INTRODUCTION

THE STATUS OF THIS TECHNICAL NOTE

1.1 This note is the seventh in a series of papers to be issued by the Treasury Taskforce providing practical guidance on key technical issues which arise from the implementation of the Private Finance Initiative (PFI). Each note focuses on a specific area of the procurement process where experience has shown that project managers would value assistance. It has been endorsed by the Commission for Architecture and the Built Environment, the Construction Industry Council and the National Audit Office.

1.2 The note is intended to assist public sector procuring bodies to ensure that the highest quality design solutions for buildings or equipment are submitted and delivered within bids for PFI projects. While the advice it contains may be relevant to non-PFI projects, its focus is on the management of the PFI procurement process, and in particular:

- the management of relationships with bidders;
- the provision of clear information early in the competition about what is required and how bids will be evaluated; and
- ensuring that design requirements are consistent with the budget available for the project.

1.3 The note does not indicate what are good design solutions to meet specific needs, which are a matter for individual departments, agencies and NDPBs. It is advisory rather than mandatory, providing guidance on good practice. However, Accounting Officers may wish to take the guidance into account in accordance with their responsibilities for value for money.

1.4 Both procurers and private sector bidders should be aware that Government procurement policy is that Ôvalue for money' is not the 'lowest price'. Instead, the optimum combination of whole life costs and quality to meet users' requirements is required. Procurers should state the criteria for the most economically advantageous tender in advertisements and in tendering documents. Clearly, with awards made on this basis, it is essential that a project audit trail showing how all aspects of design considerations have been handled should be recorded and maintained.

1.5 This note should be read in conjunction with The Treasury Taskforce's Step by Step Guide to the PFI Procurement Process (Revised November 1999), How to Follow EC Procurement Procedure and Advertise in the OJEC (June 1998), How to Account for PFI Transactions (Revised June 1999), How to Appoint and Manage Advisers (August 1998), How to Appoint and Work With a Preferred Bidder (July 1999), and How to Construct a Public Sector Comparator (October 1999), together with any departmental guidance on design issues.

1.6 The text of the note is also available at

- http://www.treasury-projects-taskforce.gov.uk

and, later in 2000 at

- http://www.ogc.gov.uk

THE STRUCTURE OF THE NOTE

1.7 Section 2 of this note explains how good design adds value and outlines what procurers should bear in mind and look for when producing output specifications. Section 3 looks at the procurement process and identifies criteria that can be used to choose between competing bids. Section 4 covers some other important issues that also need to be borne in mind.

1.8 The note is based on the assumption that the EC procurement competitive negotiated procedure, under which the procuring body may negotiate the terms of the contract with tenderers in detail, can be justified as an appropriate procedure for PFI projects (see Taskforce Technical Note No.2 How to Follow EC Procurement Procedure and Advertise in the OJEC).

2 THE VALUE OF GOOD DESIGN IN PFI

GENERAL PRINCIPLES

2.1 At its broadest, design is the process in which intelligence and creativity are applied to a project in order to achieve an efficient and elegant solution. As far as buildings are concerned, good design is not an 'optional extra', rather it is inherent in the way the brief is responded to from the very beginning. Design encompasses functional efficiency, structural integrity, sustainabililty, lifetime costing, and flexibility as well as responsiveness to the site and to its setting. There are good reasons for the appearance of a well-designed building, and the plans and sections are at least as important as the elevations.

2.2 In order to achieve good design, it is necessary to have strong PFI bidders, an end-user that knows exactly what is needed, a thorough brief and designers who can engage in a challenging and constructive dialogue with both the public sector procurer and end-users. The availability of sufficient time to achieve a good solution is essential.

2.3 Good design involves creativity, and it should lead to simplification and to savings in cost. It does not consist of using expensive materials for their own sake or of providing needlessly lavish areas and volumes. A good design team will ensure that capital costs are competitive, and that savings can be achieved on running costs. By enhancing the environment in which a service is provided, it can increase outputs and add to the quality of service. It can also give the facility a competitive advantage in attracting both customers and staff. Good design can also contribute to wider policy objectives, such as those relating to the protection of the environment, without compromising the procurement policy objective of optimum combinations of whole life costs and quality to meet users' requirements.

DESIGN QUALITY IN PFI

2.4 Design quality is measured by the extent to which an asset successfully combines a high standard of space, light and sensory comfort with essential functional requirements in a form that relates well to its surroundings. The processes and procedures through which good design can be achieved need to be developed accordingly.

2.5 Good design is at the heart of PFI because it adds value in the following ways:

Functionality: Designing the facility to work well by optimisng the operational cost of core service and, in particular, the productivity of staff.

Example: In the Hereford & Worcester Magistrate's Courts project, the PFI contractor was required to provide and service new or refurbished courthouses in four towns. Magistrates and Court staff continue to provide the core court services. Each courthouse had a forecast level of business and designs had to meet the needs and complex relationship of different user zones (magistrates, staff, public and custody) whilst providing flexibility for future change.

This was addressed by providing a detailed user requirement with schedules quantifying the mix of functional elements for each location (eg courtoom, waiting area, interview room) and room data sheets for each element describing the required functionality, usage, and adjacencies. The functional outputs did not include structural or M&E specifications. Bidders had to demonstrate an operationally effective solution that also addressed site issues and a whole life approach to value.

Future schemes will see a refinement of the prequalification and outline procedures stage and a greater focus on design quality, flexibility and client - bidder communication at ITN stage.

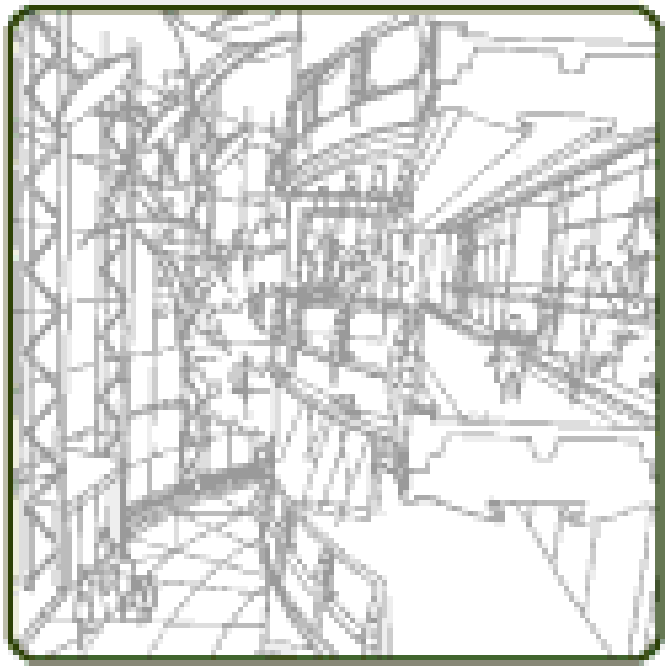
Reducing whole life costs: Consistent with the best modern approaches to construction, PFI requires informed decisions about the quality of space planning and materials to ensure that service-related assets (eg buildings) are not economically obsolete before the end of the contract period. Account must be taken of the cost of facilities management such as cleaning, regular maintenance and life-cycle replacement. The need to recommission while minimising disruption in the core service provided to the end user following the closure of parts of the facility for major maintenance is also a factor. These will be captured in the evaluation of bids by comparing discounted net costs for bids with a Public Sector Comparator based on consistent life-cycle cost assumptions.

Example: A PFI motorway project was able to combine new analytical design methods with high modulus roadbases and stone mastic asphalt (SMA) wearing courses to give new and unique design solution, tailored to the individual demands of the project. The advantages of SMA, in particular over traditional designs, include improved noise reducing qualities and less traffic disruption from maintenance, over the 30-year contract, as well as reduced costs, time and raw materials.

Central Middlesex Hospital Ambulatory Care and Diagnostic Centre (ACAD) - This project includes the provision of improved-quality elective care at significantly lower case costs (an estimated 25% reduction on previous in-patient costs).

Service enhancement: The environment created by the design of a facility should make a major contribution to the quality of the service provided, such as an airy, clean and well-lit public service facility which makes both staff and customers feel valued and respected.

It should be possible to develop objective criteria, for example the likely impact on clinical outcomes for a hospital which may be linked to other good design criteria such as the integration of modern medical technology with the design of the hospital itself.



Miros Projector/reflector system -This is being considered in a current health project. It facilitates ease of relamping, uses a non-serviced high ceiling void, and provides indirect light, enhancing a therapeutic environment.

Particular architectural requirements: The procurer may have architectural requirements that will form an essential element of the design process. These could include the need for distinguished architecture, or the need for a building to harmonise with other existing buildings. Any such requirements would need to be stated as early, and as clearly, as possible to bidders and clear criteria should be developed for their evaluation (see also Section 4.1 on Planning Permission).

Example: For the Berlin Embassy PFI project, there was a need for the building to demonstrate significant architectural quality. It had to be a showcase for the best in British art, design and technology. The client met this requirement by selecting a scheme after running an architectural competition. The winning design was made available to PFI bidders to use as a basis for their bids if they wished. They could then develop the scheme and their proposals for evaluation by the client with his advisers. The preferred bidder was selected in mid-1998 and the facility is due to open in mid-2000.

The Berlin Embassy PFI project

Wider Social and Environmental Benefits: Good design in the built environment may have a significant impact on the well-being of the community, for example on the safety and morale of those living and working in an area, and should be linked, wherever possible, with specific objectives capable of evaluative judgement such as reductions in greenhouse gas emissions through energy efficiency, or reductions in the number of accidents.

Example: In a PFI health project in Wiltshire, waste plasterboard is being recycled rather than landfilled; timber offcuts are being used as compost; roofing materials are non-PVC and increased insulation materials are being used.

2.6 Judgements about good design can be partly quantified and partly subjective. In areas where subjective judgements need to be made, it will normally be possible to develop a weighted scoring system. Section 2.3 of Taskforce Technical Note No.4 How to Appoint and Work With a Preferred Bidder covers the development of proposals for the evaluation of bids in general. For the design aspects of bids:

Functionality can be achieved by close co-operation between the procurer and bidders. Once the functionality criteria have been agreed, including the future change, growth and adaptability expectations of the facility, the bidder can quantify the lowest net present cost of the facility itself.

Service enhancement, architectural quality and wider social and environmental benefits. It may be possible to quantify some of the evaluation relating to these issues. For example, it may be possible to quantify the cost of achieving specific architectural requirements, such as the use of high quality materials for exterior works and paving. But where judgements have to rely to some extent on subjectivity, as in other specialist areas of bids, the procurer may wish to seek advice from suitably qualified independent

experts who may contribute by means of a weighed scoring system. As with any form of scoring system, it is important not to be either too simplistic or too systematic.

Wayfinding and wall protection - This is currently being considered in a PFI health project. Graphics and colours can identify neighbourhoods, reducing the necessity for complicated, unsightly and expensive signage, Patterns on floors, walls and ceiling modulation announce departments. Inclusion of perimeter floor margins markedly reduce wall damage, avoiding installation of unsightly, ineffective and expensive wall protection.

2.7 In all cases, however, the method of evaluation must be made clear by the procurer for all bids. The bid should be a cohesive entity and different parts of the bid should not be considered in isolation.

2.8 Normally, separate groups will address the different aspects of the evaluation of a PFI bid. One such group may focus exclusively on design. In such cases, the design group should produce a report that is considered by the main evaluation panel in their process for selecting a preferred bidder. The design group should include their evaluation financial factors where they can be quantified. An important consideration here is the extent to which a particular design may contribute to operational savings or efficiencies (for example, a good hospital design which increases patient throughput).

2.9 To summarise, good design requires a clear and concise statement employed. It also requires sufficient time to enable due consideration of these requirements and to develop design concepts properly, and the commitment of both the supplier and procurer to achieve quality objectives, such as performance improvement and innovation.

AFFORDABILITY

2.10 While good design will not always result in the lowest initial capital cost, over the period of the contract a higher initial investment can, when expressed as a discounted value, result in the lowest net present cost when account is taken of operational and maintenance savings and the quality of service provided. For design quality to be achieved, the procurer's realistic aspirations must be met while achieving the optimum balance between quality and cost. It is not suggested that good aspirations mean that higher capital costs should be included in the reference project or Public Sector Comparator (PSC). It is essential that the PFI procurement competition be underpinned by realistic affordability assumptions and the avoidance of unjustifiable optimism about the cost of public sector procurement to adequate quality standards (not just relating to the asset, but also to maintenance and to the provision of core services). As has been seen in the past, good design can be sacrificed as bidders desperately seek to fit their costs within a budget that was unrealstic in terms of the initial specifications. If the specifications, once costed realistically, are found to be unaffordable, then they will need to be revised through the benchmark of a realistic reference project until the public sector procurer is confident that the specifications are affordable.

2.11 The procurer, therefore, should make detailed and robust assumptions about the likely cost of the quality of the service being sought. For example, the reference project and PSC must reflect maintenance/replacement costs and time frames (see Section 3 of Treasury Taskforce Technical Note No.5 How to Construct a Public Sector Comparator). The procurer can then use competition to encourage bidders to optimise the overall costs of their proposals to obtain better value for money. The opportunity for increasing demonstrable value will be enhanced if the public sector client welcomes innovation to achieve the required outputs.

2.12 In addition, the procurer must also consider (both in terms of affordability for PFI unitary charges and for the reference project/PSC) the extent to which additional costs should be explicitly budgeted for on the following grounds:

Location or listing: A building in a conservation area or project involving the modernisation of a listed building may be subject to special requirements in terms of materials and the adaptability of existing spaces. The procurer should consult and seek to agree design parameters with the local planning authority and any statutory conservation bodies before commencing procurement. In this way, statutory and planning requirements can then be incorporated into the specification reflected in the reference project and budgeted for realistically in the PSC.

Example: A PFI education project in Nottingham involved the renovation of a 19th Century former lace mill. The college sought the support and advice of the local Lace Market Heritage Trust and the National Heritage Lottery Fund prior to launching the project. As such the Heritage considerations were fully taken into account in the procurer's requirements.

Government Offices, Great George Street - The PFI project for GOGGS will reinvigorate this important historic building, creating naturally ventilated, modern and flexible offices, enhancing the original features of the building. The scheme will embrace exisitng features, such as the light wells, and maximise the use of space. The whole life-cycle approach of this 35-year PFI deal allows for ongoing upgrades to maintain the accommodation in a desirable state and protect this historic building at the heart of Whitehall.

Civic Presence: Some buildings have long been used to enhance civic pride and as such have made landmark contributions to the built environment. Buildings which are constructed as part of a PFI project may become part of that process and, indeed, this may be encouraged where the circumstances warrant it, for example to mark the dignity and consequences of justice. Again, how this aspiration is to be costed, evaluated and described to bidders needs to be carefully thought out in advance of the competition.

Example: The design process for the Norfolk and Norwich Hospital project (see photo below) involved the full range of end users to achieve an effective healthcare outcome while, at the same time, the design team met the need to create a landmark building with a strong civic presence, a sense of hierarchy and suitable landscaped features.

Aerial view of the Norfolk and Norwich Hospital PFI project nearing completion (February 2000).

2.13 The special design requirements covered in paragraph 2.12 may not lead to increases in cost. However if they do, it may not always be possible to afford such requirements because of other priorities for public expenditure. Decisions may, therefore, need to be taken about how to balance cost and quality in establishing an affordable budget, always with a long term view. Once these options have been costed and there is a clear idea about what is likely to be affordable, the public sector procurer must produce a firm brief which makes clear which elements of the bidding criteria are mandatory (eg elements of the output specification, levels of affordability) and which elements are targets. This is essential at the outset in order to avoid bidders incurring unnecessary costs without properly defined boundaries within which to work. The procurer must be able to account for the cost assumptions in its budget for any special elements in the specification such as those described in paragraph 2.12.

2.14 Given the constant pressures on public expenditure, the procurer should at the outset, or as an alternative or supplementary initiative where there are affordability problems, explore with potential bidders the scope for the commercial exploitation of the site by the contractor to generate third party income. Third party income may not be the only solution that might be identified, however. Options should normally be considered at the point at which requirements are defined (eg during market soundings). They could be undertaken later, although probably with less efficiency (eg by issuing the ITN initially in draft to shortlisted bidders) but even in the absence of project-specific affordability problems, wherever feasible, third party use should be encouraged through the ITN and bidders should seek to maximise it in order to reduce their net present costs.

INNOVATION, OUTPUT SPECIFICATION AND COMPONENTS

2.15 Two key principles in PFI which are consistent with good design are:

Innovation: This includes breaking the grip of historic or standard public sector design approaches which have often reflected poor (including over specified) design. Procurers should take a look at how to acheive synergy between building design, facilities

management and the operation of core services (irrespective of whether or not the latter are to be contracted out). They should also encourage in-built flexibility in the specification to respond efficiently to changing requirements without causing excessive disruption to users. Procurers should also encourage bidders to undertake value engineering to save time and cost in the delivery of new services, avoid over specification and encourage modern production processes.

Example: Following discussions with the DBFO company, the Highways Agency agreed to the use of flexible piles as foundations for some bridges on the M1-A1. This innovation eliminates the need for bearings and joints by absorbing expansion and contraction movements at the base of the structure rather than at bridge deck level. This design simplification of reducing the number of joints in the structure will reduce the ingress of water and de-icing salts into the heart of the structure. In the past, traditional designs have suffered from corrosion which has reduced the life of structural components.

Output specification: A well-written output specification is critical in respect of the achievement of value for money and optimum risk allocation. To ensure quality through good design, it must also reflect the procurer's views on potential changing needs so that bidders are encouraged to propose how the necessary in-built flexibility can be achieved while minimising cost and disruption should changes be implemented. Bidders need scope to produce optimal design proposals. The successful contractor must be incentivised to ensure quality and value through good design, encompassing cost effective and efficient operational practices and management. The design solutions used as the basis for the capital costs in the PSC can be helpful in guiding bidders to an understanding of the procurer's needs and should normally be made available. Where this is done it is essential to make clear in both the brief and the evaluation guidance used by the procurer's staff and advisers that this should not stifle innovation; it is merely a reference point for bidders.

Example: The design of the Darent Valley Hospital project had to fit within a clear development master plan for the entire site. The design team established the site's infrastructure and the plan produced was used to zone the hospital's current requirements and future expansion areas.

The Dartford and Gravesend NHS Trust provided operational policies for all departments together with details of the functional content of the entire hospital. The design team interpreted this brief into room relationship parts supported initially by room data sheets and ultimately with fully loaded equipment plans. The designs were taken through four consecutive consultation processes with the hospital's clinicians. The following were reviewed and agreed:

- all departmental relationships within the context of the overall master plan;
- all room relationships;
- all furniture, fittings, finishes, equipment and services terminals; and
- interior design and soft furnishings of the hospital's wards and main departmental areas.

By the time the final design was produced, all relevant inputs had been noted, the Trust had signed off all departmental layouts and the production of detailed construction information had been commissioned. Construction commenced on site in August 1997, with the hospital due to open in September 2000.

Darent Valley Hospital

2.16 Where there are legal requirements which may affect the design, these should be explained in the output specification. For example, responsibility for compliance with the Building Regulations will rest with the Contractor, and all bidders should be informed of this. In addition, if there are statutory requirements governing how the services are to be provided, these may affect design matters and bidders should be alerted to the relevant statutory requirements.

2.17 Where components or manufacturing techniques have been tested in terms of buildability, fitness for purpose and longevity, either in PFI or in conventionally funded projects, the use of these components or techniques can save public sector procurement and private sector bidding costs.

2.18 In some service requirements, solutions to extremely sensitive or critical service objectives may have been developed over many years and exist as compulsory standards for the public provision of a service. In such circumstances, procurers should bring these solutions to the attention of bidders.

Example: Design standards for cells in Police Stations have been developed within the public sector to meet the performance standards set out in respect of prisoner safety. Bidders may, but are not required to, use these design standards. In all cases, bidders should be aware that they will be fully responsible and accountable for meeting performance standards. However, if bidders choose to use the design standards, they must be satisfied that they are adequate to deliver the level of prisoner safety set out in the output specification. No risks in this respect remain with the procuring authority.

2.19 Clarification meetings between the procurer and bidders provide an opportunity for a confidential dialogue prior to issuing the ITN. Such discussions can be used by bidders to assess whether more radical design solutions are worth pursuing, if necessary by taking the procurer through the concepts and benefits underlying a new approach. If the purpose is to assess whether the organisation as a whole is prepared for a radical change in design approach, these meetings need to involve senior decision makers (eg senior clinicians, head teachers/governors of schools). Such meetings and

those with the end-users of services (eg junior doctors/nurses and teachers) can also be used by bidders to test what is meant by design statements in the draft or final specification and, if held early enough, by those responsible in the public sector procurement team to refine the specification. Whatever the timing of such meetings, the following points need to be observed:

- Commercial confidentiality is paramount and one bidder's ideas must not be shared with its rivals. This requires a scrupulous attention to detail as far as the procurer's notes and bidder's presentational material is concerned; and
- Requests for general qualification about draft and final specifications should be circulated anonymously to all bidders, together with the procurer's answers, to ensure that the competition remains fair. Such information should reach all consortia quickly and simultaneously. Requests for comments on bidders' individual design solutions need to be handled confidentially and without passing any information on to other consortia.

2.20 The earlier such a dialogue begins, the greater the benefit. Discussions left until after the receipt of bids will contribute less to maximising the value obtainable from the procurement process. Planning early meetings and ensuring that the procurement timetable realistically allows for them is a key task for the project manager, as is monitoring the expectations of end-users.

3 Design and Procurement Process

OJEC and Prequalification

3.1 Design should not be separated out from the procurement process as a whole. Procurers and bidders should, however, have the same goal, ie to maximise design quality. Procurement teams, end-users, bidders and designers should develop a relationship at an early stage in terms of open communication and a holistic approach to the service to be provided, thus maximising synergy between operation and design, and encouraging innovation.

3.2 Clear design briefs should be part of the output specification and should set the parameters within which project designers will be expected to work. Bidders will subsequently produce more detailed design briefs in conjuction with their own designers, but the full extent of the procurer's specific design requirements should be established at an early stage. Ambiguous phrases such as "centre of excellence" or "in keeping with the area" should be explained and put in the specific context of the project.

3.3 3A procurer may require assistance in understanding the possible impact of its output specification on the way in which the asset underlying the services is designed. The early appointment of a technical adviser, such as an architect or a civil engineer, together, with other designers as neccessary, to assist with the evaluation of specialist equipment etc should help keep bidders' design costs to a minimum, by specifying the extent of design work expected at different stages of the bidding process. They should also be able to assist in preparing an optimum statement of needs, as expressed in the output specification.

3.4 If there are specific architectural requirements, they should be made clear either in the OJEC notice or at the very least in the information issued to accompany the prequalification questionnaire. This provides a clear pointer to bid sponsors in deciding which designer they might work with. Design aspirations should be made clear to the bidding consortia at an early stage, ideally when initial expressions of interest are sought or when the prequalification stage is in progress.

3.5 Consortia seeking to prequalify should normally indicate the name of their design consultants or provide details of in-house staff. In all cases, they should be required to give details of both team and individuals' experience of PFI projects or work undertaken within the same service sector. This must not be done in a way that inhibits new entrants, who should provide details of how their acheivements in other forms of procurement/service sectors may be relevant. Greater comfort may be obtained if proposed contractual relationships are made clear (although this cannot be required as a matter of law at this stage) and the individuals who will lead design development work are indicated from the beginning.

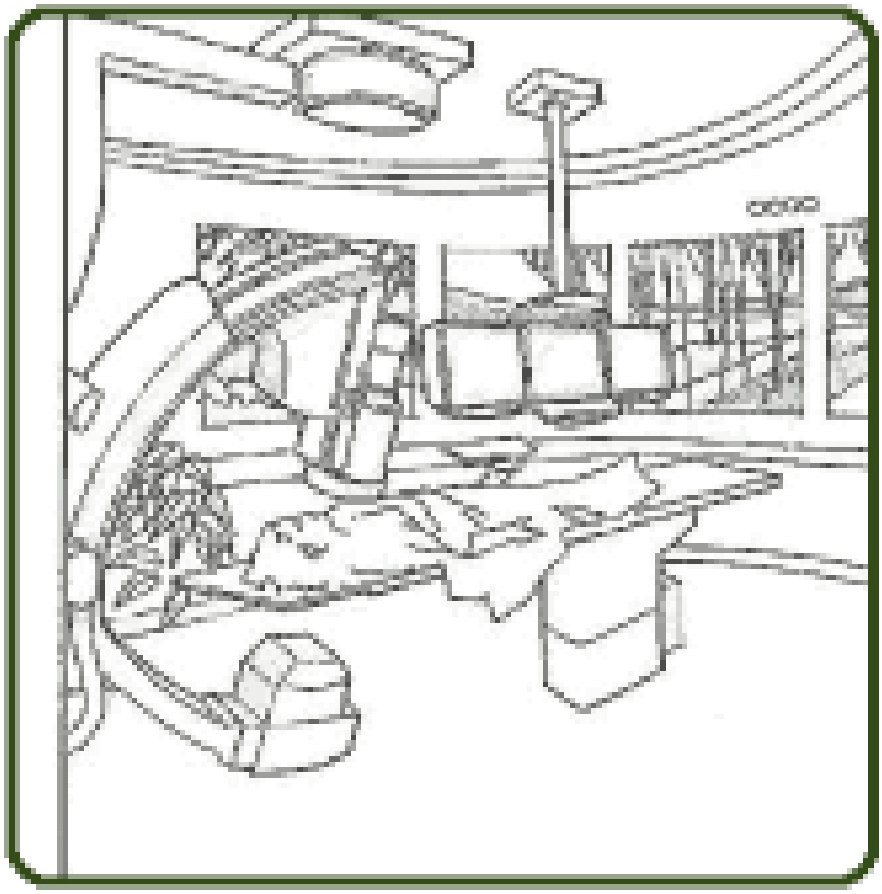
Selection of Bidders (ie Shortlisting)

3.6 Because good design is at the heart of PFI, when selecting bidders (ie shortlisting), the procurer needs to be confident that each consortium will function effectively as a well integrated team and be fully aware of the contribution that a good, integrated design team (ie a team of architects, engineers and/or designers of specialist equipment and systems) can make to meeting the procurer's aspirations. The chemistry

between bid sponsors, designers, contractors and facilities managers is critical to the success of a PFI bid. In particular, there must be direct communication between the designer and the ultimate end-user in order to ensure that the full implications of the brief can be conveyed. However, it is important to remember that the bidder, not the procurer, is the design team's client and bidders should not be discouraged from incentivising design teams. For example, they may be renumerated at cost and take their profit only in the form of a success fee at financial close. Procurement procedures that delay, or give the impression of interfering with, the bidder's selection of architects and designers should be avoided. It is for bidders to ensure that this aspect of their proposals (as with any other elements of their bid) meets the brief. Producing a clear and affordable brief is the procurer's key task.

Example: In a PFI health project in the North of England, the procurer engaged the healthcare consulting services of the equipment supplier to investigate workflow and patient management. The services looked beyond departmental processes to focus on overall organisational needs, and provided input to help and at the same time enhance clinical treatment and outcomes. The result was that improved value for money was acheived through creative design to house the equipment and more efficient positioning of rooms to take account of the combined workflows of the staff, the patients and information and their impact on one another. This approach has led to a design that should enable staff to make more effective use of their time.

An integrated approach to all aspects of design is critical for preparing a bid that offers the optimum combination of whole life costs and quality to meet the Government's vision of modern public services.



Cardiovascular procedure room

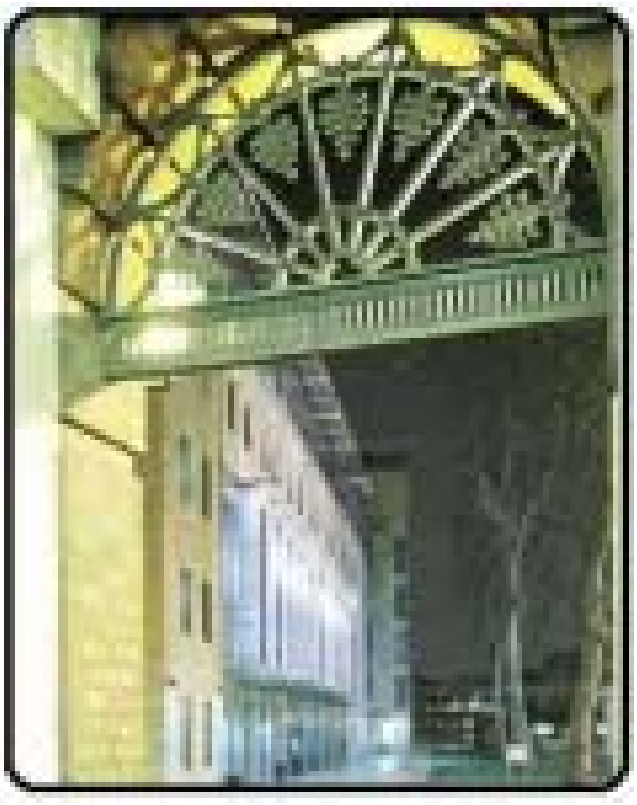
MRI environment

3.7 Procurers must make a judgement about whether the design concepts likely to be offered will meet their aspirations, be affordable and be innovative. Depending on the bidder's previous experience and, taking care to avoid discrimination against new entrants, this may be one of a number of aspects of the bidder's capability that will need to be assessed by the procurer, by a means of design team assessment. Bidders may be asked to prepare a short statement from their designers (usually not more than two pages) in order to demonstrate their approach to design. This should not be allowed to develop into extensive design drawings at this stage, in order to keep costs down. Also, without fully developed cost models, a proposed design solution in isolation has limited relevance.

3.8 Such an assessment needs to be conducted in a manner that avoids significant and unjustifiable expenditure either for the bidders as a whole or the individual members of a consortium or their proposed sub-contractors. Someone should carry out such an assessment with an appropriate level of design expertise.

When developing large and efficient facilities on constricted sites, elegant solutions should still be possible if there is creative interaction within design teams.

Kings College United Medical and Dental Schools - Hunts House site



Kings College United Medical and Dental Schools - Cornwall House interior

3.9 A pilot exercise is currently being considered by the Treasury Taskforce and the Commission for Architecture and the Built Environment (CABE) in which independent external assessors (ie additional to the appointments mentioned in paragraph 3.1.3

above) are used to assess design aspects of bids on specific projects. The results of any work under such an initiative will be made available in due course. CABE may be able to assist with the competition for the appointment of such independent advisers if procurers wish to pursue this option. This process should help stimulate innovation and achieve best value for money. It should be managed in a way which does not transfer risk relating to design back to the procurer.

3.10 For the assessment of the quality of design capability in a bidder's team at an early stage in the process, the brief to designers should contain criteria relating to:

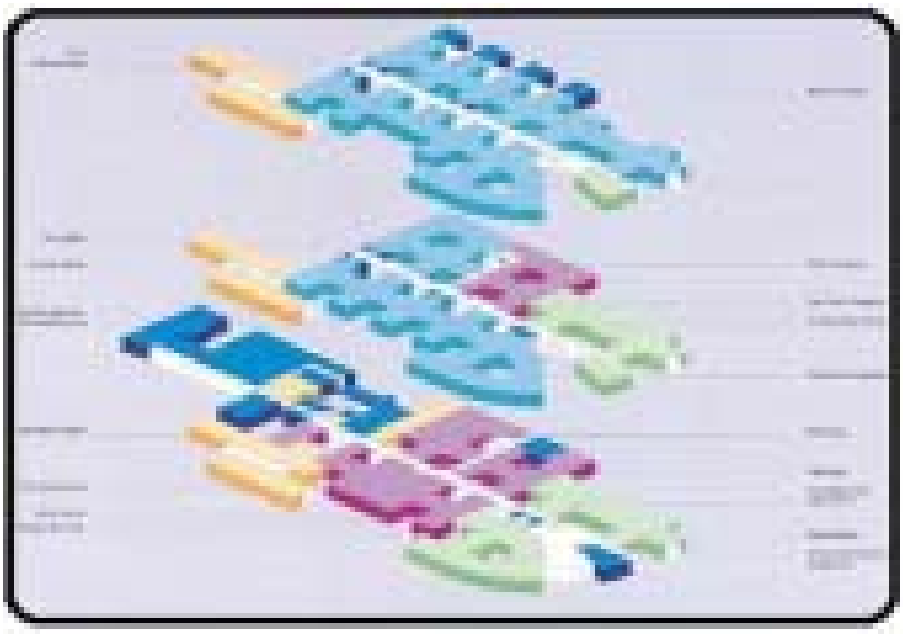
- primary functions of the facility;
- attributes;
- the 'feel' of the facility;
- setting/context (including local planning brief); and
- key design issues (including construction considerations).

Example: Barchester Prison	
Criterion	Requirement
Primary function	Category B training prison for 600 sentenced long term prisoners
Attributes	Balance between security, safety, constructive regime and operational efficiency
The 'feel' of the facility	Simple, robust, easy for the occupants to move around, compact
Setting context	The prison must be screened from its surroundings, have good road access and provide transport transport links to the station
Key design issues	Cells must be safe with no ligature points; males and females must be separated by sight and sound; life of main structure must be greater than 60 years

3.11 It is essential to make clear to bidders how such reponses will be assessed and what weighting is given to such assessments for shortlisting purposes.

BID EVALUATION

3.12 In PFI projects, particular attention must be paid to the design performance of a facility over a contract period. Design is an iterative process of analysis, synthesis and appraisal, in which data, ideas and options can be rigorously analysed and evaluated at all stages, thereby informing and justifying the key decisions which will need to be made in a sequential pattern as the design develops.

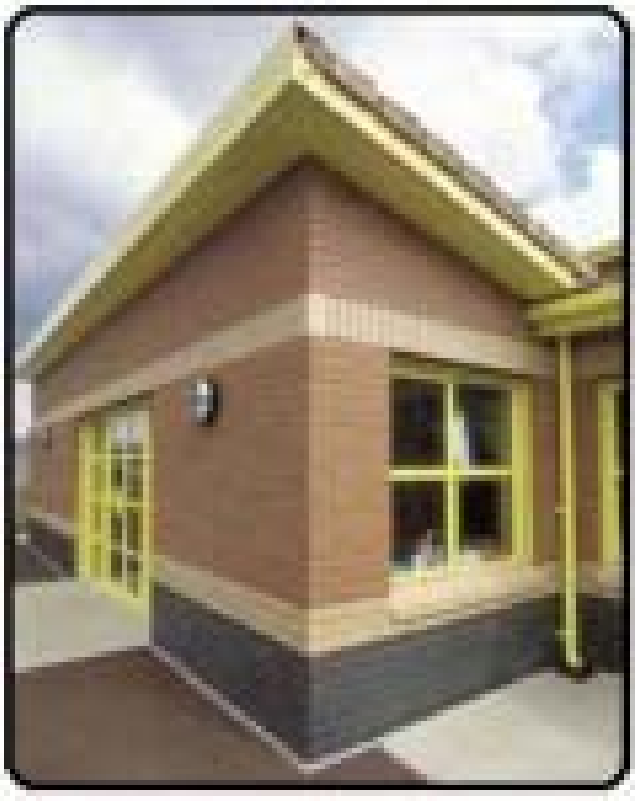


A graphic presentation of functional relationships helps members of evaluation panels understand the key design concepts in the bid

3.13 The following value for money criteria are critical in the assessment of a design proposal for a PFI project:

- Deliverability
- Flexibility
- Life cycle cost
- Quality of Innovation
- Use and integration of appropriate technology
- Efficiency of facilities management
- Overall image and quality of environment
- Integration with other facilities; and
- Reduction in overall risk.

3.14 Procurers should be aware of the risks of changing design requirements once a preferred bidder has been selected. Changing the design requirements whenever there is an absence of competitive tension creates a risk of cost escalation in the contract price and poor value for money. Benchmarking additional costs may serve as some control in these circumstances but will not necessarily be as effective as having the design requirements priced under strong competition. There may be some details of the design which a procurer may choose to leave for discussion with their preferred bidder (eg final landscaping details, type of paving surfaces and colour scheme), but these should not be aspects which are likely to have any significant impact on the project cost.



Victoria Dock Primary School, Hull

3.15 More detailed advice about bid evaluation in general is contained in Treasury Taskforce Technical Note No.4 How to Appoint and Work with a Preferred Bidder and, in particular, paragraphs 3.3.3 to 3.3.5 which contain material that is relevant to design issues.

CONTRACT AWARD

3.16 When the construction phase of a project commences, the procurer's design requirements, any existing service proposals, and the supporting contract provisions should have been clearly agreed in a totally unambiguous way so as to protect detailed design requirements.

A contractual obligation to follow the procurer's requirements set out in the specification (ie overall standards and choice of materials), and to give full effect to any of the service provider's proposals which have been agreed, will ensure that there is no drift in the type of materials used, or the size, location etc of key design features.

3.17 Obtaining the exact design quality standards indicated in the bid may be difficult if there is insufficient precision in the description of the design proposals submitted, as the contractor may then meet the output specification by using cheaper materials, or by working to a more convenient solution in the construction phase. The contract should prioritise the various design specifications and set out a detailed procedure to allow the procurer to assess any proposed changes that might compromise the agreed design.

4 Other Issues

PLANNING PERMISSION

4.1 It is important that the specification does not retain detailed planning risk in the public sector. Contract documentation will normally place the full responsibility for achieving planning permission fairly and squarely on bidders. Detailed planning permission should not normally be required to be obtained before the appointment of a preferred bidder. The public sector procurer can if necessary consult with the planning authorities on the differing bids at ITN stage to identify any possible obstacles to the achievement of planning permission. If the planning authority is generally content then the assessment of a bid will put a low risk on planning consent and therefore a high assessment, in this repect, on deliverability.

4.2 The private sector will normally have wider experience in dealing with planning authorities than the public sector. The procurer should, therefore, normally seek to transfer this risk. For many PFI accomodation projects, each bidder is likely, and indeed should be encouraged, to offer different solutions, often based on different sites. In this instance it makes clear sense for the bidder to obtain both outline and detailed planning permission.

4.3 For accomodation projects on a specific site, the procurer should at least speak to the local planning authorities and discuss their intentions in order to accelerate the process. Building a close relationship with the planning authorities can help smooth the procurement process. Where there are clear planning constraints on an existing location or on a specific site regarding the proposed use of that site, or there may be problems because of the scale and intensity of development or use (eg major hospital) or the type of facility (eg prison), these factors could lead to considerable delays. In these circumstances, the procurer may seek to obtain outline planning permission. In such cases the procurer will have more knowledge of the site and its restrictions. This will avoid each of the bidders duplicating a lengthy process and incurring unnecessary expense. There may be other circumstances where the procurer may need to retain responsibility, for example where the planning permission to be granted may be the subject of a judicial review.

4.4 Where the public sector seeks outline planning approval for sites for projects such as a hospital, school or prison, the procurer should avoid going into levels of detail that constrain the bidder's ability to provide an innovative and cost-effective design.

For example:

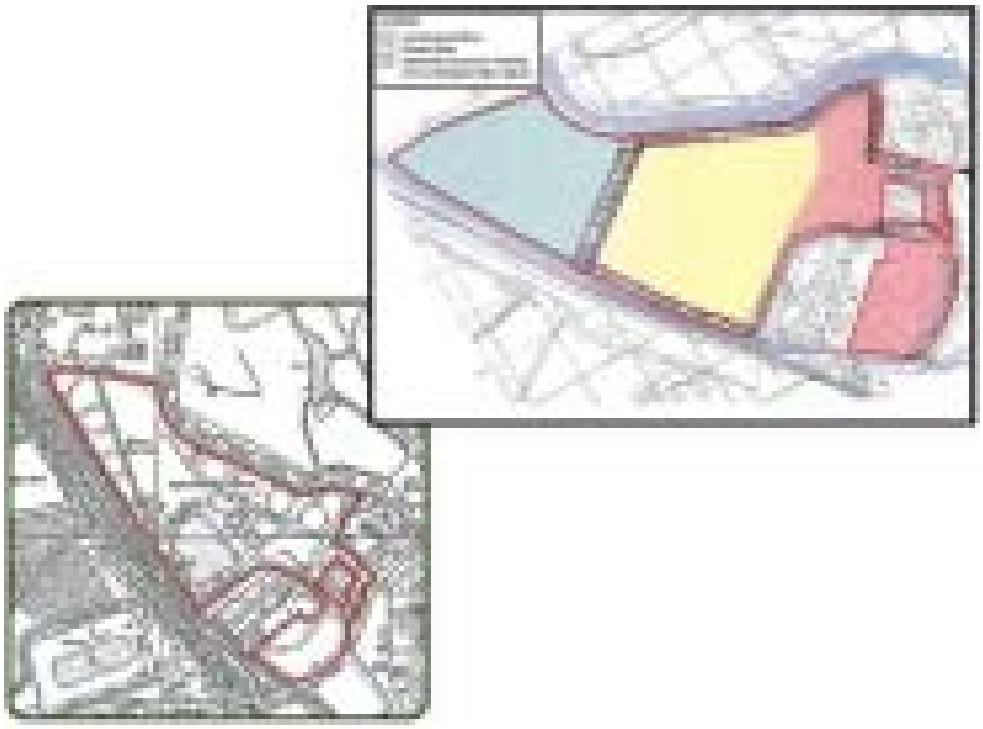
- the overall boundary of the area to be built upon should be indicated instead of providing illustrative footprints of buildings;
- maximum building heights should be indicated within the area to be built upon, which may vary if this area is further sub-divided into illustrative zones; and
- no commitments should be given about surface finishes or the massing of buildings.

Example: In a PFI prison project, planning clearance and permission were granted to the Prison Service in outline following Public Enquiry and, thereafter, the proposals were subject to procurement through the PFI process. The objective was to achieve a planning decision that was flexible and could accomodate any future designs by PFI bidders.

The planning aplications were made in outline, requiring a minimum amount of information to be submitted to the planning authority, and sufficient to identify the site and the proposal. Indicative drawings of potential prison design were also submitted, but these were always on the understanding that the eventual contract winner would be progressing their own detailed scheme within the parameters of outline applications.

The matter went to local Public Enquiry and, in support of the applications, further illustrative material was provided but, again, this related to an indicative scheme. The Secretary of State granted planning clearance and permission for the proposal and was happy to consider it in outline.

Zonal plans used by the Prison Service at a Public Enquiry to establish parameters within which bid proposals were to be prepared.



4.5 If, however, there is immediate impact on adjoining land through landscaping and boundary construction, a specific solution for these matters may be appropriate, provided it is made clear that a successful bidder may seek to improve on any such solutions in negotiation with the local planning authority at the detailed approval stage. The nature of the solutions proposed by the bidders will be relevant to the evaluation of deliverability in terms of the likely timetable and outcome when seeking detailed approval.

Site development: an example of a development control plan for an NHS Trust PFI project

4.6 Explicit technical specifications may be required to define the limits of compatibility or to describe a feature that has to be prescribed. For example, the signage to be provided by the public sector on a DBFO road must be compatible with the Highways Agency's own systems; otherwise the benefit of a national network would be lost. But only rarely should it be necessary to specify that the same system or procedures be used and, where such specifications are to be made, the requirements of the public procurement rules on technical specifications must be complied with.

4.7 The procurer should not normally take detailed planning risk as this may result in bidders offering apparently low cost schemes which, once they have been granted planning permission, may prove to require expensive alterations and extend the procurement negotiations. The private sector should be incentivised to design a scheme which will achieve planning permission and the obvious incentive is to transfer as much of the planning risk as is appropriate. The procurer must ensure that its technical specifications do not establish a single design solution, as this would result in planning risk remaining with the public sector.

4.8 The key to a successful planning application is to ensure that the provisions of any outline consent are sufficiently flexible to allow variations in alternative bids from contractors but also to ensure that any application is sufficiently detailed for a planning decision to be made on it.

DESIGN AND ACCOUNTING FOR PFI TRANSACTIONS

4.9 The degree of property risks associated with innovation in design allocated to the bidder and use of output specifications by the procurer will be relevant to the determination of accounting treatment. The key sections on design in Taskforce Technical Note No.1 (revised) How to Account for PFI Transactions are paragraphs 4.29 to 4.36 inclusive.

INTELLECTUAL PROPERTY

4.10 In some competitions, the procurer's bid evaluation team may prefer the design approach of a particular scheme together with the price offered by a competing bid with an inferior design solution. However, when assessing a bid, procurers cannot import

the quality of design solution from one bid into a competing bid (which may include more attractive financial proposals) without the specific permission of the originating bidders and designers.

4.11 Procurers must bear in mind that design copyright is covered by UK law and by an EC Directive on Intellectual Property, and the intellectual contribution made by the design team is often a major element in successful projects. This position should be clear to both those inviting bids and to service providers submitting their proposals. In particular:

4.12 **Initial Studies:** The procurer may have a number of studies prepared to establish the outline brief for a project. Such work should incorporate a clause that provides a licence enabling the procurer to use drawings and documents freely in obtaining subsequent bids. This is normally achieved by incorporating a copyright licence for a specific project. When appointed, consultants acting for the procurer should understand that they are being paid for an initial study but that the work may be used by others in developing a project. It must be made clear, however, if the consultants undertaking the initial studies are to be prevented from working subsequently for bidders in the competition.

4.13 **The Selection Process:** During the selection process, it is likely that the bidders will include proposals for all aspects of a project, including design. It is essential that, during this process, confidentiality is maintained and that the procurers act with due care in order to not transmit the ideas of one bidder/design team to another during the selection process.

4.14 **Development of Bids:** The best bids will normally incorporate basic proposals with innovative ideas. However, a preferred bidder may not always incorporate the best of these in any aspect of the bid, but may still overall be judged to be the economically advantageous tender. During the subsequent consultations and developement of proposals, the procurer must take care not to influence the preferred bidder in adopting ideas which may have been established in other bids. Equally, bidders have a responsibility to ensure that they do not trespass on the intellectual property rights of other bidders, through carelessness or any deliberate act. While bidders, for commercial reasons, may not wish to take up a legal case where copyright is infringed, design teams and other consultants must abide by their codes of professional practice, and ensure their bids comply with the law and these statements.

DEPARTMENTAL GUIDANCE

4.15 Bidders should be made aware of any existing sector-specific guidance that may include aspects of design and cost in PFI projects.

5 Further Information

Treasury Taskforce Guidance

Additional hard copies of this guidance, or of other Taskforce publications, are available from:

The Public Enquiry Unit

HM Treasury

Parliament Street

London

SW1P 3AG

Tel: 020 7270 4558/4860/4870.