

Dover Leisure Centre Procurement Review

28 June 2016

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Introduction Overview

Project Background

A new Leisure Centre is being developed by Dover District Council to replace the existing Dover Leisure Centre. Further information about this can be found in the Stage 2 Feasibility Study.

Procurement Review

This report discusses the options for the procurement of the Operator and the Main Contractor, and summarises the proposed way forward.

A Procurement Workshop was held on 28 April 2016 with Council officers and members of the Consultant Team, and this report reflects the discussions at the workshop.

Soft market testing has also been carried out with key operators and contractors on the proposed contractor framework, which supports the proposed way forward.

Procurement Requirements

A structured and systematic approach is required in order to select the most suitable option for the project. The client's project objectives, especially in terms of cost, time, quality, risk and control must be clearly defined and the above options are reviewed against these to determine the most appropriate form of procurement for this project.

The broad purpose of contract procurement is to appoint an appropriately skilled contractor and/or operator, with the right team, agreed costs, programme and appropriate transfer of risk. This simple objective has become more difficult to achieve as project programmes are condensed, and both clients and contractors/operators seek to protect their position with regard to apportionment of risk.

Market Context

The construction market contracted during the recession and is struggling to cope with the increase in construction projects coming to the market. Contractors are therefore being more selective about the projects they bid for and will often only tender for those projects where their bid costs are kept to a minimum. The location of the project also reduces the number of contractors with the capability and experience to do this type of project.

Council Priorities

When considering the procurement route, the following key considerations should be looked at, as they will directly influence the procurement route adopted.

The following priorities were established during the Procurement Workshop, and the proposed way forward reflects these priorities.

- Programme – Whilst the Council would like the centre to be open as soon as possible, programme is not the key driver.
- Cost certainty – A fixed price needs to be obtained for both the operator and construction contract before works start on site.
- Risk transfer - Risk should be transferred to the contractor and operator where appropriate.
- High quality – This is a high priority, however this must be balanced against obtaining cost certainty and risk transfer where appropriate. It will therefore be important to ensure the design is developed to a reasonably high level of detail to protect the design intent.
- Compliant with Public Contract Regulations – e.g. OJEU compliant.

Introduction Overview

Procurement Options

This report sets out the options available for the procurement of the operator and contractor for the Dover Leisure Centre. The options considered are:

Operator

- Design & Build contract and separate leisure management contract.
- Design, Build, Operate and Maintain (DBOM).
- Design, Build, Finance, Operate and Maintain (DBFO).
- Asset transfer/long lease.

Contractor

Procurement Routes:

- Traditional.
- Management Contracting & Construction Management.
- Partnering.
- Design and Build.

Procurement Options:

- Single stage.
- Two stage.

Commercial approaches:

- Fixed price (lump sum).
- Guaranteed maximum price.
- Target cost.

OJEU Compliant Procurement:

- A framework.
- Use the OJEU procedure.

Introduction

Terminology

The level of design development is referred to using the definitions provided by the Royal Institute of British Architects, the “RIBA”, and for ease of reference the main design stages are noted in the following table. We have also referenced the latest definitions from the RIBA Plan of Work 2013, with those in the previous version, the RIBA Outline Plan of Work 2007, which is still referred to in the construction industry.

RIBA Stages RIBA Plan of Work 2013	RIBA Stages RIBA Outline Plan of Work 2007	Summary (based on information to be provided by the architect)
Stage 0 - Strategic Definition	No stage in 2007 Plan of Work	Review feasibility
Stage 1 - Preparation and Brief	Stage A (Appraisal) and B (Strategic Brief)	Preparation and development of the Client Brief and initial design solutions
Stage 2 - Concept Design	Stage C - Outline Proposals	Site master plan, floor plans, elevations, typical sections, indicative material schedule
Stage 3 - Developed Design	Stage D+ - Detailed Proposals	Development of floor plans, elevations, sections, room data sheets, building materials. Fully coordinated with other consultants.
Stage 4 - Technical Design	Stage E - Final Proposals	Detailed design and specification.
	Stage F - Production Information	Construction details
	Stage G and H - Tender	Preparation of tender documents and tender period.
Stage 5 – Construction	Stage J (Mobilisation) and K (Construction Period)	Tasks to be performed under the construction contract.
Stage 6 - Handover and Close Out	Stage L - Defect Liability Period	Duties under the Defect Liability Period
Stage 7 - In Use	No stage in 2007 Plan of Work	Post occupancy review

Operator Procurement Discussion

Operator Procurement

The following topics were reviewed as part of the Procurement Workshop:

- Procurement options/routes, including:
 - Separate construction contract and leisure management contract
 - Design, Build, Operate and Maintain (DBOM)
 - Design, Build, Finance, Operate and Maintain (DBFO)
 - Asset transfer/long lease.
- Summary of current operator market
- Why test the market?
- Timescales for procurement and when best to appoint the operator
- Operator input to design and final specification
- Funding from operators
- Key contract terms and considerations:
 - Length of contract (co-termination)
 - How to maximise interest from contractors
 - Maintenance responsibilities
 - Management fee arrangements.
- Soft market testing

Operator Procurement Recommendation

We have not included a full operator procurement review in this report due to the commercial sensitivities, and further discussion required to conclude this.

It was however agreed that the leisure management contract and construction contract should be procured separately, and the remainder of the report focuses on this.

It was also agreed that the procurement of the leisure management contract should be progressed in parallel with the construction contract so that the commercial position for the operator is known before entering into the construction contract.

Contractor Procurement Routes

Traditional

With traditional contracting, design is clearly and definitely separated from construction. There are three key teams in the procurement process: the employer, the design team and the contractor.

Having developed a Design Brief from the employer, the architect produces detailed drawings and specifications, with advice taken from other specialist consultants. Bills of quantities are usually drawn up by the quantity surveyor and an estimated cost produced once the design is complete.

Contractors are invited to price the works, quantifying every specific work item from the bills or a specification. Tenders are submitted and a preferred contractor (usually the cheapest) is selected. The contractor agrees to produce exactly what has been specified in the documents and therefore has no design liability.

Traditional contracting is a slow method of procurement as the detailed design and specification needs to be completed prior to tendering the works and a long tender period is required to accurately price the works.

Once on site, the employer with the project manager must manage the contract efficiently to avoid problems associated with issuing instructions and information. It is to the contractor's advantage if information is insufficient or issued late, as this will establish grounds for extensions of time and claims for loss and expense.

Traditional contracting can provide a good level of cost certainty based on a defined product however, as the employer remains responsible for the design, any design defects have to be corrected at the employer's expense.

Cost certainty can however only really be attained once the works have been tendered, which takes place once the design is substantially complete. Should the submitted tenders be significantly higher than the cost estimate prepared by the quantity surveyor, thus requiring a significant redesign to reduce costs, then there will be a substantial amount of abortive design and cost. This will also delay the project by many months.

Traditional contracting should deliver a quality building as the standards can be precisely described in the specification however, the designers may not be aware of similar more cost effective products which could help keep costs down without compromising quality and improve buildability.

Under a traditional contract, the client can change an element of the design during construction. However, as the employer will have to bear all direct and associated costs such flexibility comes at a high price.

The Employer is liable for any defects due to poor design and specification whilst the contractor is liable for defective construction.

[A traditional procurement route is not recommended for this project as the residual risks cannot be transferred to the contractor, and time and cost certainty would be difficult to achieve.](#)

Contractor Procurement Routes

Management Contracting

In management contracting, the employer engages a management contractor at an early stage of the project to act as a professional consultant, advising on the design and managing the construction works. The management contractor is not employed to undertake any of the construction works, they are all sub-contracted. The client pays the contractor a fee for the management service.

Management contracting is claimed to reduce the conflict between the design team and contractors, which can occur on construction projects.

Under this form of contracting, the management contractor bears very little risk. The management contractor has no design responsibility and is usually not responsible for the work carried out by the sub-contractors.

Management contracting can deliver projects quickly as works can commence on site before the design is completed.

However, there is very little cost certainty in management contracting as it is impossible to be confident of the final project cost until all of the sub-contracts are entered into.

It should be possible to achieve the required quality standards, however, the designers will be under great pressure to keep pace with construction and design decisions may therefore suffer.

Construction management offers a great deal of flexibility for altering the construction works. However, all alterations to the works during construction are more expensive than if the design is right first time.

Liability for design defects usually remains with the employer and the sub-contractors are liable for construction defects.

Management contracting should only be considered if the employer is in a position to fully appreciate, control and mitigate the risks inherent in construction. This is very much the preserve of experienced developers, and the problems that blighted the Scottish Parliament demonstrate some of the downsides of this procurement route.

Management contracting is not therefore recommended for this project due to the lack of cost certainty and the limited opportunity to transfer risk.

Construction Management

Construction management is very similar to management contracting however with construction management the employer has a direct contract with each of the works sub-contractors. A consultant construction manager is employed by the employer to oversee the project and co-ordinate each of the contracts. Construction management provides flexibility in that additional works/changes to the brief can be introduced at an advanced stage however, the cost and programme implications of any changes will be born by the employer.

Construction management is not therefore recommended for this project.

Contractor Procurement Routes

Partnering

Originally promoted in the Egan Report ('Rethinking Construction') in 1998, partnering was seen as a method of integrating the different facets of the project process to deliver best value to the client and user.

It aims to deliver this by ensuring that the full project team, including the contractor, act co-operatively and make decisions in a blame-free environment of trust. This seeks to raise the collective performance and aids more effective working, with a focus firmly on agreed common goals. It does this through setting parameters whereby all contracting parties work towards shared goals and objectives, and often share any penalties and/or rewards as a result.

The efficacy of partnering is most prominent when embracing the combined talents of the full project team (including client, design team and contractor) as early as possible. For partnering to work best, the team must therefore be in place from concept to completion and be wholly focused on the needs of the client and users.

There are clear benefits to a partnering approach where relationships have been built up over a period of time, and a mutual trust has developed, and many partnership arrangements have grown out of formal contractual arrangements.

Good examples would be a supermarket chain or housing association rolling out a fairly simple building type, whereby the contractor is incentivised to do a good job otherwise they would lose significant volumes of future work available from that organisation.

The other downside to partnering is that they rarely achieve best/lowest price or is a fixed price obtained any earlier than it would under other procurement routes. Partnering lends itself to a 'cost plus' arrangement (e.g. the actual cost of the work, plus the contractors pre-agreed overheads and profit) and is not best suited to a lump sum or fixed price contract. There is also limited opportunity to transfer risk to the contractor, and risk is often shared between the parties.

Partnering is not therefore recommended for this project.

Design and Build

In design and build, the employer provides the contractor with a set of performance requirements defining what is to be provided. The contractor responds with a proposal, including prices for construction and design works. The employer and contractor negotiate to ensure the contractor's proposals accurately reflect the employer's requirements and agree a mutually acceptable specification.

Under this form of contract, the contractor is solely responsible for design, fabrication and co-ordination of the works as described in the contractor's proposals, including the appointment of specialist consultants and sub-contractors.

The employer will usually utilise a consultant to prepare the employers requirements and to monitor the progress and quality of the works.

Under design and build, the contractor is responsible for all aspects of the work. This single point responsibility can be highly attractive and advantageous to employers.

Design and build has a time advantage as design work does not have to be completed before construction can begin. The development is therefore complete much sooner than under more traditional forms of contract.

Design and build offers high cost certainty as the contractor is obliged to do whatever is necessary to comply with the contractual requirements. All risk of the cost exceeding the price lies with the contractor and as a result design and build contracts offer the highest level of cost certainty. Tendered costs may be slightly higher than with other procurement routes in order to cover the contractor's liability or risk.

Cost certainty can be attained at an early stage in the design and abortive costs are therefore less should the contractor tenders be more than the cost estimate prepared by the cost consultant and a redesign required.

It is especially important to provide the design and build contractor with accurate information on site conditions and ecology at tender stage to avoid additional costs or delay.

Contractor Procurement Routes

Quality control problems are often given as a reason for not selecting design and build. However, provided the employer's requirements document is sufficiently detailed and quality is closely monitored on site, it is possible to achieve a good quality building.

With design and build contracts, it is difficult to vary the works significantly once the contractor is appointed. Variations can be awkward to deal with and are best avoided. This can best be done by ensuring that an accurate and comprehensive employer's requirements document is prepared and agreed with all parties before the contract is let.

Develop and Construct

If the employer wants to be closely involved in the development of the concept design it is advisable to adopt an employer led design approach. The employer's design team works up the design in some detail, typically to RIBA Stage 3, to ensure that the brief can be met and that a unique design is achieved. The design team may subsequently be appointed by, or novated to, the successful design and build contractor. This procurement route is often referred to as 'Develop and Construct', as opposed to design and build, as the contractor is only required to carry out limited elements of the detailed design.

Develop and Construct allows changes in the brief to be integrated into the design for an extended period prior to tendering, which will be important where there are several key stakeholders and funders. Although changes post tender should ideally still be avoided. Essential changes may be accommodated without penalty if a disciplined change order procedure is adopted.

Develop and Construct has many of the advantages of design and build with regard to speed of design development, with the residual risks associated with shortcomings in the design and temporary works being transferred to the contractor. However, the design and quality of workmanship can be closely prescribed in order to achieve a fixed price tender from the successful contractor for a defined product.

A Develop and Construct procurement route is therefore recommended for this project, with the design being progressed to a more advanced stage, e.g. RIBA Stage 4 (previous RIBA Stage E).

Contractor Tender Options

Single-stage tender

Single-stage tendering requires full and complete tender information to work most effectively, and assumes requirements will not change substantially. Thereafter, it relies upon the tendering process to drive competition and, hopefully, an economical price.

In a buoyant construction market, many contractors decline single-stage tenders – partly because it typically provides less visibility of risks or unknowns, and partly because it is more expensive to undertake than two-stage tendering.

Over the past couple of years, many of the larger contractors have been unwilling to tender on a single stage basis. However, we are starting to see a slight shift in this as they look to secure their forward orders, and a single stage approach could be appropriate.

To successfully pursue this route, clear and comprehensive tender information, an effective market warm-up and mid-tender consultations are pre-requisites. Soft market testing with key contractors is also recommended.

Two-stage tender

Two-stage tendering provides an opportunity to capture contractors' ideas in buildability, programming and design, and is particularly relevant for complex projects.

There is competition in the first stage of procurement, where staff, overheads and profit, preliminaries and even some early packages are fixed.

Once the design has been progressed in detail and major packages of work procured, the second-stage fixed price, guaranteed maximum price (GMP) or target price can be agreed.

It is often perceived as being a more expensive option than single-stage (albeit difficult to quantify), but the premium can be often recovered through a more cost-effective design and enhanced programme following the contractor's input. This option is not without its challenges, however.

Although overhead, profits and prelims are fixed, and the work packages procured on an open-book basis, the contractor will include contingencies for design development and project risks, often amounting to 10% or more of the contract sum. As these provisions are negotiated during the second stage, they are not typically subject to market competition and can involve extensive negotiations, which can increase both cost and programme.

To make best use of a two stage tender, the contractor should be brought on board as early as possible so they can input into the design development and risk mitigation, and maximise the benefit of early contractor involvement on buildability issues.

Given the current market conditions in the construction industry, the complexity of the project, the project location, and the Council's priority for a high quality product, we recommend that a two stage tender basis is used. This will generate an appropriate level of contractor interest, whilst also gaining from the benefit of early contractor involvement on buildability issues.

Form of Contract

The form of contract is one of the final outputs of the procurement planning process, and can only be considered in the context of all previous stages. For example, some frameworks stipulate specific contracts are used.

We do however anticipate using either a JCT or NEC form of contract. This would be amended by the Council and their legal advisors, with input from the consultant team on project specific matters.

The scope of service to be provided under a Pre-Construction Services Agreement (PCSA) will also be important if a two stage approach is adopted.

Contractor Procurement Route Summary

Route	Pros	Cons	OJEU	Framework
Traditional	<ul style="list-style-type: none"> Complete control over design and product selection. Reduction in post contract changes. 	<ul style="list-style-type: none"> Longest lead time before starting on site, therefore longer overall programme. Design risk sits with client. No price certainty until much later in project. No sub-contractor input. No incentive for contractors to solve problems. Rarely used for this type of project. 	<ul style="list-style-type: none"> Yes. OJEU 'Restricted' route. 	<ul style="list-style-type: none"> No. This approach is rarely used under framework agreements.
Management Contracting / Construction Management	<ul style="list-style-type: none"> Client retains full control of the project. Design and construction overlapped, reducing overall programme. Flexibility to make changes. Open book approach. 	<ul style="list-style-type: none"> Client unable to transfer design and project risks. Increased contract management. No price certainty until very late in the construction phase. Very resource intensive for Client team. More suited to large complex projects. 	<ul style="list-style-type: none"> Unlikely an individual package will be over OJEU threshold. 	<ul style="list-style-type: none"> No.
Partnering	<ul style="list-style-type: none"> Least adversarial. Open book approach. Early contractor input on buildability issues. Should achieve a high quality product. 	<ul style="list-style-type: none"> More costly. Client unable to transfer design and project risks. No price certainty until end of construction phase. Not suited to one off projects where there is little opportunity to benefit from long term relationship. 	<ul style="list-style-type: none"> Yes, but not ideal. 	<ul style="list-style-type: none"> No. Although some frameworks do introduce an element of partnering.
Single stage Design & Build	<ul style="list-style-type: none"> More likely to achieve lowest price. Early cost certainty. Contractor takes on design liability. Risk transfer to the contractor. Design and construction can be overlapped reducing the overall programme. Client can choose extent of design carried out prior to commencing on site. 	<ul style="list-style-type: none"> Loss of control over product selection (this depends on the level of design carried out prior to tender and how detailed the Employer's Requirements are). Post contract changes often more expensive. Quality can suffer (this depends on the completeness of the design and Employer's Requirements and how well the construction phase is monitored). Contractors are less willing to participate in a single stage tender in a buoyant market, particularly the bigger contractors that would be more appropriate for this project. 	<ul style="list-style-type: none"> Yes. OJEU 'Restricted' route. Note that some legal advisors are advising that the OJEU process can't be started until planning has been granted and the final tender documents are available. 	<ul style="list-style-type: none"> Not usually. A single stage procurement route is not suited to a framework agreement.
Two stage Design & Build	<ul style="list-style-type: none"> Can achieve a reduced programme over single stage as design and tender stages can be overlapped to a greater extent. Early contractor involvement where buildability is important. More likely to receive a quality product as the contractor margins aren't as tight. Contractors more willing to tender this route in a buoyant construction market. 	<ul style="list-style-type: none"> More expensive than single stage due to reduced competition. In our experience it is 7.5%-10% more expensive. Conclusion of second stage tender can be protracted. Loss of control over product selection (this depends on the level of design carried out prior to tender and how detailed the Employer's Requirements are). Post contract changes often more expensive. 	<ul style="list-style-type: none"> Yes. OJEU 'Restricted' route is normally used, although some legal advisors will advise that a two stage approach isn't strictly OJEU compliant. 	<ul style="list-style-type: none"> Yes. A two stage procurement route is ideally suited to a two stage procurement route.

Contractor Commercial Basis

Below set out are three commercial approaches to pricing, each of which has advantages and disadvantages:

Basis	Advantages	Disadvantages
Fixed Price	<ul style="list-style-type: none"> • High level of cost certainty. • Clear basis for risk transfer. • Most effective where design and client requirements are fully detailed. 	<ul style="list-style-type: none"> • Fixed price doesn't mean final price – changes and/or risk can add to costs. • No mechanism for sharing savings. • Requires full and complete information for competitive pricing. • Change can be more expensive.
Guaranteed Maximum Price (savings shared in agreed %'s)	<ul style="list-style-type: none"> • Good level of cost certainty. • Contractor can be incentivised to find savings. • Opportunity for client to share savings. 	<ul style="list-style-type: none"> • Contractor is only motivated to find savings if GMP has some premium in it. • GMP doesn't always mean maximum price – changes and/or risks can add to costs. • Contractor may be resistant to changes which could impact price or programme.
Target Cost / Shared Risk and Reward (savings and overspend shared in agreed %'s)	<ul style="list-style-type: none"> • Equitable risk sharing incentivises contractor, so more willing to find cost-effective solutions. • Opportunity for client to share savings. • Least expensive route for change. 	<ul style="list-style-type: none"> • Lower level of cost certainty. • Risk of shared cost over-runs. • More client involvement required to drive value. • Clarity needed on risk transfer.

Given the continuing rise in construction activity and the extensive evidence of price inflation, these conditions limit the ability of clients to obtain fixed-price tenders on a single stage basis with contractors seeking to reduce risks and are therefore being selective with regard to which projects they bid. However, this is more viable via two stage tender process.

For this project, we would recommend that a fixed price approach is adopted. This will provide the Council with a higher degree of cost certainty.

Contractor Frameworks

Contractor Frameworks.

There are a number of national and regional contractor frameworks which are shown in the adjacent graphic.

Although, in theory, it is possible for the Council to access any of these frameworks, it is common practice for them to be chosen on location as the framework for that region will be most relevant with regard to the selection criteria and KPI's.

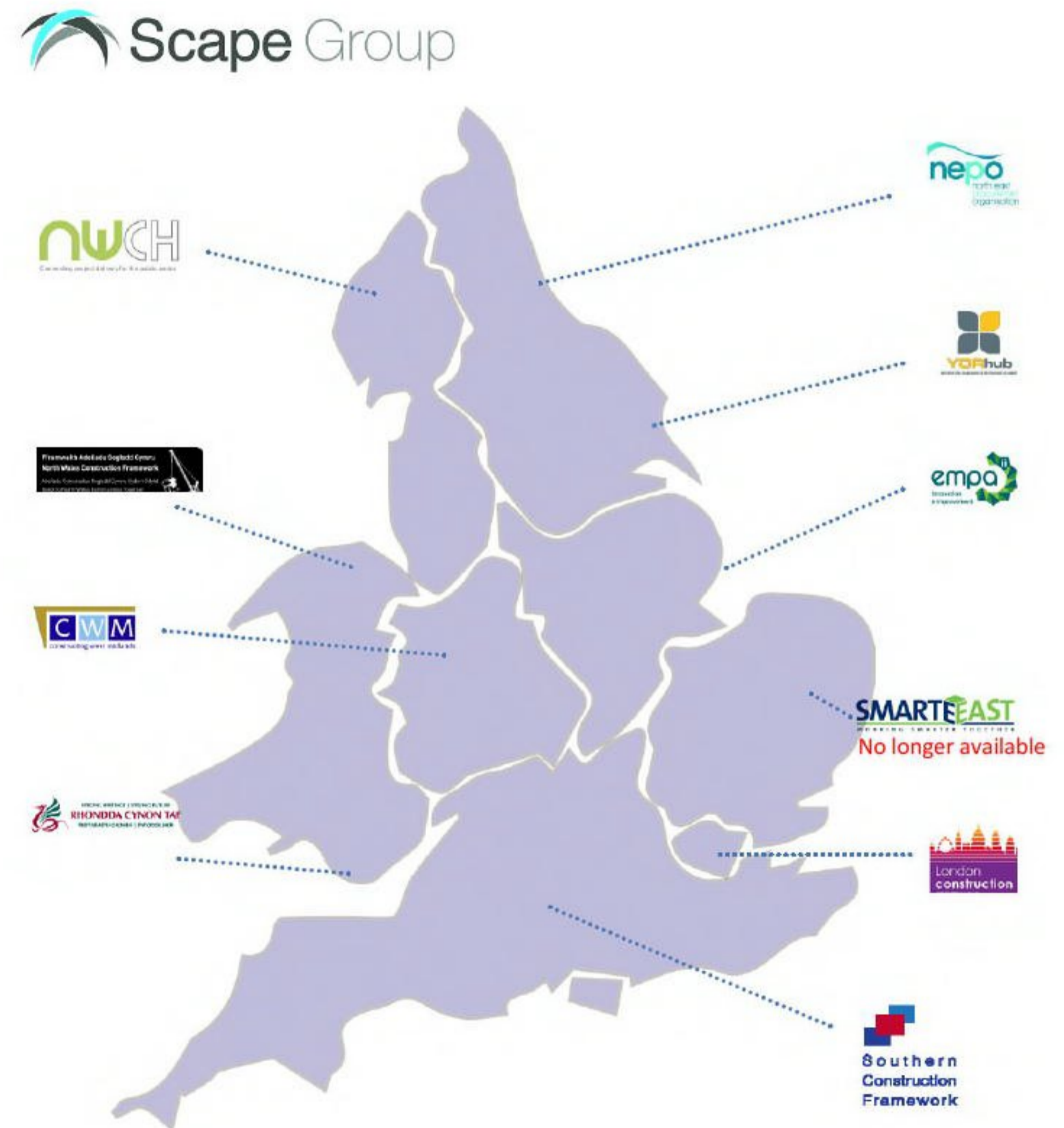
The most relevant regional framework for the Council is therefore the **Southern Construction Framework**, and specifically the South East region.

The other framework the Council could make use of is the **Scape Framework**, which is a national framework.

The main benefits of using a framework are:

- Avoids the need to OJEU the project, as the framework has been put in place using the OJEU procedures. This is becoming ever more desirable in a climate where contractors are more likely to challenge the decision where they have not been selected. This also reduces the overall programme and management costs.
- A contractor can be appointed much quicker. This is particularly relevant where buildability will be key due to the iconic nature of the scheme and the constrained city centre location.
- A framework can be selected that includes contractors with a track record of delivering similar projects.
- Frameworks include KPI's that the contractors are assessed against, which incentivises them to perform well. This is particularly important where a one off project is being delivered. KPI's also incentivise the contractor to use local labour and suppliers.

Whilst Frameworks can be used for single stage procurement routes, they are best suited to a two stage design and build procurement route.



Contractor Framework Overview

We have summarised the most appropriate OJEU compliant frameworks for this project below. These are best suited to a two stage procurement route. Further information on each framework can be found in the Appendices.

Framework	Areas Covered	Companies on Framework	Comment
<p>Southern Construction Framework (SCF)</p> <p>Lot 2 - South East</p>	South East England	<p>BAM</p> <p>Kier</p> <p>Morgan Sindall</p> <p>GallifordTry</p> <p>Mace</p> <p>Wates</p> <p>Willmott Dixon</p> <p>Midas</p>	<p>Framework is relatively new, going live on 29 April 2015. This replaces the previous arrangements covering the South East and London area (SEaL) and Construction Framework South West (CFSW).</p> <p>This Framework is set up in a similar way to the Scape Framework, albeit there is more than one contractor on the Framework.</p> <p>A mini-competition is used to select preferred contractor, and it can take a little as three weeks to select the contractor.</p> <p>Choice of JCT and NEC contracts.</p>
Scape	Set up initially to be an East Midlands framework, although it is used nationally.	<p>Minor Works Framework (Up to £2m) - Kier</p> <p>Major Works Framework (+£2m) - Willmott Dixon.</p>	<p>Only one contractor on this framework for each project value range, and therefore no competition.</p> <p>Procured in a very competitive construction market and the contractor overhead, profit and prelim rate is low in comparison to rates currently being seen in the open market.</p> <p>Current Major Works Framework is due to expire 8 May 2017.</p> <p>Willmott Dixon have a good track record of delivering leisure facilities.</p> <p>Based on the NEC contract.</p>

Contractor Scape Framework

Scape is a contracting authority in its own right, comprised of six local authority shareholders, with the agreed aim to procure services and works packages in an efficient and timely manner. The current framework is national with an annual spend of around £350m across all industry sectors.

The Scape framework has been used to deliver public sector projects for around 10 years. The currently framework has a four-year cycle, which ends in May 2017.

Kier is appointed as the sole principal contractor under this framework for projects up to £2m, and Willmott Dixon for projects above £2m. This was intentional, as Scape wanted to avoid replication of works and services to draw efficiencies in tendering costs and programme.

Scape is effectively an 'open book' two stage procurement route, with a 'target cost' being agreed at the first stage along with the contractor's overheads and profits, plus the design costs (and other associated costs) to develop the design prior to entering into the building contract.

The claimed benefits of using the Scape Framework are:

- **Process.** The framework has an easy and flexible process map, which can be adapted to suit all procurement routes.
- **Cost.** The majority of costs are open book, market tested.
- **Quality.** The framework has improvement & employment skills targets in place, which are monitored by Scape on a "Three strikes and you're out!" basis.
- **Accountability.** A single point of contact / project manager is provided to ensure effective communication and management of responsibilities.
- **Fixed price, guaranteed maximum price (GMP) or target price** can be agreed.
- **Buildability.** Experienced construction staff and planning manager assist with buildability, phasing, risk management, planning, programmes, highways etc.
- **Managing Cost.** The senior estimator and quantity surveyor along with their supply chain manager will assist the project team with live up to date advice to ensure accuracy at all stages.

- **Design Quality.** The contractor's senior design coordinator Introduces suppliers and subcontractors into the design process as required.

Willmott Dixon's profits and overheads are currently fixed at 3.5% under the Scape framework agreement, plus an additional payment to Scape, which is typically 0.5% (using a sliding scale fee by floor area) which Willmott Dixon pay to Scape. By way of comparison, the overheads and profit for a leisure centre in the current market can be anything between 1.5% - 7%.

One of the aims of the framework is to achieve efficiencies through shared learning and repetitive design, procurement and construction solutions, which will help build collaboration in the team.

The framework provider has contract documentation that is pre-agreed with the contractor. This should result in lower legal fees for the client team so that the programme and each project can proceed in the knowledge that legal agreements will not cause delay.

In our view, there are some drawbacks with the Scape framework:

- In our experience it can cost more to procure works through the Scape framework due to the lack of competition and the contractor's reluctance to take on risk without incurring a premium.
- There are no real programme benefits of using the Scape framework as it often takes longer to conclude the second stage.
- The contractor is less likely to agree a tight programme as one of their KPIs is delivery against programme. Whereas contractors are more likely to agree to a more ambitious programme where they are tendered in competition.
- Sport England aren't particularly keen on the Scape Framework due to the lack of competition.

[For the above reasons, we do not recommend that the Scape Framework is used.](#)

Contractor Southern Construction Framework

The Southern Construction (SC) Framework can be used by local authorities, public sector bodies and charities across Greater London, the South East and South West of England. It covers individual projects or programmes. The framework went live 29 April 2015.

The Framework follows the principles and practice of the previous Construction Framework South West and South East and London Area frameworks, as well as the Government Construction Strategy (2011), the industrial Strategy for Construction (Construction 2025), and is based on a Two Stage Open Book approach.

The claimed benefits of using the SC Framework are:

- Fast access to market – considerably quicker than full tendering
- Proven – the first construction framework, now established for ten years
- Certainty – high levels of time and cost predictability
- Competitive process – delivers value
- Locally focused / adaptable to local requirements
- Shared best practice across suppliers
- Contractor led continuous improvement
- OJEU compliant

Contractors are appointed via a 2 part mini competition process. This is based on quality and fee bids for a pre-construction agreement appointment.

Contractors have priced Overhead and Profit (OHP), pre-construction fee, design fees, and construction staff costs on a not to exceed percentage basis for a range of project types and sizes as part of the framework.

Mini Competition Part 1 establishes the type, value, and form of contract. This section forms the specification for the Services to be provided by the contractor during the pre-construction phase. The contractor self scores a number of questions with supporting evidence of their availability, suitability and ability to add value to the project. Typically three contractors are invited to complete Mini Competition Part 2.

The second part Mini Competition 2 tests the contractors' financial response, and provides an opportunity to demonstrate to the Client that they provide the 'best fit' to deliver the project.

The contractor will be paid a fee for pre-construction stage duties which is governed by a Pre-construction-stage agreement. The contractor will then work collaboratively in an open book environment with the Client team to develop the design and provide an acceptable tender for the works before being awarded a Construction Agreement for delivery of the project.

The SC Framework is similar to the Scape Framework in many ways, with broadly similar rates. However, the main difference is that there is more than one contractor on the framework, and there is therefore an element of competition to the first stage where the contractor is selected. For this reason, we recommend that this framework be used.

It should however be noted that same challenges existing when trying to conclude the second stage when the contractor is no longer in competition, and this will require careful management by the appointed cost consultant to ensure best value is obtained.

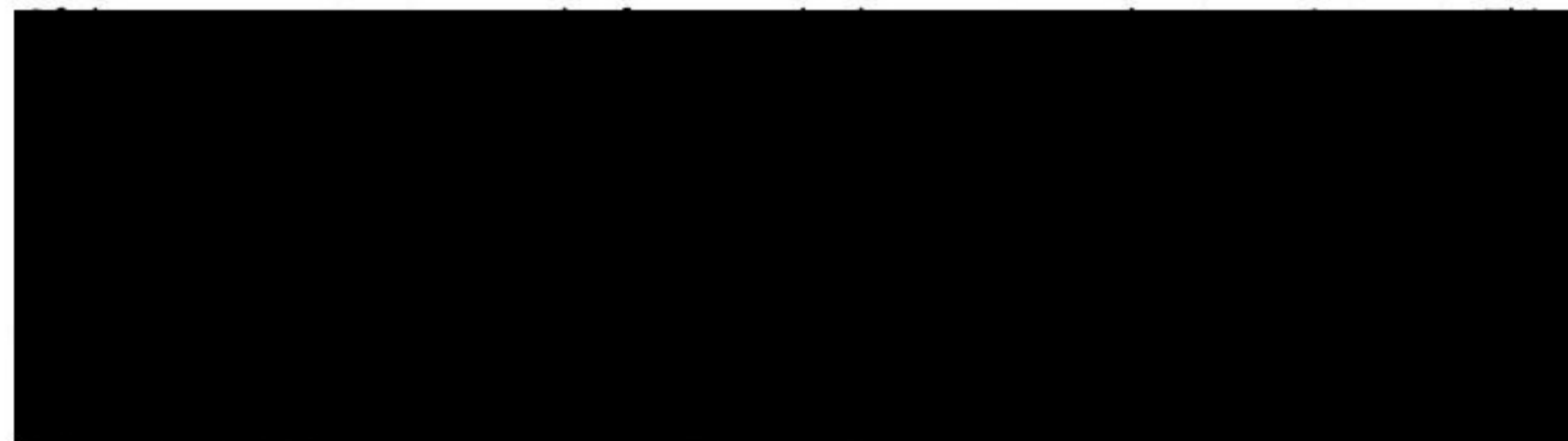
Contractor Southern Construction Framework

Soft Market Testing

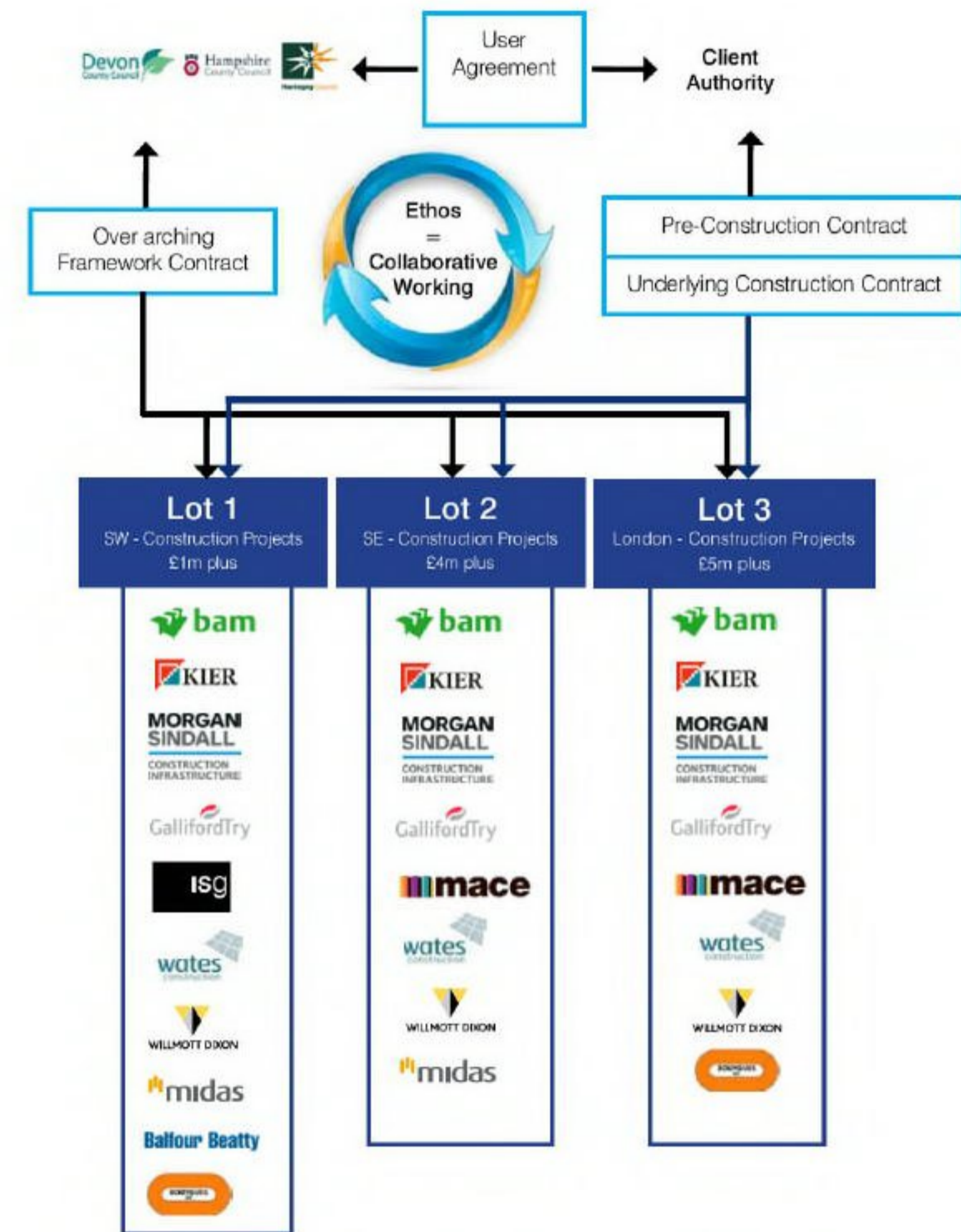
One of the outcomes from the Procurement Workshop was to approach the contractors on the SC Framework to establish the level of interest in the project.

A background document was issued to the contractors via the framework manager to provide an overview of the project. This included the following project information:

- Overview of work completed to date
- Proposed facility mix
- Estimated capital costs
- Initial floor plans designs and area schedule
- Procurement route
- Indicative programme



This therefore supports the recommendation to use the Southern Construction Framework.



Contractor OJEU

The current OJEU threshold for construction works is £4,104,3942 (as of 1 January 2016).

There are four possible OJEU routes that can be used to tender projects: Open; Restricted; Competitive Dialogue; Competitive Negotiation procedures; and Innovation Partnership.

For a project of this nature the most suitable route used to be the Restricted procedure, and the tender process was run in parallel with the design development, so that no time is lost on the overall programme. However, The Public Contracts Regulations 2015 have left ambiguity on this matter, inferring that all procurement documents must be accessible when the OJEU notice is posted.

By taking a cautious interpretation of the regulations in respect of the procurement documents, these would need to be available to contractors in their entirety at the Pre Qualification Questionnaire stage. This would have a significant impact on the delivery date for the project. This would also diminish the benefits of using a more orthodox two stage approach when the contractor would be appointed under a Pre-Construction Services Agreement prior to the design and project requirements having being fully defined.

The Competitive Negotiation procedures are therefore being seen as an alternative, which enables the OJEU process to commence in parallel with the design development. It is however important that the approach to be adopted and shortlisting / down-section of contractors is clearly set out, along with any negotiation points.

The Open procedure invites an unlimited number of interested parties to tender against defined parameters. This is not normally recommended for construction projects as the number of tenders received can inhibit a timely appointment of the contractor. In addition to this, there will also be certain contractors who will not bid under this procedure as the likelihood of appointment is diminished due to the number of bidders.

The Competitive Dialogue procedure is a much more involved process and is best suited to complex development projects where the bidders will be required to develop a design as part of their proposals, and the design is refined, along with the financial proposals, through dialogue with the client.

If the OJEU procedure is adopted, a Project Information Memorandum (PIM) which provides the project background, and a Pre-Qualification Questionnaire (PQQ) would be issued upon request. The contractors would be required to provide information in response to the PQQ including the following:

- Company information – size, location.
- Financial information – audited accounts, ability to provide a performance bond, Dunn and Bradstreet credit rating.
- Insurance details – including Professional Indemnity.
- Project team – experience of the team, track record, proposed sub-contractors.
- Experience – track record, working with public bodies, experience of procurement route.
- Health and Safety – health and safety policy, track record, ability to act as the Principal Contractor.
- Regulatory issues – Regulation 14 of the Public Works Contract Act 1991.

If an OJEU procedure is used we would recommend that a maximum of five contractors be shortlisted to tender from the expressions of interest received in response to the OJEU notice (this is also the minimum allowed). In our experience, contractors are not prepared to commit significant resource and cost to prepare a tender if more than five contractors have been asked to tender for the works. This approach is in line with OJEU procurement rules.

Contractor OJEU

The tender procedure would be in accordance with the Council's procurement regulations and will follow the Code of Procedure for Selective Tendering for Design and Build published by the NJCC.

Shortlisted tenderers would be invited to mid-tender meetings at which they can seek clarification of the client's requirements and discuss the priorities and critical objectives. Responses to contractor's questions would be circulated to each of the contractors tendering. This would also give the Council an opportunity to meet the individuals who will be responsible for delivering the construction of the project.

A contractor would be appointed on the basis of them scoring the highest overall tender score based on both quality and cost criteria, and the other tenderers would be notified accordingly.

The whole process can take four months to finally appoint a contractor. This approach is not therefore suited to a two-stage procurement route, as the benefits of involving a contractor early are not realised, although it could technically still be used.

Using the OJEU procedure also carries a higher risk of challenge from unsuccessful contractors compared to frameworks. This is in part due to the costs associated with responding to an OJEU tender. Additionally, a contractor is less likely to jeopardise their standing in a framework.

For these reasons we would not recommend that the OJEU procedure is used to procure the contractor for this project.

Recommendations

To summarise we consider the following to be the most appropriate procurement approach for the Dover leisure Centre:

Approach	Reasons
Contractor and operators to be procured separately. This will discount a DBOM, DBFO and Asset Transfer approach.	<ul style="list-style-type: none"> To maximise competition and meet the project programme.
A two stage develop and construct procurement route to be adopted.	<ul style="list-style-type: none"> Programme – to achieve completion by the end of 2018. Early contractor involvement. More attractive in the current tender market. Collaboration with contractor to obtain high quality product. Risk transfer where appropriate.
Design developed to Stage 4 (previously Stage E) in conjunction with the contractor and for the completion of the second stage tender.	<ul style="list-style-type: none"> Ensure a high quality product is obtained. To enable a fixed price to be obtained for the works on completion of the second stage tender.
A fixed lump sum price is obtained for the works.	<ul style="list-style-type: none"> Obtain cost certainty before starting on site. Risk transfer where appropriate.
Key designers, e.g. architect and civil/structural engineer would be appointed by/novated to the contractor to complete the design.	<ul style="list-style-type: none"> Continuity of design. Programme – to avoid downtime whilst a new team get up to speed. Obtain a high quality product. Transfer design risk to the contractor.
The contractor is procured through the Southern Construction Framework.	<ul style="list-style-type: none"> OJEU compliant. Avoids full OJEU process and associated programme impact. Mini-competition to select contractor. National contractors with relevant experience on the framework. Bring on board a contractor at an early stage to work with the Council and the Design Team, and advise on, programme, buildability, cost, etc.

Appendix A

Contractor Framework Information

Appendix B

Consultant Framework Information



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