provision of guidance on how whole life cost benefits can be evaluated</p> <p>Phase 2 – consider performance guarantees in relation to durability</p>	B5
4	KPIs	Too many and/or inappropriate indicators	<ul style="list-style-type: none"> Greatly influences behaviour of contractor potentially removing focus from important areas of service 	<p>Phase 2 – develop simplified set of generic maintenance KPIs that are outcome and customer focused – including satisfaction (check required on work already done in this regard)</p>	B6

Commercial

Item	Topic	Cause	Effect	Potential outline solution	Linkage to key issue
1	Incentivisation/reward mechanisms	<p>Lack of robust mechanisms built into the contract i.e clear processes that explain who does what where not covered by target cost pain/gain mechanism</p> <p>Inappropriate pain/gain share ranges in some contracts (see also item 4 below)</p>	<ul style="list-style-type: none"> Potential non-generation of cost saving ideas partly due to lack of clarity of how financial benefits will be shared and over what term Potential for undesired behaviours where share mechanism allocates too much risk or opportunity to the contractor 	<p>Phase 2 – development of end-to-end process that can be contractualised – address potential inclusion of supply chain. Address also issue of self-funding of innovation.</p> <p>Phase 2 – produce guidance note describing the potential impact of various share range options and consider if any element of fee should be put at risk</p>	A11
2	Focus on higher margin activities	<p>Unsustainable high or low rates</p> <p>Inability to review rates</p>	<ul style="list-style-type: none"> Clients cherry pick rates that makes the overall service unsustainable from contractor perspective Service levels reduced that attract unprofitable rates 	<p>Phase 2 - provide guidance on identification of unsustainable/abnormally low tenders (linked to enhanced dialogue covered in 'Procurement 2' above)</p> <p>Phase 2 – investigate possible ways that rates can be reviewed (both ways) at</p>	B1

			<ul style="list-style-type: none"> Contractors focus on activities with higher margin despite network needs 	appropriate intervals post contract to more closely reflect actual performance and circumstances	
3	Inappropriate indexation	Indexation mechanism that doesn't reflect the true increase in prices	<ul style="list-style-type: none"> Inability for contractor to accurately price the tender Can lead to unsustainable rates – both high and low 	Phase 2 – identify most appropriate mechanism embracing work already undertaken by HTMA and others – investigate also the influence from having a smaller SoR as covered above	B2
4	Target cost	<p>Potential inflation of target to reduce likelihood of pain</p> <p>Insufficient understanding and control of actual cost</p> <p>Inappropriate application</p>	<ul style="list-style-type: none"> Expensive service and lack of pressure for the contractor to be efficient Lack of assurance about performance and efficiency Inefficiencies where target cost used for low value work 	<p>Phase 2 – develop guidance for main risk areas on target inflation including allowances for risk, programme duration for time related cost, inclusion of new/adapted rates, etc</p> <p>Phase 2 – undertake brief review of the extent to which value and cost are being compared including use of EVA and if appropriate propose a mechanism whereby the 80:20 items of work can be analysed in terms of target allowances v actual cost including</p>	B4

				analysis of utilisation. This can also be used to enable effective benchmarking and continual improvement	
5	Issue resolution	Lack of process for dealing with issues in a structured and disciplined manner prior to formal dispute	<ul style="list-style-type: none"> • Protracted debates often about misunderstood positions • Inertia and delays due to lack of effective escalation mechanism • Significant senior management time wasted • Breakdown of relationships as matters become personal rather than being managed through a formal process 	Phase 2 – preparation of issues resolution process with appropriate guidance	B8