

PPC Practitioner Award 2013-08-22

Ministry of Justice - Two Stage Tendering using PPC2000 from 2003 to 2013

In 2002, HM Prison Service embarked on an ambitious strategy to transform its largely transactional procurement of its new build and refurbishment programme to a cutting edge activity that was aligned with the core recommendations from Rethinking Construction and Accelerating Change.

This required significant change to the manner in which the then HMPS Construction Unit operated. At the heart of the transformation was an absolute determination by HMPS to deliver change and the benefits that would be realised. To support the change, HMPS chose PPC2000 as the contractual enabler. Strategic Alliance Agreements (that were fully aligned with PPC2000) were formed with twelve providers who undertook the new build and refurbishment projects across the custodial estate in England and Wales.

The results speak for themselves. Over the next nine years, all projects with a total spend of circa £2.5Bn were delivered on time and to budget in highly demanding operational conditions.

In June 2010, the Ministry of Justice (the department created in 2007 that subsumed HMPS Construction Unit into its Estates Directorate) began work on the strategy for the delivery vehicle to replace the Strategic Alliances on their expiry in 2012. At this juncture, the Government Construction Strategy was in development and NEC 3 was the mandated choice for central government departments.

Our new strategy developed alongside the evolution of the Government Construction Strategy. It became increasingly clear that the Strategic Alliances created in 2003 had stood the test of time and were very much aligned with the evolving Government Construction Strategy with its focus on early contractor involvement, two stage tendering, transparency and a project team working together to deliver projects and programmes. There were new initiatives, of course, in the Government Construction Strategy that would need to be factored in the new MoJ delivery vehicle such as Project Bank Accounts, Building Information Modelling and the use of a standard pre-qualification questionnaire (PAS 91). PPC has also embedded the ERG Fair Payment clauses, carbon reduction clauses and the encouragement of Industry Apprenticeships through a bespoke Employment & Skills scheme.

There was also the matter of the standard form of contract(s) that would best suit the delivery model. As noted, NEC 3 was mandated for central government departments but the MoJ had successfully delivered a successful programme using PPC2000.

Consequently, the MoJ:

- Undertook a detailed analysis of how PPC2000 and NEC 3 aligned with the government construction strategy.
- returned to an Partnering Contract Review undertaken by Arup for the Office of Government Commerce in September 2008 that reviewed PPC, NEC 3 and JCT Constructing Excellence standard forms against criteria including achieving value for money, supply chain involvement management and performance, clear provisions for pricing and achieving collaborative working;

- engaged with the construction market and construction consultancy sector; and
- engaged with clients that use NEC 3 and JCT Constructing Excellence

It reached similar conclusions to Arup that all three contracts had their merits and all were fundamentally sound standard forms of contract.

With regard to alignment with the published Government Construction Strategy, PPC more than held its own and given the strong record of delivery using PPC it was concluded that the MoJ should retain the option to use PPC as well as the mandated NEC as the forms of contract that will be used for projects delivered under our National Strategic Alliance and three Regional Strategic Alliances that went live in April 2012.

In addition, it was considered that PPC had a number of features that particularly lend themselves to; a) managing potential risk from OJEU challenges to two-stage tendering; (b) managing the risk from changing priorities for the estate that can lead to projects being deferred to later financial years; and (c) a structured dispute resolution hierarchy (d) 2 stage process specifically supporting BIM implementation

These are explained in more detail below:

- a) with regard to the potential OJEU risk, PPC provides a single contract structure on the partnering team members entering into the Project Partnering Agreement marking the conclusion of the first of a two stage procurement process with the signing of the Commencement Agreement marking the conclusion of the second stage of the procurement process. Other forms will ordinarily require two separate contracts to be signed. This creates potential risk from an OJEU perspective and the signing of each contract should have its own 'Alcatel' period;
- b) in respect of managing the risk from changing priorities the two stage process of the PPA and the CA caps the partnering team members liabilities. For the MoJ it is particularly important that in the event of having to defer projects before the CA is entered into that our liability is capped at the Constructor Services Fees
- c) the dispute resolution hierarchy and the Core Group have been particularly effective at 'taking the heat' out of issues that invariably arise across a large programme of works and to enable clear rational decisions to be made for the benefit of the successful delivery of projects. The alignment of the early warning provisions in each model form
- d) the two stage approach enables real value to be added by the professional providers and constructors in the development of a BIM model to an appropriate level as part of the first stage competition which protects against wasted constructor efforts in a competition whilst still maintaining the competitive edge with such an arrangement. Risks are seen, assessed and managed in an open and collaborative manner leading to the appointment of a constructor who takes the BIM model and develops to a stage ready for construction and then further developed for the operation and maintenance of the facility.

As a result, and in order to ensure that our use of NEC would preserve the above facilities and to enable the use of our standard templates and processes, three very simple amendments were made to NEC that are a testament to the way in which PPC has continued to work for the MoJ and our partnering teams. The amendments are:

1. An Early Contractor Appointment provision was created that is effectively an equivalent to the Project Partnering Agreement
2. A Commencement Agreement facility was created that is an equivalent to the PPC2000 Commencement Agreement
3. The incorporation of a dispute resolution hierarchy and the provision for a Core Group

In terms of our new delivery vehicle we have very simply incorporated provisions relating to Building Information Modelling and provisions to support the effective use of Project Bank Accounts.

The commitment and hard work by the MoJ and its partnering teams and the approach to project delivery and continuous improvement that is supported by the use of PPC2000 has enabled us to confidently predict that we will exceed the 20% cost reduction mandated by central government.

Finally, the procurement of the new Strategic Alliances has been recognised at the highest level in Government with the citation as published in 'Government Construction Strategy one year on' that the competition was an "exemplar in how to conduct a large and complex procurement process...every key date hit.... level of effort in the bidding process was proportionate...demanding.....refreshing approach...other public bodies should aspire towards".

Kevin Murray