

TOP CONSTRUCTION AND PROCUREMENT TIPS



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Is now an opportunity to review your processes and procedures and ensure you're ready for what's ahead? To help get you started, we've put together some tips, which we hope you will find useful.

Review your standard documentation

Standard Forms of Contract

You will hopefully be aware of the changes that were published for some forms in 2016, so you should review your standard forms of contract to make sure you are using the updated versions. Top of the list will be the changes introduced by JCT, such as DB16, which address issues such as payment provisions, insurance provisions and updated Collateral Warranties.

The TPC has also been updated and is now called the Term Alliance Contract. It is one option alongside the JCT Measured Term Contract and NHF Schedule of Rates contract for procuring maintenance or other "term" works and services. Despite the updates, the balance of risk under these contracts has not changed substantially, in most cases it is advisable that a Schedule of Amendments should still be used to "rebalance" each contract as appropriate.

Procurement strategy, policy or contracts standing order

If you're one of the many organisations yet to update your internal procurement rules, to align values and processes to the Public Contracts Regulations 2015 requirements for below threshold contracts, you should review your wider procurement strategy and approach. For example, the requirement to advertise certain contracts on the Contracts Finder website.

Procurement processes

Where you are procuring works, services or supplies through an OJEU procurement process, you will need to ensure that your documents meet new requirements of public procurement law. In particular, there is a new Crown Commercial Service form of selection questionnaire (previously the PQQ) that must be used in all procurements apart from the open procedure. To engage with the best pool of bidders to invite to tender, make sure that any project specific questions in your selection questionnaire are relevant to the procurement.



Is now an opportunity to review your processes?

Managing key risks

In addition to ensuring your documentation and processes are up-to-date, you should also consider potential risks for the coming year.

Sustainability

Sustainability of contracts continues to be a key area of risk. Increasing volatility can be seen in material price rises, and we are aware that some contractors are withdrawing from key markets, including social housing, under increasing pressure on costs. These risks can be managed at the front end by ensuring that procurement processes result in sustainable bids. After contracts have been let, there is now clearer scope to vary terms post-contract under Regulation 72 of the Public Contracts Regulations 2015. However, take care to ensure that any variations are within the parameters of the permitted changes under the Regulations, before any agreements to vary are implemented.

Brexit

Brexit brings with it the prospect of further labour shortages if, as seems increasingly likely, the freedom of movement of workers provisions will no longer apply. One initiative to overcome this and, more importantly, to promote workplace fairness in the maintenance sector is the Tradeswomen into Maintenance Project. We are supporting this project and working with them to produce some legal guidance and template contract and procurement clauses (to be issued later this year) – you can support too.

Resolving disputes

The Technology and Construction Court has updated its pre-litigation processes; known as the Pre-Action Protocol process. This places more emphasis on there being a proportionate exchange of information over disputes that have arisen, and a requirement to meet and to consider mediation before entering into litigation. With the right approach, this could ensure that disputes are addressed and resolved more quickly and cost effectively than before.



You should consider potential risks for the coming year.

CONTACT US

If you are experiencing any problems with procurement processes or contract management, get in touch as early as possible to discuss the best way to manage your risks. Hopefully, this will help to develop an approach that avoids escalating the dispute, whilst ensuring that your position is fully protected.



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