

Scenario: Design & Build with Consultant Transfer

Introduction	<p>When procuring works using a Design & Build procurement methodology, it is common for the employer (Additional Client) to employ designers to produce only a partial design (e.g. concept) and for this to form the basis of contractor's tenders.</p> <p>Following appointment of the contractor, it is common for the designer to move across from the employer's team to the contractor's team to complete the design and support the contractor in discharging their ongoing design and construction liabilities.</p> <p>This example looks at different ways in which the transfer of design duties can be arranged, to assist in the development of an appropriate project procurement strategy.</p> <p>Specific Consultant Transfer guidance in the following sections is <i>highlighted in italics</i>.</p>
Register for use of the Framework	<p>If not already registered as an Additional Client for the relevant Lot Alliance, complete and submit a Registration Document. Once approved by CCS Alliance Manager and notified to other Alliance Members, you will be able to access the Framework Suppliers.</p> <p>Complete and submit a User Access Agreement for the particular project or programme of works. This will generate your UAA project reference. The UAA reference must be quoted on all documentation to allow CCS to centrally manage Framework suppliers and contracts.</p> <p>(Registration Documents and User Access Agreements are available on the Framework website – https://www.crowncommercial.gov.uk/agreements/RM6088)</p>
Works Contract Packaging Considerations	<p>Consider whether cost efficiencies can be made by packaging multiple projects with similar characteristics into a single contract. This may be e.g. similar scope of work; technology or location.</p>
Selecting the Appropriate Lot and Procurement Strategy	<p>Consider using the Lot Selection Guided Match tool (available on the Framework website – https://www.crowncommercial.gov.uk/agreements/RM6088) to confirm the appropriate lot and link to appropriate supplier details.</p> <p><i>It is assumed in this instance that a review of project criteria has already resulted in a decision to adopt a Design & Build procurement route.</i></p>

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Consider using the Procurement Strategy Guided Match tool (available on the Framework website – <https://www.crowncommercial.gov.uk/agreements/RM6088>) to support you in reaching a decision on the most appropriate procurement strategy. i.e. optimal combination of:

- Procurement Route: *already determined – Design & Build*
- Tendering Method: e.g. single stage, two-stage or negotiated methods
- Pricing Mechanism: e.g. lump sum or target cost
- Most appropriate industry standard forms of contract, relative to the potential procurement strategy identified.

Selection of the procurement strategy should always take account of advice from appropriate specialists in the project design and delivery team. *This is especially important where arrangements such as Consultant Transfer are being considered.*

Specific considerations related to Consultant Transfer:

- *Reasons why a Consultant Transfer arrangement might be appropriate include:*
 - *Continuity of design between employer and contractor design phases*
 - *Ensure the use of a known quality of design resource by the contractor*
 - *Maintain a single point of contact and responsibility throughout all project phases*
 - *(Attempt to) transfer all design risk to contractor*
- *A “novation agreement” is normally used to achieve Consultant Transfer in one of the following forms:*
 - *1) Contractor takes over consultant agreement as if they were originally the employer*
 - *2) Agreement recognises different scope of services and responsibilities of consultant to employer and contractor pre and post transfer*
 - *Of these, the second arrangement recognises the reality of the situation more closely and would normally be the preferred option*
- *Other considerations:*

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	<ul style="list-style-type: none"> ○ <i>The consultant and contractor agreements should anticipate the transfer arrangements from the outset and define precisely the transfer requirements and liabilities etc that each party will be expected to have at each stage of the process.</i> ○ <i>If the consultant will be expected to provide a warranty in respect of pre-transfer design to the contractor upon transfer, this should be an explicit requirement in the consultant appointment.</i> ○ <i>If the consultant will be required to provide a collateral warranty to the employer in respect of post-transfer design upon transfer, this should be an explicit requirement in the consultant and contractor appointments.</i> ○ <i>Note that the designer will have different priorities and responsibilities post-transfer. E.g. they will not be able to undertake things such as independent quality checks and certification on behalf of the employer post-transfer.</i> ○ <i>Be wary of creating conflicts of interest e.g. if the designer is appointed as part of the team evaluating contractor tenders and subsequently ends up in a service contract with them.</i> ○ <i>Consider using industry standard documentation to implement the consultant transfer (e.g. Construction Industry Council (CIC) Novation Agreement and Consultant Collateral Warranty.)</i> <p><i>Specific legal advice about the proposed transfer arrangements should always be obtained, before proceeding.</i></p>
Further Competition Process	<p>All suppliers in the Lot must be given the opportunity to submit a tender or to decline. If they decline, they must give a valid reason. Multiple failures to bid without valid reasons may lead to suspension from the Framework for a period (this can only be done by CCS).</p> <p>You should not request pre-qualification information that has already been assessed as part of the Framework evaluation process. This would include things such as:</p> <ul style="list-style-type: none"> • Quality Management • H&S Competence • Others *** <p>You may carry out a further selection process, based on quality. This could include e.g.:</p> <ul style="list-style-type: none"> • Evidence of enhanced security capability • Evidence of successful delivery of similar previous projects

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	<ul style="list-style-type: none"> • Responses to Method Statements addressing project specific risks or issues <p><i>Specifically recognising Consultant Transfer requirements, when preparing tender documentation ensure that:</i></p> <ul style="list-style-type: none"> • <i>the transfer requirements and liabilities etc that each party will be expected to have at each stage of the process are precisely defined.</i> • <i>If the consultant will be required to provide a collateral warranty to the employer in respect of post-transfer design upon transfer, this should be an explicit requirement in the contractor terms and conditions.</i> <p>You should carry out a further selection process based on price. The framework percentages and prices are maximums; suppliers may reduce prices at further competition stage but may not increase them.</p> <p>The Quality/Price ratio adopted at Framework level was 75/25. This may be varied by up to 25% at further competition stage i.e. the Quality/Price ratio may be anywhere between 50/50 and 100/0.</p> <p>The further competition process including evaluation must be carried out transparently and with pre-declared evaluation criteria, following Treasury and Cabinet Office guidelines. Seek further guidance from local commercial specialists or CCS if required.</p>
Primary Documentation Requirements	<ul style="list-style-type: none"> • Project Brief • Form of Contract chosen for call-off • Boiler plate clauses • Project/Client Specific contract amendments/requirements • Specification / Scope / Works Information / Employer's Requirements • Drawings • Pricing Document • Form of Tender • Other <ul style="list-style-type: none"> ○ <i>Terms and conditions proposed for the novation arrangement</i> ○ <i>If required, precise form of collateral warranty that consultant will be required to provide to the employer in respect of post-transfer design</i>

Scenario: Design & Build with Consultant Transfer**Co-ordination
with Others**

An appropriate Design and Project Management team should be used to implement and manage the design / further competition / award and construction phases.

This may be an in-house team or sourced externally, e.g. by using the CCS Project Management and Full Design Team framework.

CCS should be advised of the outcome of the tender and award process to ensure appropriate framework level reporting and management of the supplier.