

Smart PFI: RIBA Position Paper



Introduction

The government is committed to PFI and also to the achievement of good design in public buildings. At present these two policies are not aligned. The RIBA has identified the quality of design in PFI project as a particular problem requiring a fresh approach and innovative thinking.

There is an opportunity to effect a simple yet significant shift in PFI procurement that the RIBA firmly believes would be to the benefit of all parties involved in PFI projects, both on the client and supply sides. This paper sets out our recommendations, based on the principles of Smart PFI. These proposals are not limited to single PFI projects and may be extended to selection processes in Public Private Partnerships such as Building Schools for the Future and LIFT.

Background

The RIBA had concerns about the PFI procurement process on the grounds not only of design quality but also wasted money, time and effort. In June 2005, the RIBA hosted an expert seminar to explore these issues and to begin to develop possible solutions. The seminar attracted a number of high-level delegates from across the PFI development sector including developers, public sector clients, urban professionals, constructors and Government officials as well as architects.

These interrelated factors result in reduced value for money, excessive costs, barriers to competition, delays to delivery and lower design quality.

The problems identified by participants were broadly similar:

- Excessive cost and time necessary to bid for PFI
- Inadequate resourcing of the public sector client at the early stages of procurement
- The Strategic and Outline Business Case stages - to allow adequate option appraisal including site and location appraisal - and strategic brief development
- Untested and/or poorly tested project briefs prematurely put to the PFI market
- A lack of experience within the public sector clients, many of which were first time commissioners of buildings
- Insufficient direct contact between the client and the design team during the bid stages to allow good briefmaking and a robust design to emerge with adequate stakeholder consultation.



Developing Smart PFI

Informed by the expert seminar, and launched in October 2005, "Introducing Smart PFI" set out two possible alternative procurement models, invited reactions to our proposals, and enabled us to develop our ideas further. The proposed models sought to rectify the problems we had identified affecting design quality, and to deliver broader benefits in terms of reducing the time and cost of bidding for PFI projects.

Both models sought to do away with the current procedure whereby typically three bidders carry out extensive design and costing work, only for two of these expensively prepared and costed designs to be binned. In one model the client would prepare an outline design in advance of going to the market; in the other the preferred bidder would be selected on grounds other than design and then embark on the design in consultation with the client body. Both these models have been used in PFI projects.

The Smart PFI proposals enable the public sector client to benefit from design intelligence at the early stages of the project. This enables development and testing of a more detailed brief, and provides for increased certainty regarding budgets, affordability and site related factors, including the regulatory environment, before going to the market.

The RIBA received a generally encouraging response from a broad range of participants in the PFI process. Both the Treasury and the Office of Government Commerce welcomed the proposals, but asked for more reassurance from the finance sector that they would find Smart PFI acceptable, and an analysis of the implications for the transfer of risk. This further consultation has been carried out with positive results and led the RIBA to identify the first of the above two models as the best option. This is now called the 'Client Concept Design Model' of Smart PFI.

Smart PFI: The Client Concept Design Model

Step 1 Pre-dialogue

The public sector client appoints a management and design team, chosen through a normal, EU compliant competitive process for their creative skills and understanding of the client's area of expertise. The most appropriate selection methodology is Quality Based Selection with a competitive interview and fee proposal. Selection criteria would include: understanding of client need, creativity, design skills, innovation, value for money and deliverability.

The successful team is then appointed to work in close collaboration with client representatives and other stakeholders to develop an intimate knowledge of the client's strategic and operational needs and set an appropriate vision for the project supported by research and visits to class-leading facilities.

They are required to produce:

- a well researched and comprehensive design brief
- site analyses and selection
- an outline design for the project, achieving full user-client sign-off on content, layout and quality benchmarks
- an output specification
- an analysis of buildability and construction logistics
- a robust budget for the project based on the outline design solution and taking account of all site specific costs
- a further client sign-off to confirm the affordability of the project
- planning approval (if appropriate)

This content takes the project to OGC Gateway 3A.

This information – which replaces the PFI Reference Scheme with a properly considered Client Concept Design - contributes to the finalisation of the Outline Business Case. It should ensure that the Public Sector Comparator test, of whether to go to PFI or procure conventionally, is based on a fully developed client concept design, reflecting the user client's real need, rather than on a theoretical model, or historical cost data. It is important to note that the client concept design need not develop information as to 'how' the building is constructed, as this responsibility and associated risk remains with the private sector. Rather it conveys 'what' the client requires in terms of content, form, quality and performance.

The scope of the concept design may be varied to be simpler or more complex depending on the needs of the building type.

All the activities of Step 1 will be carefully managed through a project 'execution plan' with a detailed programme and scheduled deliverables which would typically be that associated with RIBA stages A,B and C but would depend on the size and complexity of the project.

Step 2 Competitive Dialogue – from Invitation to Participate through to Preferred Bidder

The procedure introduced by Article 29 of Directive 2004/18/EC (January 2006) will run as it does currently but instead of developing an entirely new design bidders are asked to develop the Stage 1 Client Concept Design sufficiently to build up a tender.

The consortia are challenged to use their innovation, competing to demonstrate how they could most efficiently deliver the required design solution in terms of building methodologies, value engineering, lean construction, facilities management, financing and the provision of partnering services where appropriate. They are also invited to identify any areas of the design where they feel improvements could be made or any opportunities for additional income generation offered by the site. Each bidder will work with its own design team as now.

The design team that prepared the client concept design for the public sector client may be retained to judge consortium proposals or the client may wish to engage their independent Client Design Advisor, hired to help plan the process and select bidders.

Step 3 Preferred Bidder to Financial Close

From Preferred Bidder to Financial Close the process runs as at present.

The Client Design Advisor or the design team that prepared the concept design for the public sector client may be retained to ensure that the design, as developed and subsequently executed by the successful bidder, maintains the quality standards required by the client. OGC Gateway 3B, the Detailed Design, will be passed before full Gateway 3 is approved and the contract can be closed.

Concept Design Outputs

- Developed Brief
- Illustrated Urban Design Strategy
- Site Plan including landscape
- Plans 1:200 or 1:100 as appropriate (including landscape where appropriate)
- Sections 1:50 or 1:100
- Elevations
- 3D views external and internal
- Quality standards and definition of construction elements
- Proposals for integration of art
- Design Statement (including options considered)
- Access Statement
- Buildability and Construction Logistics Statement
- Sustainability Statement
- Environmental Services Strategy including emissions targets
- ICT Strategy
- Maintenance Strategy
- Whole Life Costing
- Schedule of Accommodation
- Adjacency diagrams.

Advantages

The Smart PFI Client Concept Design Model

- creates a close relationship between the user-client and the initial design team, which will engender a better understanding by both of the client's requirements, thereby promoting innovation and enhancing design quality
- places greater focus on improving the resourcing of the vital early design stages
- gives the public sector client a thorough understanding of cost and affordability issues prior to engaging with the market
- reduces uncertainty for the private sector by having the user-client sign-off the outline design as fully meeting its needs
- obviates the need for the production of multiple, hugely costly and mainly abortive designs and costings by the industry which drive up the cost to the public purse
- reduces bid costs and times significantly as the bidding consortia are not required to invest so much in design
- helps encourage new entrants to the market bringing greater competition through reduced bid costs and times and by pre-tender confirmation of affordability
- ensures that the private sector continues to take full responsibility for the funding, detailed design, construction, management, maintenance and availability of the facility.

Risk Implications

As the proposed model appears to produce different patterns of risk and risk management from those currently prevailing within the PFI market we sought to better understand the implications for risk and any knock-on effects, through further detailed and focused consultation.

The Smart PFI model is not a wholly unknown or untested process. Where it has already been applied the process has provided benefits, which are evident in the resulting schemes. Some of the principles behind the changes to procurement and design processes proposed by Smart PFI have already been tested in schemes, for example in Northern Ireland. The approach is also used by the Department of Constitutional Affairs for court projects.

Current Allocation of PFI Risk

We believe that there is a current misconception concerning the level and nature of risk transfer from public to private sector in traditional PFI schemes, both in theory and in practice. The transfer of risk is neither so complete, nor so clear cut, as is often believed.

This is especially true of design risk, and in particular, the conceptual design risk. In fact the conceptual design risk, when tested, lies with the client. In practice, in traditional PFI, once the contractor signs the contract, there is little comeback for the client on conceptual design issues (even if insurance is in place that is believed to cover such issues). These include matters that are key to operational efficiency such as scheme layout, quantum of accommodation, overall capacity, and adjacencies. The client is expected to have undertaken due diligence on these matters and the client concept design will have been signed-off and agreed by the client following legal and operational advice.

Issues such as quality of construction and fitness for purpose of building elements reside with the contractor. These will continue so to do under Smart PFI.

Therefore, under the Smart PFI process, the risk profile does not change materially for either public or private sector, when compared to the realities of the current system. Arguably, the client's inherent risk, associated with the responsibility accrued through signing-off the client concept design, will be better managed and understood, by a better-advised client. Additionally the whole process is subject to greater clarity and testing so further reducing risk.

Risk Transfer vs Risk Management

Risks should lie with whoever is best placed to manage them during the decision-making, delivery and long-term management of a project.

Although risks will be fully transferred under Smart PFI, some key risks, e.g. suitability of requirements, affordability and scheme feasibility, will be effectively minimised for the public sector.

We believe that Smart PFI and the process of examining PFI procurement processes allows a more efficient understanding, allocation and management of risk for both public and private sector.

European Legislative Implications

We believe that the proposed changes are compliant with the principles of Competitive Dialogue set out in the European Procurement Directives. Indeed a more detailed specification may be advantageous before entering the competitive dialogue procedure.

Legal Implications

The more detailed and tested an outline design is before the client goes to the market, the more likely it is to speed up the procurement process. Many legal and contractual delays now centre on the emergence during the bid process of factors that should have been identified and resolved earlier.

The basic contractual fundamentals of not paying for the scheme until it is delivered, on time and on cost, would not be affected. Only minor changes to existing standard documentation would be required.

Scheme Finance Implications

No significant difficulties are likely to arise from introducing the Smart PFI model from a scheme funding perspective. The process of undertaking a greater level of design work before going to the market would provide greater certainty and a better analysis of a scheme's feasibility and cost. Greater testing of the proposed site and client concept design will therefore increase certainty as regards cost and affordability.

There is very little likelihood that Smart PFI would constrain the funding options for a scheme. In consultation, the proposal to encourage better preparation and resourcing early in the project has been welcomed by the financiers of PFI schemes.

Gateway Review Implications

The stages of the Smart PFI process outlined above are congruent with OGC Gateways. Gateway 3a equates to the Client Concept Design and 3b to the Detailed Design provided by the Preferred Bidder. As now the full Gateway 3 sign off equates to Financial Close.

Recommendations

The RIBA calls on:

The Treasury to increase the funding available to the public client after the initial, preparatory stages of procurement sufficient to enable proper option appraisals, the preparation of a well developed brief, a client concept design and a robust budget.

Central and Local Government to increase availability and capacity of design and other professional skills for the public sector, and to seek more effective ways of applying the skills and expertise, such as client design advisors, that already exist.

Professional bodies to encourage the acquisition of cross-professional skills that reflect the changing reality of PFI design, procurement and construction.

The Treasury to reflect new and emerging best practice, including the principles of Smart PFI, in its anticipated review of Technical Note No 7.



The principles of Smart PFI – greater preparation at the beginning of the procurement process, and more time spent between the client and the design team - flow from innovations and best practice already being demonstrated on a number of PFI projects, providing benefits clearly evident in the resulting schemes. These include King's Mill Hospital, Nottinghamshire, Jo Richardson School, London, and Belfast City Hospital.

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