



PfS Contractors Framework

Local Competition Overview

Document Status: Issued

February 2011

Document Control

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Document Properties	
Document Owner	Academies Director
Organisation	Partnerships for Schools
Title	PfS Contractors Framework The Local Competition
Abstract	
This Local Competition Overview is developed to assist the Framework User in undertaking a local competition through the PfS Contractors Framework.	

Version History				
Date	Editor	Version	Status	Reason for change
16/06/2010	SB	1.0	Issued	1 st Issue for the PfS Contractors Framework
14/02/2011	SB	2.0	Issued	2 nd Issue for the PfS Contractors Framework

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1. **INTRODUCTION**

1.1 PfS has established a Contractors' Framework ("the Contractors' Framework") of 12 design and build contractors for each Sector (hereafter referred to as "Panel Members") to complement and eventually succeed the existing National Framework. The Contractors' Framework is intended to deliver single educational facilities or a programme of educational and/or community facilities.

1.2 The Contractor's Framework will operate across two Sectors:-

- Sector 1 will cover the North West, North East, Yorkshire and Humber, East Midlands and West Midlands;
- Sector 2 will cover the East of England, South East, South West and London.

A map and list of the areas covered by each of the Sectors is shown at Appendix E of this document

The purpose of this Document is primarily to provide Framework Users with advice on how to use the Contractors' Framework and how to conduct a "Local Competition" to select a Panel Member off the Contractors' Framework. The Document will also be of use to Panel Members so that they will understand what is expected of them through the process. The Contractors' Framework was procured by PfS acting as central purchasing body on behalf of the bodies listed below. The potential Framework Users are:

- Partnerships for Schools;
- local authorities in England;
- school governing bodies in England;
- voluntary aided schools in England;
- voluntary controlled schools in England;
- Diocesan and other relevant faith authorities in England;
- DFE;
- Academies established or to be established in England (including free schools);
- Foundation Schools in England;
- Trust Schools in England;
- the Learning & Skills Council;
- sixth form colleges in England;
- Primary Care Trusts in England;

and any statutory successors and organisations created as a result of reorganisation or organisational change.

1.3 The Contractors' Framework was procured under the Restricted Procedure of the European Procurement Regulations. The document details the process to be followed to ensure the regulations are adhered to, in particular, the Design and Build Contracts must be used to contract with a Panel Member. The use of an alternative form of Design and Build Contract will not be permitted for any Scheme.

1.4 All Framework Users will be required to enter into a Memorandum of Understanding (MoU) with PfS prior to FS approval which will stipulate the terms under which the Contractors' Framework will be managed and the information available to Framework Users.

- 1.5 The Local Competition Overview document has been developed to enable Framework Users to operate the Contractors' Framework effectively and efficiently. It also seeks to ensure that the Framework User is able to undertake the Local Competition process in a manner that enables compliance with applicable regulations. The document details:-
- 1.5.1 the Local Competition process;
 - 1.5.2 the documents relevant to the conduct of the procurement process. This could be either documents to be produced by the Contractors' Framework User or other documentation that would be of benefit to the Contractors' Framework User;
 - 1.5.3 other physical deliverables required of the Contractors' Framework User;
 - 1.5.4 typical timescales for different procurement stages.
- 1.6 The Local Competition Overview is intended to be the sole document for the operation of the Contractors Framework. There are also template documents for users to use to develop their requirements at each stage of the process. These are: -
- 1.6.1 Feasibility Study (FS) Template and Appendices;
 - 1.6.2 Preliminary Invitation to Tender (PITT) and Evaluation Matrix;
 - 1.6.3 Invitation Tender (ITT) Templates and Evaluation Matrix;
 - 1.6.4 Final Business Case.(FBC) Template

All of the documents are on the PfS website. Where the need for further information arises, PfS will develop and issue such information and publish it on the PfS website.

2. **TYPES OF SCHEME**

PfS anticipates that the Contractors' Framework will be used to deliver:-

- single Scheme projects,
- a programme of Schemes to be procured in more than one phase as a Future Schools Scheme.

The Local Competition is designed to be identical for each of these types of Scheme. The framework was procured on the basis there will only be one sample school developed during the Local Competition – this is further highlighted in Section 7 of this Document.

3. **OVERVIEW OF LOCAL COMPETITION DOCUMENTS**

3.1 **Local Competition Process and Timetable**

This document sets out the procedure that must be adopted by any Framework User wishing to use the Contractors' Framework for a Local Competition. In summary, the Local Competition is expected to run as follows:-

Stage	Task / Timescale	Document(s) Required	Purpose of Document(s)	Location of Document
<p>1. Feasibility Study</p>	<p>Enter into Memorandum of Understanding (MOU) with PfS before the completion of the FS.</p> <p>Enter into Confidentiality Agreement before submission of FS</p> <p>Preparation of the FS is expected to take 12 weeks</p>	<p>MOU</p> <p>Confidentiality Agreement</p> <p>Feasibility Study Template</p>	<p>Governs the terms under which the Contractors' Framework is managed and the information available to Framework Users</p> <p>Provides for the Framework User to be bound by Confidentiality obligations in respect of pricing/rates and other information provided by the Panel Member and made available to the Framework User by PfS</p> <p>FS to be approved by PfS. Approval of FS will confirm Local Competition process can commence</p>	<p>MOU will be provided to Framework Users by PfS and is available on the PfS website</p> <p>Confidentiality Agreement will be provided to Framework Users by PfS and is available on the PfS website.</p> <p>FS template is available on the PfS website</p>
<p>2. PITT - Initial Engagement and Shortlisting</p>	<p>This stage should take no more than two weeks</p>	<p>Invitation to all Panel Members to take part in Local Competition by way of completion of PITT</p> <p>PITT, PITT Evaluation Matrix and draft ITT</p>	<p>To enable an evaluation of initial responses to shortlist two Panel Members. See paragraph 6 of this document for more information</p>	<p>Template PITT and ITT available on the PfS website.</p>
<p>3. ITT and Evaluation</p>	<p>This stage should take between 8-10 weeks. This ITT period is generally split into a 6-8 week design</p>	<p>ITT to be sent to two short listed Panel Members. Documents required for ITT:-</p>	<p>To enable an evaluation of Scheme specific requirements in order to select the preferred Panel Member. See paragraph</p>	<p>Template ITT available on PfS website.</p>

Stage	Task / Timescale	Document(s) Required	Purpose of Document(s)	Location of Document
	development competition and a 2 week ITT evaluation period.	<ul style="list-style-type: none"> • Volume 1 – Information and Instructions for Panel Members • Volume 2 – FS as approved by PfS. • Volume 3 – Design and Build Contract (and Future Schools Agreement if relevant) • Volume 4 – Surveys and Collateral Warranties • Volume 5 – Authorities Requirements • Volume 6 – Pricing Schedules • Volume 7 – Technical Questions • Volume 8 – Documents to support Planning Application 	7 of this Volume 4 for more information	
4. FBC/Contract Award	This stage should take 16 weeks	Final Business Case Template	FBC to be approved by PfS in order to release funding for the Scheme.	FBC template is available on the PfS website.

Stage	Task / Timescale	Document(s) Required	Purpose of Document(s)	Location of Document
		<p>Design and Build Contract</p> <p>Future Schools Agreement</p> <p>Development Agreement</p>	<p>Design and Build Contract to be entered into by Panel Member and Framework User in order to commence Scheme.</p> <p>Where the procurement involves more than one school a Future Schools Agreement will be signed. This provides the basis and the process for the development of the Future Schools.</p> <p>To be signed between the Framework User (other than an Academy Company) and the Academy Company and provides the basis upon which the Academy Company participates in the process of design finalisation and has its interest recognised and governs the licence and leasing arrangements and design and construction of the Academy.</p>	<p>Design and Build Contract available on request from PfS</p> <p>Future Schools Agreement is available from PfS on request</p> <p>Development Agreement available on the PfS website.</p>

4. **OVERVIEW OF THE LOCAL COMPETITION**

- 4.1 Prior to the Local Competition process commencing, the Framework User will need to have prepared a Feasibility Study (FS). This will need to be approved by PfS in order to permit the Framework User to engage with the Panel Members.
- 4.2 Each Local Competition will have the following stages:-
- Pre-Procurement Feasibility Study (FS)
 - Preliminary Invitation to Tender (PITT) - Initial Engagement and Short Listing;
 - ITT and Evaluation; and
 - Final Business Case (FBC) and Contract Award.
- 4.3 Each stage is described in sections 5 to 10 below, with the programme shown at Appendix A.

5. **PRE PROCUREMENT – FEASIBILITY STUDY (12 WEEKS)**

- 5.1 The Framework User will prepare a FS which will be approved by PfS in order to permit the Framework User to issue a PITT to the Panel Members. The requirements for FS are set out in the FS template. The FS should demonstrate that all appropriate issues have been addressed and that the project is ready to move to procurement. The FS sets out the options that have been considered for the Scheme and also recommends a preferred option for the Scheme which has been scoped and costed within the agreed funding envelope. The FS will also need to document the agreed procurement strategy particularly for any Future Schools Scheme. Preparation of the FS is expected to take 12 weeks. In demonstrating a project is ready for procurement the FS needs to contain the following as a minimum:-
- A clear brief for Panel Members to respond to – including an accommodation schedule and adjacency diagrams.
 - surveys as referred to in the Feasibility Study template document with appropriate collateral warranties upon which the successful Panel Member can rely having been agreed with appropriate consultant;
 - confirmation that the parties understand the requirements of Clause 4 and Schedule 15 of the Design & Build Contract regarding matters of land title and will provide all such information as required under the terms of the Contract. the affordability position clearly stated a clear strategy for ICT procurement and management of relationship of the independent procurements of ICT and the Scheme;
 - a costed control option; and
 - a letter of support from the relevant local planning authority in lieu of outline planning permission.
 - an agreed approvals process to enable quick decision making
- 5.2 Project support funding is available from PfS (up to £150,000 for a single Scheme and no more than £300,000 for a programme with Future Schools Schemes) for Framework Users to cover project management and technical support costs. The support funding covers project related costs such as costs of a technical adviser, surveys, achieving the outline design required for FS stage and ongoing project management costs, including construction management. The funding is drawn (top-sliced) from the funding envelope

agreed by PfS and further advice is available from the PfS Project Director appointed to the scheme.

- 5.3 The Framework User should consider employing a Project Manager/ Technical Adviser to undertake the day to day running of the Scheme and to develop the Scheme through to FS stage. For Framework Users that are Local Authorities, such appointment can be via either the PfS Programme Management and Technical Adviser Frameworks¹, through the Framework User's own framework (if a suitable framework is in place) or via an OJEU (or other acceptable public sector procurement process) competitive process. Alternatively, the Framework User can use its own internal resources to undertake the role of Project Manager/Technical Adviser if they are sufficiently qualified and experienced.
- 5.4 The control option prepared by the Framework User (as part of the development of the FS) will be included in the FS and be available for Panel Members to review as part of the Local Competition. The Framework User will not novate the control option or provide collateral warranties for this control option. As stated above, the purpose of the control option is to fix the funding and assist in the briefing process. The control option done by or on behalf of the Framework User is expected to be up to the design equivalent of RIBA Stage A/B only. The Framework User should ensure there is no conflict of interest once the Local Competition process commences, ie an architect or other consultant or supplier providing initial design work or other services in relation to the FS for that Scheme on behalf of the Framework User should not be put forward by a Panel Member as part of their supply chain in response to the Local Competition invitation for that Scheme. Framework Users are advised that Panel Members who contravene this requirement will be in breach of their Framework Agreement(s).
- 5.5 The Framework User will also be expected to set out their procurement strategy for the provision of ICT hardware in the FS and this will need to be agreed with PfS. The procurement route will normally be the ICT Services Framework - the position on ICT procurement must be made clear in the FS, particularly in respect of how it is intended that the "out of wall" ICT will be procured and how any design and construction interfaces will be managed . This will require liaison with the Sponsor or Academy Company. In all cases the Framework User will need to ensure that ICT needs are properly captured in the ICT Cost Principles & Profile and in the ICT Requirements Document. and that this information is provided to the Panel Members at ITT stage so that the interface is properly managed.
- 5.6 The Framework User will be required to undertake market testing with the Panel Members to demonstrate there is sufficient interest in the Scheme. This should take the form of a "Bidders Open Day". An indication of market interest will need to be recorded in the FS.
- 5.7 The Framework User will prepare its Invitation to Tender (ITT) in accordance with the template on the PfS website. The ITT must be drafted in parallel with the FS as it will be issued in draft with the PITT to all Panel Members. The ITT documents will consist of the following:-
- instructions on how to bid;
 - confirmation of which Design and Build Contract(s) option (either Target Cost or Lump Sum) will be used for the Scheme;

¹ Further information on PfS Technical Adviser Frameworks is available from the relevant PfS Project Director.

- a scheme brief and the Authority's Requirements for the Scheme;
- details of the ICT procurement strategy;
- all surveys undertaken to date by the Framework User, with supporting collateral warranties;
- the FS (including full details of the procurement strategy for Future Schools Schemes);
- pricing schedules;
- documents to support a planning application; and
- any reference design work related to the control option / options appraisal.
- where the ITT relates to a Future School Scheme questions which relate to the procurement methodology and other information required to demonstrate how the Panel Member would procure that Future School Scheme but no design or confirmation of design team is required.

6. **PITT STAGE - INITIAL ENGAGEMENT AND SHORT-LISTING (2 WEEKS)**

- 6.1 Once the FS for a Scheme has been approved and the Scheme has been given approval to proceed by PfS, the Framework User will write to all of the Panel Members in the appropriate Sector (to invite them to take part in the Local Competition. It is permissible to write to Panel Members via e-mail. The Framework User should issue a Preliminary Invitation to Tender ("PITT") document with the invitation to take part in the Local Competition, including a draft ITT that has been worked up in parallel with the FS. **The PITT must be approved by PfS prior to issue by the Framework User.**
- 6.2 Panel Members will be required to express an interest in the Scheme by submitting responses to the PITT. Panel Members must either; fully respond to the PITT or decline and provide detailed written reasons for declining on or before the relevant closing date for the PITT responses. The purpose of the PITT will be to select a short list of two Panel Members. A period of one week should be given for completion of the PITT by Panel Members. Evaluation of responses by the Framework User should take one week to complete and if it is decided to undertake clarification interviews they should be conducted in accordance with paragraph 6.5 below.
- 6.3 The PITT will be designed to establish key local issues, such as:-
- confirmation of its supply chain members and their availability and capacity to deliver at the current time for the sample scheme;
 - how each Panel Member intends to approach the Scheme and develop the designs;
 - the Panel Members' understanding of the key local issues to be addressed; and
 - the Panel Members' ability to deal with local interface issues, for example working with an existing ICT partner or integrating with an existing ICT procurement and interface with FM providers such as catering providers.
 - Outline proposals for taking forward future schemes (the details of the supply chain are not required at this stage)

The PITT questions are intended to cover most issues that Framework Users would require at this stage in the process, although making minor amendments to reflect local or project specific issues may be accepted. Where a PITT relates to a Future School Scheme the questions should relate to the procurement methodology and other information required to demonstrate how the Panel Member would deliver the Future School Scheme. No designs are required in the PITT.

- 6.4 The PITT template includes details of the evaluation criteria and weightings that have already been notified to Framework Users in accordance with the Regulations. The Framework User has the flexibility to determine the weightings within the parameters provided in the evaluation criteria, including specific weightings, sub-criteria and sub-criteria weightings. The Framework User must disclose any specific weightings, sub-criteria and sub-criteria weightings it proposes to utilise in the evaluation of the PITT.
- 6.5 The Framework user may choose to interview panel members that have responded to the PITT. Where a Framework User chooses to do this they will only be required to interview a maximum of 6 (six) Panel Members. The selection for interview will be on the basis of being ranked in order after the evaluation of responses to this PITT. The interview will not be scored separately but will be used to moderate the evaluation of the written responses to this PITT. Dates of potential interviews should be advised in the PITT and Panel Members given 3 days notice prior to attending interview. . At the end of this stage the Framework User will select a short list of two Bidders and will release the final ITT documents to those Bidders.
- 6.6 The Framework User will inform those Panel Members who have not passed the PITT stage at the same time as they inform those Panel Members who have been short listed. The Framework User shall provide written feedback on the reasons why the Panel Member has been unsuccessful, including that Panel Member's evaluated scores and the lowest and highest scores from the competition. The Framework User shall also meet with the Panel Members to provide feedback. PfS must be consulted in any written communication and may attend any feedback sessions with Panel Members. A copy of the full evaluation matrix with completed scores shall be provided to PfS.
- 6.7 The PITT stage will take no more than two weeks. However, if the Framework User intends to interview then the overall procurement must be completed within the 26-28 week timeframe. Discussions should take place with the nominated PfS Project Director to determine how this can be achieved.

7. ITT STAGE - INVITATION TO TENDER AND EVALUATION (8-10 WEEKS)

- 7.1 The two short listed Panel Members must then be given between 6 and 8 weeks to develop their bids, depending on the complexity of the Scheme. Should Panel Members decline to respond to an ITT, they must provide detailed written reasons for the same. During this time they will be given regular access to the Design User Groups and key Framework User representatives. The short listed Panel Members should be encouraged to proactively seek and respond to the briefing information whilst also managing aspirations in line with the funding envelope and the Authority's Requirements. The Scheme(s) will be developed in line with available funds and within the Panel Member's agreed Pricing Schedule incorporated in the Contractors' Framework Agreement. The relevant Pricing Schedules will be available to Framework Users when they have short listed two Panel Members. All Framework Users must have signed the MoU with PfS governing release of such information. A confidentiality agreement will also need to be signed by the Framework User.

- 7.2 The level of design at ITT stage for the sample Scheme will be detailed in the ITT. There will be only one sample Scheme. The Selected Panel Member may commence the design of non-sample Scheme(s) following appointment and prior to award of a Design and Build Contract. This will be at their own risk. Schemes can to be designed pursuant to an award of a Future Schools Agreement.
- 7.3 The Framework User’s procurement strategy and timeline will need to be agreed with PfS as part of the FS approval process, and Framework Users should make the strategy and timeline clear to all of the Panel Members when they are invited to take part in the Local Competition.
- 7.4 The Framework User will have agreed with PfS as part of the FS approval process the funding available for a particular Scheme on a Scheme by Scheme basis. In developing their bids, the shortlisted Panel Member will be required to ensure that the Contract Sum (if a Lump Sum Design and Build Contract is used) or the Guaranteed Maximum Cost (GMC) (where the Target Cost Design and Build Contract is used) for that Scheme is no greater than the funding envelope advised and any funding contributed by the Framework User, subject to relevant VAT rules / legislation. The selected option of Design and Build Contract to be used must be made clear to all the Panel Members when they are invited to take part in the Local Competition
- 7.5 The template ITT should have been attached in draft form to the PITT in order that Panel Members had the information necessary to respond to the PITT questions. The template ITT will comprise the following:-
- | | |
|----------|---|
| Volume 1 | Information and Instructions to Bidders |
| Volume 2 | Agreed Feasibility Study |
| Volume 3 | The appropriate Design and Build Contract(s) and Future Schools Agreement (if relevant) |
| Volume 4 | Surveys undertaken by the Framework User and all supporting collateral warranties |
| Volume 5 | Authorities Requirements |
| Volume 6 | Pricing Schedules |
| Volume 7 | Technical Requirements |
| Volume 8 | Documents to support a Planning Application |
- 7.6 The information requested in the ITT should be based on the template ITT. This template also includes details of the evaluation criteria that have already been notified to Framework Users in accordance with the original procurement process to select Panel Members. **Volumes 1 and 7 of the ITT must be approved by PfS prior to issue by the Framework User.** The information requested in the template ITT will include:-
- the design approach;
 - materials specifications;

- fittings, furniture and equipment details;
- programmes, method statements and decant/phasing plans;
- cost proformas and whole life cost analysis; and
- design information as set out in Volume 7 of the ITT:-

Where the ITT relates to a Future School Scheme, procurement methodology and other information is required to demonstrate how the Panel Member would deliver that Future School Scheme, but no design is required.

- 7.7 Shortlisted Panel Members will have 6-8 weeks to respond to the ITT.
- 7.8 The Framework User will need to allow two weeks to evaluate the ITT and appoint a Selected Panel Member.
- 7.9 Framework Users are encouraged to insert appropriate questions that will test the Panel Members' understanding of local and project specific matters. Framework Users should note that generic questions (detailed in Appendix C) were asked of the Panel Members by PfS as part of the process used to establish the Contractors' Framework. Framework Users should take care not to repeat such generic questions but are advised to use appropriate adaptations to ensure relevance to local and project specific matters. Panel Members should also be reminded that their responses must be project specific and have due regard for local matters.

8. **EVALUATION OF PITT AND ITT**

- 8.1 Under the Regulations PfS was required to indicate the evaluation criteria and weightings to be used for the PITT and ITT stages of the Local Competition. The relevant criteria and weightings are set out in the template PITT and ITT documents, with suggested weightings included.
- 8.2 The Framework User may choose a specific weighting from within the weighting range for each evaluation criteria indicated in the documentation. Any changes should be agreed in advance with PfS as part of the FS approval process.
- 8.3 The Framework User may also use scoring thresholds for the available score under the evaluation criteria. Such details must be set out in the PITT and ITT so that Panel Members are fully aware of any scoring threshold against the relevant criteria. Such a scoring threshold could be, at the Framework User's discretion, set at 50% so that any Bidder failing to achieve a score of 50% or more of the available score against the relevant criteria will be excluded. As explained above, this process needs to be made clear to Panel Members when they are invited to take part in the Local Competition in order to ensure full transparency. .

9. **APPOINTMENT OF SELECTED PANEL MEMBER**

- 9.1 Following the completion of the evaluation of the ITT submissions, the Framework User shall inform the shortlisted Bidders of the outcome of the evaluation process and shall confirm which Bidder shall be appointed the selected Panel Member ("the Selected Panel Member") on the basis of the evaluation process, using the standard form of appointment letter. The Framework User shall provide written feedback on the reasons why the Panel Member has been unsuccessful, including the Panel Member's evaluated scores. The Framework User shall also meet with the Panel Members to provide

feedback. PfS must be consulted in any written communication and may attend any feedback sessions with Panel Members.

- 9.2 The Framework User is required to offer detailed feedback to the unsuccessful Panel Member on the evaluation of his unsuccessful ITT submission. This will include a face to face meeting.
- 9.3 Upon appointment of a Selected Panel Member to a Scheme by the Framework User, the Selected Panel Member will work with the Framework User and client team to further develop designs and submit a full planning application prior to contract award.

10. **FINAL BUSINESS CASE AND CONTRACT AWARD (16 WEEKS)**

- 10.1 It is important to note that there will be no contractual commitment from the Framework User until the Design and Build Contract is awarded, so Selected Panel Members will be expected to carry all development costs at risk until contract award. Framework Users should note that all Panel Members entered into the Contractors' Framework Agreement on this basis.
- 10.2 Between appointment as Selected Panel Member and contract award, the Selected Panel Member will be expected to:-
- Finalise the designs, construction programme and obtain all statutory consents in preparation for the construction phase including full planning permission;
 - Engage with the client team, both to gain any final briefing information and to appraise design status;
 - carry out any designs of other Schemes as agreed in the procurement strategy before contract award;
 - Prepare and agree room data sheets with relevant stakeholders and the Framework User; and
 - Submit contractor's proposals, contract sum analysis and cash flow information to the Framework User prior to the anticipated date of contract award.
- 10.3 During this period, the Framework User will be required to prepare a Final Business Case (FBC), which will be reviewed and approved by PfS.. The FBC will either confirm that there has been no material change to the Scheme objectives since the FS or that any changes have the appropriate and evidenced approvals. The Scheme needs to demonstrate it is affordable, is supported by stakeholders and that the procurement process has been robust. On approval, for Schemes funded via PfS, funds will be released for the Scheme, and the Scheme will be able to reach contract award. For Schemes funded from other providers PfS will issue an approval letter.
- 10.4 The template FBC can be found on the PfS website.
- 10.5 A Framework User may include within a PITT or ITT a Scheme on behalf of another Framework User ("Second Framework User"). Such a scheme may be delivered under a Future Schools Agreement. In all cases, the Second Framework User will enter into the Design and Build Contract with the selected Panel Member. Where a Framework User is including such a Scheme full details of the Scheme and the Second Framework User must be included within the PITT or ITT.

11. **DESIGN AND BUILD CONTRACTS**

- 11.1 The choice of contract to be used, which should be indicated to Panel Members when invited to take part in a Local Competition, will vary according to the nature of the Scheme. Information on the appropriate contract to use and issues to consider is set out in Appendix B.
- 11.2 Framework Users should note that as part of setting up the Contractors' Framework Panel, the Panel Members have provided unqualified statements of acceptance of the Design and Build Contract terms. As a consequence, neither the Framework User nor Panel Member is permitted to make changes to any Design and Build Contract other than where indicated in the Design and Build Contracts themselves (including their schedules and appendices).
- 11.3 PfS approval of the Design and Build Contract(s) to be entered into will be required with the Framework User providing a table of any relevant derogations in PfS prescribed format at least 3 weeks prior to anticipated contract award.

12. **INTERFACE WITH OTHER CONTRACTS**

- 12.1 ICT hardware will be procured separately by the Framework User or directly by the Academy Trust. Where the Scheme is an Academy, the Sponsor/Academy Trust directly procures its ICT provider/supplier. Where the Scheme is a Local Authority maintained school, the Local Authority will procure its ICT separately. Where the Scheme is a VA School, the VA School Governing Body will procure its ICT separately. In all cases, the Selected Panel Member will be required to work closely with the preferred ICT Service Provider to ensure that the design of the building and ICT hardware and infrastructure are closely integrated and that the ICT Infrastructure requirements are properly addressed.
- 12.2 There may also need to be an interface with key Facilities Management Providers, for example catering. The interface will be managed by the Framework User, and the Selected Panel Member will need to work closely with the Facilities Management Provider.
- 12.3 The Framework User must ensure that any commissioning under the Design and Build Contract that interfaces with ICT provision is fully detailed in the Authority's Requirements.

13. **FURTHER ASSISTANCE**

Framework Users using the Contractors' Framework can get advice and assistance from their PfS Project Director.

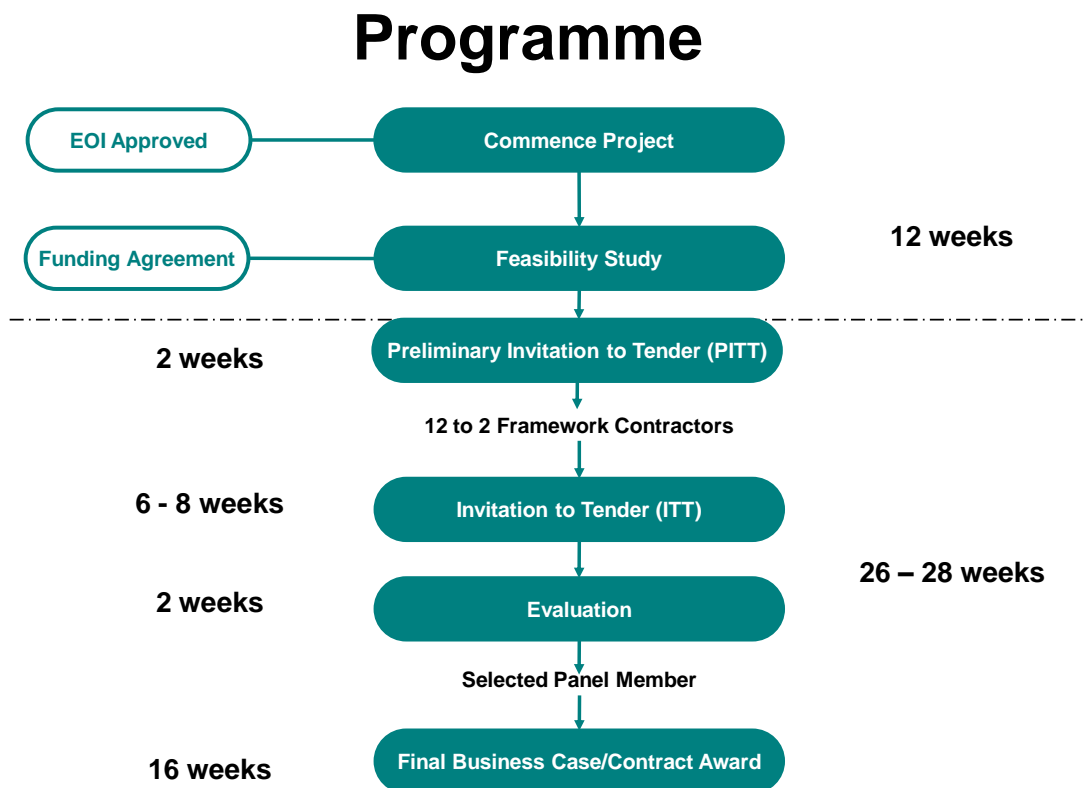
14. **ACADEMIES' DEVELOPMENT AGREEMENT**

- 14.1 Framework Users (other than an Academy Company) should note that an Academies' Development Agreement has been prepared to regulate the relationship between the Framework User and the Academy Company. The Academies' Development Agreement (to be entered into between the Framework User (other than an Academy Company)) will be executed simultaneously with the Design and Build Contract. It provides the basis upon which the Academy Company participates in the process of design finalisation, is consulted by the Framework User in relation to construction and commissioning matters and more generally has its interest recognised in terms that the Authority will in turn take into account within its relationship with the Panel Member.

- 14.2 The Academies' Development Agreement also envisages the novation of the Design and Build Contract to the Academy at a date immediately following completion of the Defects Liability Period (defined in the Design and Build Contract). The purpose of novation is that the Academy then has a direct relationship with the Panel Member for the purpose of enforcing the Design and Build Contract generally and specifically in relation to Intellectual Property Rights and Latent Defects. This approach also allows the Framework User to drop out of the contractual chain.
- .

APPENDIX A

Programme for Delivering the Local Competition



APPENDIX B

Design and Build Contracts and the Future Schools Agreement – Summary of Key Points for a Framework User

NB The two Design and Build Contracts to be used under the Contractors' Framework Agreement are based on the standard form BSF Design and Build Contracts (February 2008) issued by PfS. It is likely that a large proportion of the issues set out below will need to be addressed by the Authority on either Design and Build Contract used by a Framework User depending on the specific requirements of a Scheme.

The terms of the two Design and Build Contracts are fixed. Amendments to any of the terms are not permitted (other than those allowable through the footnote or the operation of square brackets or as otherwise noted in the contracts) and will not be agreed by PfS. The footnotes and parentheses of the standard document (together with this Summary) will guide a Framework User as to the options it has and decisions it needs to take to produce an agreed form.

1. GENERAL COMMENTS AND BACKGROUND

The Design and Build Contracts ("Design and Build Contracts") are to be used where the Framework User stated as the "Authority" in the contracts is using capital funding to procure either substantial new building works or substantial refurbishments pursuant to the Contractors' Framework. The parties to the Design and Build Contract will be the Authority and the Panel Member who has been selected following the Local Competition procedure under the Contractors' Framework Agreement, identified in the contract at the "Contractor". A separate Design and Build Contract must be used for each Scheme.

The two standard forms of Design and Build Contract, which will be used depending on the type of works to be undertaken, are as follows:-

1.1 Lump Sum Option

A fixed-price contract, where the price of the original contract work remains fixed, to be used for Schemes which are predominantly or exclusively of a new build nature but may also be used for Schemes that are predominantly or exclusively refurbishment if the Authority prefers. It is important to note that the price may still be subject to modification on account of ordered variations, claims and other matters.

1.2 Target Cost Option

A cost reimbursable contract which is to be used for Schemes which are predominantly or exclusively refurbishments. This form of contract is sometimes called *gainshare – painshare*, with the theory being that there are advantages for both the Authority and the Contractor. The idea is to offer an incentive to the Contractor such that the Contractor keeps a proportion of any savings on the final cost compared with the agreed target. The target cost sharing mechanism is set at 50/50 in this contract. Perhaps more significantly, the Contractor is required to absorb half of any overruns up to the guaranteed maximum cost threshold and all of the overrun from that threshold onwards.

1.3 Only one school Scheme can be procured under any Design and Build Contract. Where, exceptionally, more than one Sample School is designed and priced under the Local Competition, a separate Design and Build Contract must be entered into for each school Scheme. The Authority will enter into a Future Schools Agreement with the Contractor for the procurement of non-sample Schools (provided the Authority has included that

such non-sample future schools are to be procured under the Future Schools Agreement as part of the Local Competition Procedure for the Sample School(s)). The Future Schools Agreement must be signed at the same time as the Design and Build Contract for the sample Scheme is signed. Key Points on the Future Schools Agreement are set out at section 4 of this Appendix.

- 1.4 Save where expressly stated otherwise, this paper deals with the contractual provisions in both Design and Build Contract Options.
- 1.5 The key commercial principles relating to the Design and Build Contracts are summarised at Section 2 below.

Some direction is then given in relation to completing the forms of Design and Build Contracts and populating the Schedules at section 3 below.

2. **KEY COMMERCIAL PRINCIPLES (CLAUSE 5)**

2.1 **Design, Construction, Commissioning and Completion of the Works**

The Contractor must carry out or procure the carrying out of the design, construction, completion, commissioning and testing of the Works so that the School is completed on or before its Date for Completion in full compliance with the Authority's Requirements and the Contractor's Proposals, good industry practice, all necessary consents and applicable legislation. There are further obligations regarding the Works, including the use of materials of satisfactory quality, the use of appropriately qualified staff and the maintenance of a safe and secure site.

2.2 **Site Conditions, Latent Defects and Asbestos (Clauses 7 and 8)**

The Contractor shall take responsibility for site conditions and the access to and rights over the Site.

For refurbishment projects or projects where any part of an existing building is retained, a building survey and at least a Type II asbestos survey must have been carried out at the date of execution of the Design and Build Contract. The Contractor is then responsible for any defects and asbestos to the extent that such are identified in or ought reasonably to have been identified in such surveys or in such other surveys as it would have been reasonable to have expected the Contractor to have carried out. The Authority is responsible for all other defects or asbestos. In the context of refurbishment projects, the insurance arrangements will need to be reviewed and the Contractor should be noted on the relevant school policy.

All surveys which are procured prior to the entering into of the Design and Build Contract are appended within the relevant Schedules 23-25.

2.3 **Certification of Completion of the Works (Clause 22)**

Certification of the completion of the Works (or relevant part thereof) will usually be undertaken by the Authority's Representative. The Authority's Representative issues a Completion Certificate for the Works (or relevant part thereof) when he is satisfied that the Works (or relevant part) are practically complete. The Authority needs to give careful consideration to the selection of its Authority's Representative, whether in house or an external consultant. PfS strongly recommend that the Authority engages an external consultant with the requisite experience and professional indemnity insurance cover to

carry out the role of the Authority Representative. PfS has an existing Framework of Technical Advisers which the Authority can use.

2.4 **Late Completion of the Works (Clause 24)**

There are two alternative clauses relating to late completion of the Works; liquidated damages or provision of temporary accommodation by the Contractor. The individual circumstances of each project and the Authority's requirements will determine which option is appropriate.

2.5 **Payment (Clause 16)**

The method and type of payment will depend upon whether the Lump Sum Option (new build) or the Target Cost Option (refurbishment) is used. The payment profile for the Lump Sum contract is against construction milestones. Milestone payments are made as the works progress, ie completion of foundations, completion of concrete slab etc. A detailed Milestone Schedule must be prepared and incorporated into Schedule 9. For the Target Cost version, payments are made monthly against Actual Cost (as defined in the contract) incurred. In both options, a fixed figure for the Contractor's Margin (profit, overheads, administration and the like) is agreed at the outset. The Contractor's Margin is payable against an agreed profile to be set out in Schedule 9 (Payment Provisions). In both cases, a retention is withheld from payments due to the Contractor (milestone or monthly), with one half of the retention being released upon issue of the Completion Certificate and the balance upon issue of the Certificate of Completion of Making Good Defects or the Final Statement (whichever is later). The retention percentage is 3%.

2.6 **Relief Events and Compensation Events (Clause 17)**

The Contractor will be entitled to an extension of time and, if this option is selected, relief from its obligations (only) in the event of the occurrence of any Relief Event. The Contractor will be entitled to seek an extension of time, relief from obligations and/or compensation on the occurrence of a Compensation Event. Relief Events and Compensation Events are defined narrowly within the contract but depending on project specific issues the definition of Compensation Events may be expanded to cover matters such as the discovery of endangered species or Judicial Review.

2.7 **Variations (Clause 15)**

Upon request by the Authority, the Contractor is required to provide an Estimate in relation to the proposed Variation. The Estimate must provide the Contractor's opinion upon a number of issues including the impact on any Start on Site Date and/or any Date for Completion, and any Estimated Change in Project Costs. Following further discussion between the parties, the Authority will decide whether to proceed with the Variation.

2.8 **Insurance (Clause 25)**

The Contractor is required to take out and maintain the Required Insurances and also to take out and maintain, and procure that its sub-contractors and design consultants take out and maintain, professional indemnity insurance. Authorities must carefully review their own insurance arrangements, particularly in the context of refurbishment schemes or shared sites.

2.9 **Termination (Clause 31)**

The Design and Build Contract provides for termination in the following circumstances:-

- Voluntary termination by the Authority;
- Termination on Authority Default;
- Termination on Contractor Default (including corrupt gifts and fraud);
- Force Majeure.

The payment due to the Contractor upon termination will depend upon the reason for termination. In the event of Contractor Default, the Contractor indemnifies the Authority against all additional costs incurred by the Authority (above those it would have paid to the Contractor had the Contractor completed the Works) in completing the Works. In the event of Authority Default, voluntary termination or Force Majeure the Contractor shall be entitled to be paid for the Works undertaken and materials ordered at the date of termination together with cost of removal of materials and plant from the Sites and Direct Losses caused to the Contractor by the termination.

2.10 **Collateral Warranties/Parent Company Guarantee (Clause 27)**

The Contractor shall procure the provision of collateral warranties in favour of the Authority from all Principal Building Sub-Contractors (as defined) and the Professional Team appointed by the Contractor. The Contractor must also provide a parent company guarantee in favour of the Authority from its parent whose identity is fixed under the Contractors' Framework Agreement. The Contractor may be required to procure a performance bond (equating to 10% of the Contract Sum) in favour of the Authority, upon execution of the Design and Build Contract though this will be determined by the Authority taking into account the cost of procuring the performance bond and the value for money this may/may not offer. The Authority should note that it will be responsible for and shall bear the cost of providing the bond and will not be permitted to rely on the capital funding envelope for the Scheme for meet the cost of the bond.

2.11 **Dispute Resolution Procedure**

The Design and Build Contract is a "construction contract" as defined by the Housing Grants Construction and Regeneration Act 1996 and therefore either party has the right to refer any dispute to adjudication, in which circumstances the Scheme for Construction Contracts shall apply. The decision of an adjudicator shall be binding on the parties pending final resolution of the dispute by the English courts.

2.12 **Novation**

Where the Authority is procuring an Academy or a Voluntary Aided School, there is a requirement under the terms of the relevant Development Agreement to novate the Design and Build Contract to the Academy Trust or VA School Governing Body. Novation only takes place when all financial claims have been settled by the Authority with the Contractor and the Certificate of Completion of Making Good Defects has been issued. The form of novation is attached at Schedule 21. In these circumstances, the Selected Panel Member is required to enter into a collateral warranty with the Framework User at the point of novation to protect the Framework User in the event of any forfeiture of the long lease to the Academy Trust or where the Framework User retains part of the site upon which the Scheme has been constructed.

2.13 **Completing the Design and Build Contract**

It is vital that an Authority fully and accurately compiles and completes all Schedules to a Design and Build Contract and reviews all alternative options, footnotes and text in square brackets before entering into a Design and Build Contract. Legal advice should be sought as appropriate.

3. **COMPLETING THE CONTRACTS AND SCHEDULES**

Each of the Design and Build Contracts are drafted in such a way that the Authority is required to populate the Schedules, where appropriate, and insert detail into clauses as indicated by the footnotes. The footnotes show information to the Authority on key issues that need to be considered before completing any Design and Build Contract and all references to them should be deleted from the final form Design and Build Contract. No Design and Build Contract should be entered into with a Contractor, unless an Authority has completed the contract correctly and populated all of the Schedules.

These Notes relate to (and follow the clause numbering of) the Lump Sum Option. Information on issues that are particular to Target Cost are noted below where applicable:-

3.1 **Parties**

Ensure the correct name and registered office/principal place of business of the Authority and the Contractor are inserted here. Ensure that the Contractor's details are the same as the Contractor's details under the Contractors' Framework Agreement, eg that the Contractor has not entered into the Design and Build Contract using a subsidiary company.

3.2 **Recital B**

The Contractors' Framework Agreements with each of the Contractors are dated [] 2009.

3.3 **Recital D**

Insert here a geographical description of the proposed school.

3.4 **Definition "Abandons"**

Authority to consider whether these periods are acceptable.

3.5 **Definition "Academic Year"**

Authority to consider whether these are the most appropriate start and end dates for an academic year.

3.6 **Definition "Ancillary Rights"**

If the Authority has a particular requirement for a third party to commission a new school (such as in relation to ICT provision or arrangements with an FM Contractor), these need to be spelt out in the Authority's Requirements.

3.7 **Definition "Asbestos Survey"**

For refurbishment projects and if appropriate, projects that include demolition activities, the Authority needs to commission type II asbestos surveys and attach the same to the

Design and Build Contract at Schedule 23 . The Authority must ensure the surveyor enters into a collateral warranty with the Contractor, so that the Contractor can rely on the performance of the surveyor in carrying out the asbestos survey. The Authority should ensure that the surveyor's appointment provides for the procurement of third party warranties as may be required.

3.8 **Definition "Authority's Default"**

Consider whether the 20 day period is acceptable.

3.9 **Definition "Authority Related Party"**

Item (iv) should be included if there is a VA School or Academy being procured under a Development Agreement which will require novation of the Design and Build Contract.

3.10 **Definition "Contractor's Margin"**

The Framework Agreement will set out any Contractor's Margin which needs to be inserted at Schedule 9, together with details of the Contractor's Margin Payment Profile which may be on a monthly or stage payment basis. Note that the payment of the Contractor's Margin is subject to the retention provisions, as detailed in clause 16. (Payment will vary depending on whether the Lump Sum or Target Cost Option is used).

3.11 **Definition "Decant Protocol"**

Schedule 17 is available for the Authority to set out its decant protocol. There is an example protocol in Schedule 17 but the Authority should draft this on a school specific basis.

3.12 **Definition "Disclosed Data"**

The Authority to ascertain whether or not a data room is being used and amend as appropriate. Where an electronic data room is used, details should be entered in the appropriate square brackets.

3.13 **Definition "FM Contractor(s)"**

The Design and Build Contracts recognise that the FM Contractor is likely to be appointed either by the Authority or the Academy Trust (where an Academy is being procured) or the Governing Body of a VA School (where a VA School is being procured) It is likely that the FM Contractor will require rights of access under clause 3.9 so details should be incorporated into the Construction Programme.

3.14 **Definition "Long Stop Date"**

The Authority should give consideration to the Long Stop Date but the period should be at least half the length of the anticipated construction period (calculated to the nearest month).

3.15 **Definition "Principal Building Sub-Contractor"**

This list should contain all those sub-contract packages in respect of which collated warranties will be required. The footnote contains an indicative list but careful consideration should be given to the packages.

3.16 **Definition “Professional Team”**

The Authority needs to insert any other Consultants which may be involved and employed by the Contractor, such as fire engineers, landscape architects etc.

3.17 **Definition “Term”**

PfS have assumed a three term year. Any differences must be made clear to the Contractor and included in the drafting.

3.18 **Clause 2.2 - Criminal Records Bureau**

This provision can be deleted if no part of the Works qualifies as Sensitive Works.

3.19 **Clause 3.1 – Authority’s Representative**

The Authority’s Representative should be a technically qualified person with construction background knowledge in contract administration and consideration should be given by the Authority to engage third party consultants to carry out this role.

3.20 **Clause 3.6 – Representative of the Contractor**

The key contact from the Contractor should be named here.

3.21 **Clause 3.9 – Rights of FM Contractors and ICT Service Providers**

This provision can be deleted if no rights of access are required by the Authority for those third party contractors.

3.22 **Clause 4.1 – Authority Obligations**

The Authority warrants title as set out in Schedule 15. The Authority warrants title to the Contractor and any omissions or inaccuracies will be a Compensation Event in favour of the Contractor. If the Authority is constructing a school on behalf of a VA school, then an appropriate indemnity in relation to title needs to be sought from the VA school.

3.23 **Clause 4.4 – Contractor’s Due Diligence**

If a Contractor is to be given responsibility for the risk items set out in clause 4.4, adequate access for surveys must be made available. The value of environmental warranties and indemnities should be reviewed on a project specific basis.

3.24 **Clause 5.1 – Contractor’s Obligation to Carry Out the Works**

The Authority should ensure that detailed testing and commissioning programmes are incorporated within the Authority’s Requirements and met by the Contractor’s Proposals.

3.25 **Clause 5.6 – Consents and Planning Approval**

It is entirely feasible that the Authority may be obliged to obtain consents or satisfy certain conditions within an existing planning permission that the Contractor cannot satisfy (e.g. because only the Authority as landowner can procure certain consents) and separate schedules should be prepared detailing those items.

3.26 Clause 5.7 – Fire Folder

Only relevant to the extent that the Fire Precaution Workplace Regulations 1997 (as amended in 1999) are applicable to the works once completed.

3.27 Clause 7 – The Sites

The provisions of clause 7 need addressing to properly allocate risks. The Authority should bear any additional costs arising out of unforeseen conditions in areas where the Contractor cannot investigate and which cannot reasonably be identified by the Contractor, these areas need to be clearly identified in the agreement including by plan to clearly show the extent to which the Authority takes the risk for such unforeseen conditions.

3.28 Clause 8.2 – Asbestos Liability

This clause will only be appropriate where buildings are being demolished or refurbished.

3.29 Clause 10.3 – Minimising Disruption

Wording in square brackets to be used on phased schools.

3.30 Clause 10.6 – Decanting

This clause is only relevant if the Contractor is carrying out the decant and if that is the case, a specifically drafted protocol should be incorporated at Schedule 17.

3.31 Clause 10.7 – Induction

This clause to be incorporated to the extent that the Contractor will provide induction seminars/workshops for teachers, staff and students.

3.32 Clause 15.1 – Variations

There are limits on the ability for the Authority to request a change. The Authority is to consider which of the exclusions are appropriate.

3.33 Clause 15.6 – Disputes

Authorities should give consideration to the risk management of potential disputes and how such disputes are defined.

3.34 Clause 16 – Certification of Milestones

Clause 16.2.3 of the Design and Build Contract – Lump Sum Option provides an option that the Authority's Representative cannot certify a milestone is complete unless and until all preceding milestones have been completed. This may not be the case where works are proceeding in unconnected areas at a different rate.

3.35 Clause 16.14 – Final Statement

The Contractor must provide PfS standard costs proformas, as identified on the Partnerships for Schools website.

3.36 **Clause 21 – Provision of Planned Maintenance Programme**

Authority to consider whether relevant in relation to refurbishment of part of a school.

3.37 **Clause 22.2 – Dates on which Completion Dates May Occur**

This provision allows for the Authority to insist on handover only on given term or half term dates but these provisions may not be relevant in every case.

3.38 **Clause 22.6 – Rectification of Snagging Items**

There is a contractual 20 business day requirement for rectifying snagging items but the Authority may agree to waive this in relation to long lead in items.

3.39 **Clause 24 – Alternative A/Alternative B – Liquidated Damages and Provision of Temporary Accommodation**

There are two alternative options here for the Authority to decide on. The Authority can decide to take liquidated damages for failure on the part of the Contractor to complete on time or alternatively, require the Contractor to make temporary accommodation available. The liquidated damages rate should be a genuine pre estimate of the likely loss to be suffered by the school in the event of a delay in completion. If alternative accommodation is required, then details of the relevant distance from the relevant existing school needs to be inserted at 24.4.2.

3.40 **Clause 25 – Insurance**

The whole of the insurance provisions in clause 25 need to be considered by reference to market availability at the relevant time. Project specific requirements must also be dealt with here, eg shared site.

3.41 **Clause 25.10 – Professional Indemnity Insurance**

Guide levels of PI cover have been set. For Schemes with a contract value of less than £10m, PI insurance in the sum of £5m will be required. Where the contract value exceeds £10m, PI insurance in the minimum sum of £10m will be required from the Contractor. The Authority must decide on appropriate levels of PI cover for the Professional Team and Principal Building Sub-Contractors.

3.42 **Clause 26.2 – Obligations re Reinstatement and Insurance**

Relevant amount to be inserted showing excess.

3.43 **Clause 27**

This clause sets out in detail who is required to give collateral warranties and when they must be entered into. There are obligations on the Contractor to enter into collateral warranties in favour of the Authority or a third party at the Authority's direction. The Authority would require warranties to, for example, VA Governing Bodies and to Academy Trusts. Warranties should be made available to these third parties, notwithstanding later novation of the Design and Build Contract. It should be noted that where collateral warranties are provided in favour of a party who will be the beneficiary of the novation of the Design and Build Contract, then such collateral warranties shall terminate once novation takes place.

The Authority will require a collateral warranty from the Contractor on novation of the Design and Build Contract to protect it in circumstances where the long lease to the VA Governing Body or Academy Trust is forfeited.

The Contractor is also required to procure collateral warranties from its Principle Building Sub-Contractors in favour of the Authority and third parties. This is likely to relate to major design elements, such as piling steelwork, cladding, lifts etc which should be listed in the definition.

The Contractor is required to procure collateral warranties from the Professional Team in favour of the Authority and third parties.

3.44 **Clause 27 – Performance Bond**

Authorities need to give consideration as to whether or not a bond is required. If so, a decision must be taken as to the bond sum (normally 10% of the contract sum) and the date of release of the bond (usually on the completion of the works). Authorities may also consider a reducing bond in the event that works are carried out using sectional completion. It is not intended that the bond be “on demand”, rather that it will follow the default bond model promulgated by the Association of British Insurers. A draft form of bond is contained at Schedule 14. The Authority should note that it will be responsible for and shall bear the cost charged by the Contractor of providing the bond and will not be permitted to rely on the capital funding envelope for the Scheme for meet the cost of the bond.

3.45 **Clause 39.7.4 – Freedom of Information**

The Authority needs to give consideration as to how long it requires a Contractor to retain information for disclosure.

3.46 **Clause 42 – Notices**

Full details of the Contractor and Authority’s name, address and fax numbers needs to be incorporated, as does that of the Contractor’s and Authority’s Representatives.

3.47 **Clause 50 – Limitation on Liability**

In order to reflect market conditions, each of the design build contracts contains an aggregate cap on liability which needs completing in clause 50.1. This should be expressed as a fixed sum, equating to 150% of the Contract Sum and the Contractor’s Margin, as detailed in Schedule 9. The Authority should note that there are certain exclusions to the cap detailed in clause 50.2.

3.48 **Schedule 1 – The Authority’s Requirements**

The Authority’s Requirements should be worked up with the Authority’s Representative, broadly in line with PfS standard output specification – see PfS website.

3.49 **Schedule 2 – The Contractor’s Proposals**

The Contractor’s Proposals should meet the Authority’s Requirements and have been thoroughly interrogated by the Authority’s Representative.

3.50 Schedule 3 – Details of School

In Part 1, the Authority should detail its Existing School premises which are the subject matter of the contract. Part 2 details New Schools to be constructed (as defined).

3.51 Schedule 4 – The Construction Programme

To be agreed with the Contractor and incorporated here.

3.52 Schedule 5 – The Site Plan(s)

Relevant plans for the school to be incorporated here showing the Works area with details of how the Site boundaries change during a phased construction process (if relevant).

3.53 Schedule 6 – Review Procedure

This is a procedure for design development during construction. Consideration needs to be given to the lists of reviewable design data under paragraph 7.

3.54 Schedule 7 – The Date or Dates for Completion

Parts 1 and 2 set out the dates for completion and start on site dates for the school and/or part of the Works.

3.55 Schedule 8 – Completion Requirements

This is the list of pre-conditions which must be achieved by the Contractor before completion can be certified. Note that all testing and commissioning certificates must be provided and all collateral warranties and guarantees be in place and that the Health and Safety file is completed and provided to the Authority as part of the list of pre-conditions. There is provision within the footnotes for dealing with completion of landscaping outside the planting season.

3.56 Schedule 9 – Payment Provisions

Here the Authority will detail the Contract Sum, the Contractor's Margin, the Milestones for Payment (milestone value and cumulative value) for the Lump Sum version of the contract, the Interest Rate and the Payment Profile for the payment of the Contractor's Margin. A detailed breakdown of the Milestones against which certification will take place must be included where the Lump Sum version of the Design and Build Contract is being used.

3.57 Schedule 10 – Minimum Information to be included in the Planned Maintenance Programme

Here the Authority will detail its minimum requirements for a planned maintenance programme which the Contractor is required to provide pursuant to clause 21. The Authority should liaise with its FM Contractor in preparing this Schedule (if FM Contractor is already appointed).

3.58 Schedule 11 – Prohibited Materials

Refer to Part 2 of the Authority's Requirements.

3.59 **Schedule 12 – Insurances**

The insurance schedule presupposes a separate policy being taken out by the Contractor for the project. Authorities may consider using the Contractor's group all risk insurance cover (rather than a project specific policy) on schemes with a contract value under £[10,]000,000. Consequential amendments to the schedule would then be required.

3.60 **Schedule 13 – Forms of Collateral Warranty**

There are separate forms of collateral warranty to cover the various warranties and beneficiaries detailed in clause 27.1. Where the Authority is procuring an Academy the Authority can call for a collateral warranty from the Contractor at the point of novation of the Design and Build Contract. Similarly where the Authority retains a proprietary interest in part of the Site of an Academy a warranty can be obtained on novation.

3.61 **Schedule 14 – Performance Bond**

See earlier notes on bonding.

3.62 **Schedule 15 – Warranted Title Matters**

This Schedule sets out the level and detail of title information that must be supplied by the Authority to the Contractor and against which the Authority gives a warranty. The information breaks down into four parts:-

Part 1 – Title warranties.

Part 2 – Disclosed title matters (official copy entries/epitome of title).

Part 3 – Replies to enquiries (based on standard pre contract enquiries).

Part 4 – Disclosed searches.

The Authority should appreciate that a high level of title information needs to be provided to the Contractor and the Authority needs to make this information available at the FS stage

3.63 **Schedule 16 – Equality Requirements**

These are general provisions which the parties are required to comply with

3.64 **Schedule 17 – Decant Protocol**

A draft template to be revised and agreed on a Scheme specific basis where the Authority wished the Contractor to carry out decant.

3.65 **Schedule 18 – Commercially Sensitive Information**

Here the Authority and the Contractor will list out commercially sensitive material and the period for which it should be held.

3.66 **Schedule 19 – Authority's Policies**

To be inserted by the Authority but must include the OCG Fair Payment Guide.

3.67 **Schedule 20 – Authority Planning Conditions**

It is often the case that a number of the conditions to the planning consent for the Scheme can only be obtained, carried out or implemented by the Authority, with support from the Contractor. This Schedule should list out those conditions by either marking up the planning consent itself or separately listing the Authority's conditions.

3.68 **Schedule 21 – Deed of Novation**

This allows for the Design and Build Contract to be novated to an Academy to sit with any land transfer or leasing arrangements under the Development Agreement. The Deed of Novation is not in substitution for collateral warranties, which should be made available to an Academy in any event.

3.69 **Schedule 22 – Parent Company Guarantee**

To be provided by the Contractor's Parent as stated in the Contractors' Framework Agreement between PfS and the Contractor. Advice should be sought from PfS as to the appropriate entity pre-qualified by PfS under the Contractors' Framework to provide the Parent Company Guarantee. There may be circumstances where Panel Members do not have a Parent and PfS will advise of this. In these circumstances, appropriate amendments need to be made to the Design and Build Contract as detailed in the footnotes.

3.70 **Schedule 23 – Asbestos Survey[s]**

Here the Authority will include copies of any asbestos surveys procured in relation to the Scheme.

3.71 **Schedule 24 – Building Survey[s]**

Here the Authority will append any building surveys procured in relation to the Scheme.

3.72 **Schedule 25 – Site Survey[s]**

Here the Authority will append any site surveys procured in relation to the Scheme which should include but not be limited to Ground Investigation Surveys.

4. **FUTURE SCHOOLS AGREEMENT – SUMMARY OF KEY POINTS**

4.1 **General Comments and Background**

Under the Local Competition procedure set out in the Contractors' Framework, the Authority may be procuring a series of school Schemes either with each school having its own separate and defined funding envelope or all schools within an overall funding envelope. The Local Competition is expected to provide for such Schemes to be procured using one Sample School (against which the Contractor will price and provide design with the Local Competition) with the further Schemes delivered as non-sample schemes. The Sample School will be delivered under a separate Design and Build Contract entered into pursuant to the Contractors' Framework Agreement.

Non-sample schools will be delivered using the Future Schools Agreement. This agreement provides an option for the Authority to call for the Contractor to produce Future Schools Scheme Proposals which essentially mirror the level of design and

pricing information required by the Local Competition under the Contractors' Framework for the sample school.

The purpose of the Agreement is to allow the Authority to procure the non-sample schools with the Contractor selected for the Sample School but without the need for the Contractor to design and price both the sample and non-sample schools during the Local Competition. The Future Schools Agreement is expected to be executed at the same time that the Design and Build Contract for the sample school is signed.

Once the Future Schools Agreement has been entered into with the Contractor, the Authority may call for Future Schools Scheme Proposals under the Future Schools Agreement at any time before the termination of the Framework Agreement.

The Authority is not obliged under the Future Schools Agreement to:-

- give any exclusivity to the Contractor in respect of the non-sample schools;
- request any Future Schools Scheme Proposals;
- implement any Future Schools Scheme Proposal (whether approved or not).

The Authority has no liabilities or obligations to the Contractor at any point during the Future Schools Agreement for the costs incurred by the Contractor in preparing any Future Schools Scheme Approval documentation. The Authority only becomes liable to the Contractor once a Design and Build Contract is entered into for the Future Schools Scheme.

4.2 **Key Commercial Principles**

The Authority needs to familiarise itself with the Future Schools Scheme Approval Procedure set out in Schedule 1 of the Future Schools Agreement.

In broad terms, the Contractor works (at risk) with the Local Authority to analyse and discuss accommodation requirements and decide which Future Schools Schemes the Contractor should submit ahead of the approval procedure commencing proper.

The Contractor is then obliged to submit a Future Schools Scheme Proposal within 14 weeks of receipt of a Future Schools Notice (or such other time as the parties may agree) from the Authority.

The Future Schools Agreement sets out in detail at clauses 3.1.1 – 3.1.7 the level of information required to be provided by the Contractor within a Future Schools Scheme Proposal, which equates to the level of information submitted at invitation to tender under the Local Competition and in any event, no less than RIBA Level C+. The Contractor must also provide a fixed price lump sum or target cost for the project, with the price built up strictly in accordance with the pricing schedule under the Contractors' Framework Agreement.

The Authority then either approves or rejects the Future Schools Scheme Proposal. If the Proposal is approved, then the Authority will submit its final business case to PfS, planning consent will be obtained and the Contractor enters into a Design and Build Contract within 14 days of a written request by the Authority.

If the Proposal is rejected, the Contractor has the opportunity to resubmit if required by the Authority.

Any Future Schools Scheme Proposal is valid for a period of six months from the date of submission by the Contractor.

APPENDIX C

Technical Requirements used during the Contractors' Framework ITT conducted by PfS to establish the Contractors' Framework

See attached separate document

APPENDIX D

Information and Maps for each Sector

Introduction

The attached map provides Framework Users with an indication of the Sector in which they are located with regard to the use of the PfS Contractors’ Framework. There are 2 Sectors:

- Sector North (shown as Sector 1 in Map) – This comprises the North West, the North East, Yorkshire and the Humber, the East Midlands, and the West Midlands;
- Sector South (shown as Sector 2 in Map – This comprises the East of England, the South East, the South West, and London.

In the event of any query, Framework Users are advised to contact the PfS Project Director.

The following Contractors have been appointed to the PfS Contractors’ Framework Panel in the respective Sectors:

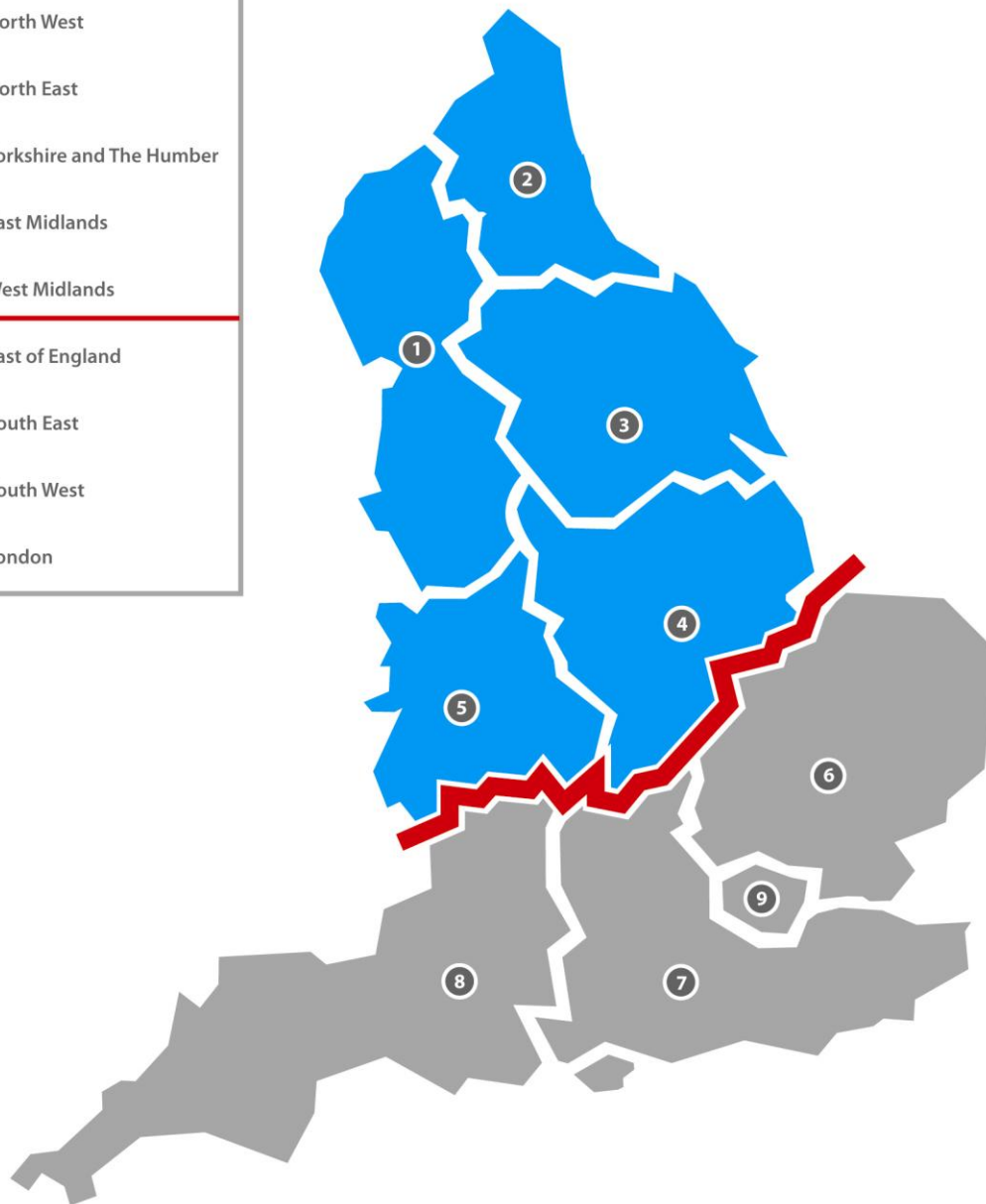
Sector North

Sector South

	Contractor	Contractor
1	Balfour Beatty Construction Limited	Apollo Property Services Limited
2	BAM Construction Limited	Balfour Beatty Construction Limited
3	Bovis Lend Lease Limited	BAM Construction Limited
4	Carillion Construction Limited	Bovis Lend Lease Limited
5	Clugston Construction Limited	Carillion Construction Limited
6	Interserve Projects Services Limited	Interserve Projects Services Limited
7	Kier Regional Limited	JB Leadbitter & Co Limited
8	Shepherd Construction Limited	Kier Regional Limited
9	Sir Robert McAlpine Limited	Rydon Group Limited
10	VINCI Construction Limited	Sir Robert McAlpine Limited
11	Wates Construction Limited	Wates Construction Limited
12	Willmott Dixon Construction Limited	Willmott Dixon Construction Limited

Partnerships for Schools Contractor Framework Sector Map

Sector 1	1	North West
	2	North East
	3	Yorkshire and The Humber
	4	East Midlands
	5	West Midlands
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Sector 2	6	East of England
	7	South East
	8	South West
	9	London



Partnerships for Schools - Indicative list of locations by Sector / Sub-Region

Sector 1 (North)

1. North West

- Cumbria
- Lancashire
- Cheshire
- Sefton
- Wirral
- Liverpool
- Knowsley
- St Helens
- Wigan
- Bolton
- Bury
- Rochdale
- Oldham
- Salford
- Trafford
- Manchester
- Stockport
- Tameside
- Blackpool
- Halton
- Warrington
- Blackburn with Darwen

2. North East

- Northumberland
- Durham
- Newcastle upon Tyne
- Gateshead
- North Tyneside
- South Tyneside
- Sunderland
- Hartlepool
- Darlington
- Stockton-on-Tees
- Middlesbrough
- Redcar & Cleveland

3. Yorkshire and The Humber

- North Yorkshire
- Leeds
- Barnsley
- York
- Doncaster
- East Riding of Yorkshire
- Bradford
- Caldergate
- Kirklees
- Sheffield
- Rotherham
- Kingston upon Hull
- North Lincolnshire
- North East Lincolnshire

4. East Midlands

- Lincolnshire
- Nottinghamshire
- Derbyshire
- Leicestershire
- Rutland
- Northamptonshire
- Derby
- Nottingham
- Leicester

5. West Midlands

- Staffordshire
- Shropshire
- Herefordshire
- Worcestershire
- Warwickshire
- Wolverhampton
- Dudley
- Walsall
- Sandwell
- Birmingham
- Solihull
- Coventry
- Stoke
- Telford and Wrekin

Sector 2 (South)**6. East of England**

- Norfolk
- Cambridgeshire
- Hertfordshire
- Suffolk
- Essex
- Peterborough
- Bedfordshire
- Luton
- Thurrock
- Southend on Sea

7. South East

- Oxfordshire
- Hampshire
- Buckinghamshire
- Surrey
- West Sussex
- East Sussex
- Newbury
- Reading
- Wokingham
- Bracknell & Forest
- Windsor & Maidenhead
- Slough
- Isle of Wight
- Southampton
- Portsmouth
- Brighton & Hove
- Medway Towns
- Milton Keynes

8. South West

- Gloucestershire
- Wiltshire
- Somerset
- Devon
- Dorset
- Cornwall
- South Gloucestershire
- Bristol
- Bath & NE Somerset
- North Somerset
- Plymouth
- Torbay
- Poole
- Bournemouth
- Swindon

9. London

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|---|---|
| <ul style="list-style-type: none"> • Barking & Dagenham • Barnet • Bexley • Brent • Bromley • Camden • City of London • City of Westminster • Croydon • Ealing • Enfield • Greenwich • Hackney • Hammersmith & Fulham • Haringey • Harrow | <ul style="list-style-type: none"> • Having • Hillingdon • Hounslow • Islington • Kingston & Chelsea • Kingston upon Thames • Lambeth • Lewisham • Merton • Newham • Redbridge • Richmond upon Thames • Southwark • Tower Hamlets • Waltham Forest • Wandsworth |
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