



Department for Levelling Up,
Housing & Communities

Guidance on Collaborative Procurement for Design and Construction to Support Building Safety: An Overview



Commissioned by the Department for Levelling Up, Housing and Communities
and prepared by

Professor David Mosey of King's College London Centre of Construction Law
and Russell Poynter-Brown of On-Pole Limited working in collaboration with
the Procurement Advisory Group

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Purpose of this Overview

This Overview summarises the key points and recommendations in the guidance document relating to collaborative procurement for design and construction to support building safety (the 'Guidance') which can be found at www.gov.uk. Readers are strongly advised to refer to the Guidance itself for a more comprehensive analysis and explanation of the principal factors promoting building safety within collaborative procurement initiatives.

It is intended that the Guidance will be updated at regular intervals and to reflect secondary legislation accompanying the Building Safety Bill.

The Guidance has been prepared by Professor David Mosey of King's College London Centre of Construction Law and Russell Poynter-Brown of On-Pole Limited working in collaboration with the Department for Levelling Up, Housing and Communities and the Procurement Advisory Group. The Guidance and this Overview are offered in good faith but without legal liability, on the understanding that clients and teams will rely on their own professional advice when considering, adopting and implementing its recommendations.



1

What is different about the Guidance?

The Grenfell Tower fire in 2017 represented the greatest loss of life in a residential fire since the Second World War. Since the tragedy there has been a significant programme of work across government and the wider built environment industry to reform the building safety system in line with the recommendations in Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, in which she said:

- A key issue underpinning system failure is 'Indifference' where *'the primary motivation is to do things as quickly and cheaply as possible rather than to deliver quality homes which are safe for people to live in.'* (Foreword, page 5)
- ***'Improving the procurement process will play a large part in setting the tone for any construction project. This is where the drive for quality and good outcomes, rather than lowest costs must start.'*** (Foreword, page 8)
- ***'The procurement process kick-starts the behaviours that we then see throughout design, construction, occupation and maintenance.'*** (Section 9.1, page 108)

Dame Judith Hackitt identified the procurement processes used across the construction industry as one of the many areas that urgently need to be improved. At the time of the publication of the Guidance and this Overview, the Grenfell Tower Inquiry is still underway, but there has been significant criticism of the procurement process that governed the Grenfell Tower refurbishment project.

The Guidance has been developed to support clients and industry in adopting and implementing procurement practices that will deliver safer buildings. It:

- Examines evidence of the ways in which collaborative procurement can lead to safer, better-quality outcomes, and it
- Explains how clients and their project teams can use collaborative procurement in practice.



Collaborative approaches have been proven to succeed in reducing risks and improving value on construction projects in the public sector and the private sector. These approaches should be adopted on all construction projects, and the Guidance shows why it is essential to adopt them on projects that are ‘in-scope’ of the new regulatory regime that will be introduced through the government’s Building Safety Bill (the ‘Bill’).

The Bill describes the most significant changes to building safety legislation in decades and undertakes wholesale reform of the associated regulatory system. It introduces a new era of accountability, making it clear where the responsibility for managing safety risks lies throughout the design, construction and occupation of buildings that are in-scope, with more onerous sanctions for those that fail to meet their obligations.

Through the Bill and associated legislation, the government will introduce a more stringent regulatory framework in design and construction led by the Building Safety Regulator for new high-rise residential buildings, care homes and hospitals which are 18 metres or more in height or at least seven storeys (‘higher-risk’ buildings). As part of these reforms, the government will establish three gateways at key stages in design and construction that will apply to higher-risk buildings:

- ‘Planning gateway one’ – at the planning application stage
- ‘Gateway two’ – before building work starts
- ‘Gateway three’ – when building work is completed.

The Guidance is designed to support the regulatory regime reforms and it recommends procurement and contracting questions that should be addressed in advance of each ‘gateway’ application.

The Guidance also supports a more stringent regulatory framework for building work carried out in existing higher-risk buildings, which will be led by the new Building Safety Regulator and will strengthen oversight of prescribed refurbishments:

- Before building work starts to assess whether proposals comply with building regulations and assure building safety

- During building work, through inspections at key stages, and the requirement for significant changes from the original proposal to be assessed by dutyholders and approved by the Building Safety Regulator before they are made
- On completion of building work to check compliance with building regulations before a completion certificate is issued.

In addition, the Guidance is designed to support:

- Public and private sector clients and their advisers when implementing collaborative processes, relationships and systems as features of their procurement strategies, procedures and contracts for projects in-scope and when addressing questions that are relevant to each ‘gateway’ point
- The parties identified in the Bill comprising ‘dutyholders’ during design and construction (namely the ‘Client’, ‘Principal Designer’, ‘Principal Contractor’, ‘Designers’ and ‘Contractors’), ‘Accountable Persons’, ‘Building Safety Managers’ and all other consultants, subcontractors and suppliers when using collaborative processes, relationships and systems to inform, support and integrate the design, construction, supply and operation of an in-scope project and when implementing risk management so as to prioritise safety and quality issues and the needs of residents
- The Building Safety Regulator when establishing how the industry moves to safer practices across the lifecycle of buildings in-scope of the new regulatory regime.

Rather than prescribing particular procurement models or contract forms, the Guidance recognises that clients in the public and private sectors adopt varying approaches; it summarises ways in which all public and private sector dutyholders can demonstrate to the Building Safety Regulator how they have created and used collaborative processes, relationships and activities in order to improve safety and quality outcomes.

The Guidance mirrors the commitment in the government’s 2020 Construction Playbook that improved procurement practices will deliver ‘better, faster and greener solutions that support our recovery from the COVID-19 pandemic and build the economy of the future while improving building and workplace safety’ (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941536/The_Construction_Playbook.pdf).

Dame Judith Hackitt's Independent Review:

- *'The way in which procurement is often managed can reduce the likelihood that a building will be safe.'*
- *'The contracting process determines the relationships, competencies and processes that exist between all the parties in the build and management processes.'*
- *'Procurement sets the tone and direction of the relationships between the client, designer, contractor and their subcontractors, as well as determining the formal specification of the building.'*
- *'Issues at this stage, for example inadequate specification, focus on low cost or adversarial contracting, can make it difficult (and most likely, more expensive) to produce a safe building.'* (Section 9.7, page 109)

Collaborative construction procurement needs to be clearly connected to the underlying commercial needs and issues that arise on any project, and it will not succeed if it depends on vague or idealistic concepts. The Guidance breaks down collaborative procurement into **four specific proposals** that should be adopted on any in-scope project:

- Selection by value that avoids a race to the bottom (**Section 5**)
- Early supply chain involvement that improves safety and reduces risks (**Section 6**)
- Collaborative relationships that improve commitments and involve residents (**Section 7**)
- A golden thread of information that integrates design, construction and operation (**Section 8**).

The Guidance goes on to explain what systems sustain and enhance a collaborative culture (**Section 9**) and how strategic collaboration can embed improved safety (**Section 10**).

Section 11 illustrates how, in addition to improved safety and quality, collaborative procurement enables public and private sector clients and their teams to achieve other improvements in economic, social and environmental value.

Section 12 outlines team-building techniques through which the collaborative culture of in-scope building projects can be cultivated. It also shows how collaborative clients and teams can benefit from new sources of advice and support, and how dutyholders can use lessons learned from other industries.



2 Why is the Guidance needed?

Case studies provide a wealth of evidence as to how collaborative procurement can improve project outcomes. Yet the construction industry and its clients remain cautious and collaborative practices have not become the norm. Instead, many clients, consultants and contractors continue to use procurement models and contracts that endanger building safety by:

- Gambling on lowest price bids without joint review of detailed costs
- Focusing primarily on transferring risk down the supply chain and preparing the ground for potential claims and disputes.

The Guidance shows how collaborative procurement preserves reasonable legal and commercial protections while using early planning, clear roles, full consultation and accurate information to reduce the potential for failures, errors, misunderstandings and disputes.

Government response to the ‘Building a Safer Future’ consultation:

‘Fire and structural safety issues can be exacerbated by poor procurement, including:

- *poorly designed tender specifications and processes*
- *eleventh hour contractor appointments*
- *lack of appropriate engagement with the supply chain and*
- *contract forms which prioritise low-cost solutions at the expense of building safety.*

These practices can result in poor value for money and poor building safety outcomes. The Government believes that collaborative procurement approaches can help to mitigate some of the poor behaviours identified above.’

Effective collaboration among the individuals engaged on a project or programme of work is only made possible by integrating the differing needs and commercial priorities of the organisations who employ them. A shared knowledge pool is imperative, and the legal and

commercial tests of collaborative construction procurement should consider:

- Firstly, how team members build up shared knowledge at a time when it can be most effectively used to improve project outcomes
- Secondly, how team members use that shared knowledge to improve project outcomes rather than to seek benefits at someone else’s expense.

There is no universal business morality that creates collaborative norms of behaviour or that builds an underlying basis for trust or good faith. To demonstrate competence and translate goodwill into actions, team members need a clear and balanced understanding of what a collaborative culture means in practical terms and how they are expected to create and sustain it. To anticipate and avoid misunderstandings or breakdowns in good working relationships, team members need to establish procurement processes and contracts that reflect and support their collaborative practices.

The procurement and contracting policies expressed in the government’s 2020 Construction Playbook recognise that ‘setting the right behaviours and practices throughout the design, construction, occupation and maintenance stages, and the handoffs between these stages, is crucial to ensuring building safety’. Although the Construction Playbook focuses primarily on procurement by public sector clients, it follows extensive private sector consultation and is supported by a ‘Compact with Industry’ whose signatories include private sector organisations such as the British Property Federation.

The Construction Playbook’s Compact with Industry emphasises the need to ‘work more collaboratively at all levels of the supply chain’, and ‘to place more focus on social value, sustainability and asset performance’. It highlights the opportunities for public sector clients and suppliers ‘to create long-term relationships that will underpin our investments in people, technology and capacity’.

As regards the use of collaborative contracts, the Playbook states that:

- ‘One of the most effective ways to deliver outcomes is to create contracting

environments that promote collaboration and reduce waste'

- 'Contracts should create positive relationships and processes designed to integrate and align multiple parties' commercial objectives and incentives'.

In the procurement process leading to a collaborative contract, team members should be selected according to their competence and the value they bring to a project. They should be:

- Paid promptly,
- Earn a fair profit and
- Be given the earliest opportunities to influence optimum approaches to safety and quality as well as other aspects of efficiency, risk management and value for money.

Team members will be motivated to concentrate their efforts on the best interests of the project, and not on tactics that prepare the ground for later claims, if they understand how collaborative relationships and processes will help them to:

- Avoid losses
- Minimise wasted cost, time and resources
- Enhance their reputation
- Avoid disputes.

Dutyholders are therefore encouraged to implement the collaborative processes, relationships and activities recommended in the Guidance in order to achieve the improvements in project strategy, procurement, contracting and management that are necessary to prioritise residents and ensure their safety.



3

What gateway questions link this guidance to the new building safety regime?

The Guidance sets out a checklist of suggested questions for teams to use in preparing for each of the three ‘gateways’ through which in-scope projects will need to pass in the new building safety regime. These gateways are expected to be used to scrutinise compliance with the new building safety regime by dutyholders during design and construction comprising the ‘Client’, ‘Principal Designer’, ‘Principal Contractor’, ‘Designers’ and ‘Contractors’ as defined in the Bill. These gateways are expected to be confirmed when the Building Safety Bill and related legislation become law.

Planning gateway one (planning application stage)

Government response to the ‘Building a Safer Future’ consultation:

‘To aid the local planning authority in their decision as to whether to grant planning permission, the developer will be required to submit a Fire Statement setting out fire safety considerations specific to the development with their planning application.’

Question A: Have the Client’s processes for identifying the person drafting the ‘**Fire Statement**’, and for other professionals who are involved in preparing the planning application, demonstrated a **balanced approach to value** and **evidence of suitable competencies**?

[Guidance **Section 5**]

Question B: Have the Client’s contract terms for professionals who are involved in preparing the planning application stated their **integrated commitments** (within the scope of their agreed roles and contributions) to the **safety and quality compliance** of their proposals?

[Guidance **Section 7**]

Question C: Have the Client’s selection process and contract terms for the professionals involved in preparing the planning application made clear their capabilities and commitments **to use suitable digital information management tools** for the creation, sharing, storage and use of information? [Guidance **Section 8**]

Gateway two (building control stage, before construction can begin)

Government response to the ‘Building a Safer Future’ consultation:

- *‘At Gateway two, the Client will also be required to ensure they are satisfied that the Principal Designer and Principal Contractor can demonstrate the necessary competence to discharge their responsibilities effectively.’*
- *‘The Client will be required to submit key information to the Building Safety Regulator demonstrating how they are complying with building regulations through the submission of full plans, the construction control plan, fire and emergency file, and other supporting documentation that will help the assessment team determine whether the application meets the building regulations requirements and that the dutyholder has sufficiently demonstrated that they are managing building safety risks.’*
- *‘Key information related to fire and structural safety submitted during the three Gateways will form part of the golden thread of data, which will be kept up to date and made accessible to relevant people throughout the lifecycle of the building.’*

Question D: Have the Client’s procurement processes for identifying and appointing the Principal Designer, the Principal Contractor and the other professionals involved in preparing the building control application submitted at Gateway two (including plans, construction control plan, fire and emergency file and other supporting documentation), and for identifying and appointing all other parties who will be working on the project during design and construction, demonstrated a **balanced approach to value** and **evidence of suitable skills, knowledge, experience and behaviours**? (also shown in the Client’s **signed declaration of competence at Gateway two**) [Guidance **Section 5**]

Question E: Have the Client's procurement processes for identifying and appointing the Principal Designer, the Principal Contractor and the other professionals involved in preparing the building control application submitted at Gateway two (including plans, construction control plan, fire and emergency file and other supporting documentation), and for identifying and appointing all other parties that will be working on the project during design and construction, used **early supply chain involvement ('ESI')** so as to optimise their **contributions to improved safety and quality** within agreed periods of time after their appointment and in advance of Gateway two? [Guidance **Sections 6 and 10**]

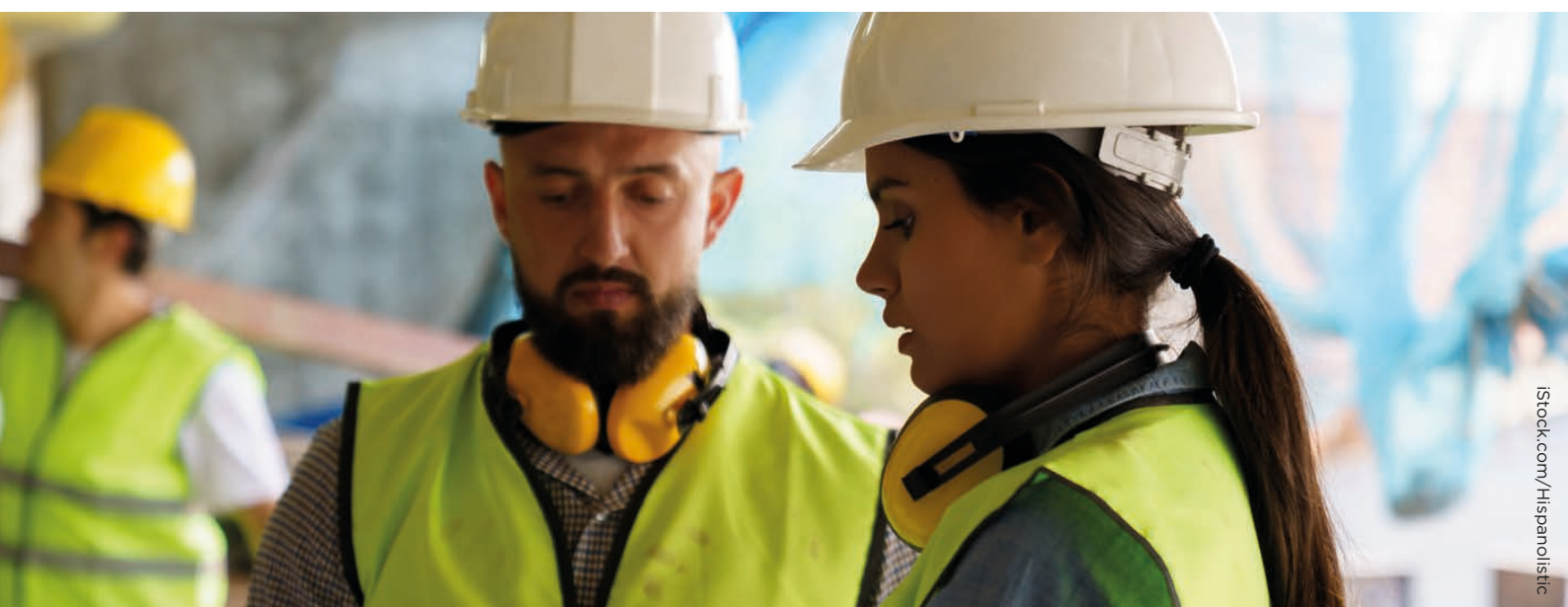
Question F: Have the Client's contract terms for the Principal Designer, the Principal Contractor and the other professionals involved in preparing the building control application submitted at Gateway two (including plans, construction control plan, fire and emergency file and other supporting documentation), and the contract terms for all other parties that will be working on the project during construction, stated their legal obligations as **dutyholders** (within the scope of their agreed roles and contributions) to **safety and quality compliance**? [Guidance **Sections 7, 9 and 10**]

Question G: Have the Client's procurement processes for the Principal Designer, the Principal Contractor and the other professionals involved in preparing the building control application submitted at Gateway two (including plans, construction control plan, fire and emergency file and other supporting documentation), and the procurement processes

for all other parties that will be working on the project during design and construction, made clear their capabilities and commitments to **use suitable digital information management tools** for the creation, sharing, storage and use of information comprising a **golden thread of information**? [Guidance **Section 8**]

Question H: Is there a collaborative system by which the Client, the Principal Designer, the Principal Contractor, and the other professionals involved in preparing the building control application submitted at Gateway two (including plans, construction control plan, fire and emergency file and other supporting documentation), and all other parties that will be working on the project during design and construction, have **regularly consulted with each other and with residents** (where applicable) in advance of Gateway two in relation to the safety and quality compliance of all designs and specifications and all related cost, time, supply, construction, maintenance and risk management information? [Guidance **Sections 7 and 9**]

Question I: Is there a **transparent decision-making process** by which the Client, the Principal Designer, the Principal Contractor and other professionals involved in preparing the building control application submitted at Gateway two (including plans, construction control plan, fire and emergency file and other supporting documentation), and those that will be working on the project during design and construction, have agreed the **Gateway two application**, based on and to the extent of their agreed roles and their contributions as dutyholders to **safety and quality compliance**? [Guidance **Sections 7 and 9**]



During construction (between Gateways two and three)

Government response to the 'Building a Safer Future' consultation:

'The change control strategy submitted as part of the construction control plan at Gateway two will need to be updated and maintained throughout the construction phase, to record all changes from the original plans as submitted, together with:

- *a complete construction control plan*
- *an updated fire and emergency file; and*
- *a complete key dataset.'*

Question J: Is there a collaborative system by which the Client, the Principal Designer and the Principal Contractor, and the others working on the project during design and construction, **regularly consult with each other** in accordance with their agreed roles and contributions as dutyholders:

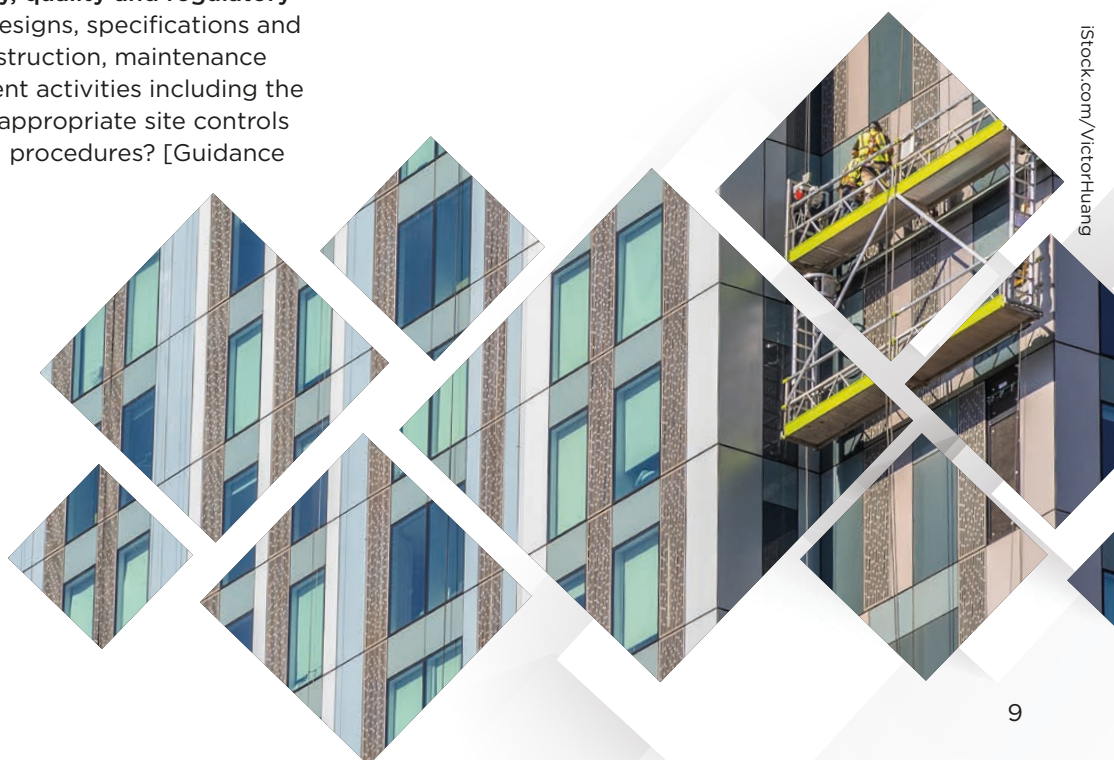
- To implement the **construction control plan**?
- To update, maintain and implement the **change management strategy** approved at Gateway two and to record all changes from the application approved at Gateway two?
- To monitor and update the **golden thread** of information, ensuring that it is accurate and up to date?
- To ensure the **safety, quality and regulatory compliance** of all designs, specifications and related supply, construction, maintenance and risk management activities including the implementation of appropriate site controls and change control procedures? [Guidance **Sections 7 and 9**].

Gateway three (completion and handover, before occupation)

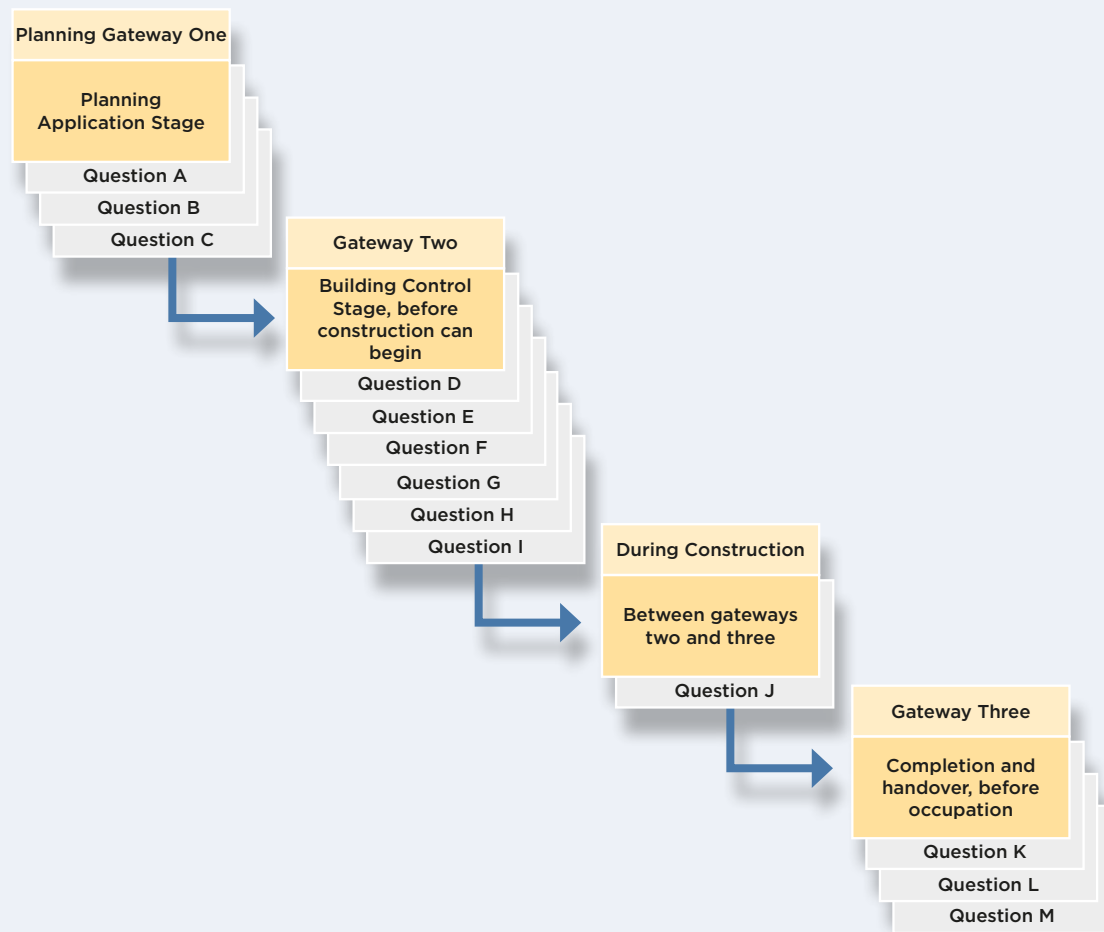
Question K: Is there a collaborative system by which the Client, the Principal Designer and the Principal Contractor, and the other professionals involved in preparing the Gateway three application (including as-built plans and other prescribed documents), have **regularly engaged with residents** (where applicable) in advance of Gateway three, based on and to the extent of their agreed contributions as dutyholders, in relation to safety, quality and regulatory compliance? [Guidance **Sections 7 and 9**]

Question L: Is there an integrated system by which the Client, the Principal Designer and the Principal Contractor, and the other professionals involved in preparing the Gateway three application (including as-built plans and other prescribed documents), have confirmed, based on and to the extent of their agreed roles and contributions as dutyholders, the **safety, quality and regulatory compliance** of all designs and specifications and all related supply, construction, maintenance and risk management information and activities at regular stages **before work is covered up** during construction, and **before work is handed over on completion** at Gateway three? [Guidance **Sections 7 and 9**]

Question M: Have the Client's procurement processes made clear its capability and commitment to hand over the **golden thread of information** and other prescribed information to the operator of the completed building (if applicable)? [Guidance **Section 8**].



Collaborative Procurement Guidance: Checklist Flow Chart



4 What are the key points when implementing collaborative procurement?

The Guidance explains key points that should be considered when implementing collaborative procurement on in-scope projects in the public sector or the private sector. These key points reflect the guidance in **Sections 5 to 12** inclusive, and the summaries follow the same sequence of topics as those sections:

Key points - Section 5: How can a procurement process avoid a race to the bottom?

- Avoid a single-stage, fixed price procurement process, especially if there is a risk that the Client may be provided with inaccurate fixed prices based on incomplete or inaccurate information (5.1)
- Use a two-stage procurement process that enables early provisional appointments following which team members' tender proposals and commitments can be tested and improved upon before full implementation of the project is approved (5.2)
- Assess competencies carefully against a recognised set of criteria to ensure that dutyholders and other team members can fulfil their commitments and obligations (5.3)
- Ensure that evaluation criteria are detailed, measurable, weighted and accurately reflect the Client's brief and the principles of value-based procurement (5.4)
- Demonstrate a robust balance between safety, cost and quality, using evaluation processes that demonstrate value and provide evidence of suitable competencies and insurances (5.5)
- For public sector Clients, use the provisions of current Public Contracts Regulations that enable a balanced approach to assessing the most economically advantageous tenders (5.6).

Key points - Section 6: How can early supply chain involvement improve safety and reduce risks?

- Appoint Principal Contractors, subcontractors and other supply chain members through early supply chain involvement ('ESI') following a value-based procurement process, so that they contribute their skills, knowledge and experience and so that they demonstrate behaviours that will optimise safety and quality (6.1)
- Use ESI pre-construction phase processes to test how Principal Contractors, subcontractors and other supply chain members can work with Clients and consultants to improve project outcomes and reduce risks (6.2)
- Use ESI '*Supply Chain Collaboration*' to optimise early contributions by selected subcontractors and other supply chain members during the pre-construction phase of the project (6.3)
- Implement ESI to improve cost certainty and transparency by the separate agreement of appropriate profit and overheads and by active engagement with Principal Contractors, subcontractors and other supply chain members (6.4)
- Use ESI to plan and agree integrated timescales and to manage changes (6.5)
- Use forms of contract that provide integrated ESI systems and controls (6.6).



Key points – Section 7: How can collaboration improve commitments and involve residents?

- Ensure that the roles and relationships agreed between project team members are demonstrably clear, collaborative and integrated (7.1)
- Establish fair payment terms and cost models that eliminate late payment and support profitability (7.2)
- Use transparent decision-making systems (7.3)
- Use joint risk management by which appropriate team members agree the actions for dealing with each risk while accepting reasonable accountability (7.4)
- Implement a consultation system to ensure that the views of resident representatives are notified, discussed and taken into account (7.5)
- Make clear the contractual relationships and processes that support a collaborative culture (7.6).

Key points – Section 8: How can a digital golden thread integrate design, construction and operation?

- Recognise the importance of sharing accurate and complete project information (8.1)
- Use digital information management tools for the creation, sharing, storage and use of project information (8.2)
- Consider how digital information can improve whole life asset management (8.3)
- Use building information modelling ('BIM') to improve ESI processes (8.4)
- Use BIM to improve collaborative procurement relationships and activities (8.5)
- Consider how BIM contributions can be integrated using collaborative contracts (8.6).

Key points – Section 9: What systems sustain and enhance a collaborative culture?

- Establish collaborative team leadership, management and quality control (9.1)
- Agree a suitable system for developing accurate cost information and prices (9.2)

- Consider and agree suitable incentives that will enhance relevant commitments (9.3)
- Consider the benefits of systems for early warning and collaborative dispute resolution (9.4)
- Consider the potential for project insurances to encourage collaborative behaviour (9.5).

Key points – Section 10: How can strategic collaboration embed improved safety?

- Consider the potential for long-term collaborative contracting to embed improved safety and quality and other economic, social and environmental value (10.1)
- Consider the potential of a '*framework alliance*', including enhanced outputs from Supply Chain Collaboration (10.2)
- Consider the potential of a '*term alliance*' governing whole life asset management (10.3)
- Identify where modern methods of construction ('MMC') can improve safety and offer other benefits (10.4)
- Consider systems governing strategic performance measurement and incentives (10.5).

Key points – Section 11: What improved economic, social and environmental value can collaborative procurement achieve?

- Assess and agree how collaborative procurement systems demonstrate improved value for the Client (11.1)
- Assess and agree how collaborative procurement systems demonstrate improved value for Principal Designers, Principal Contractors and all other consultants, contractors, sub-contractors and other supply chain members (11.2)
- Assess proposals for improved cost certainty and cost savings where these do not compromise safety or quality (11.3)
- Assess the benefits of proposals for other improved economic value such as improved performance and extended warranties where these do not compromise safety or quality (11.4)
- Assess the benefits of proposals for improved social value where these do not compromise safety or quality (11.5)

- Assess the benefits of proposals for improved environmental value where these do not compromise safety or quality (11.6).

Key points – Section 12: What are the benefits of collaborative techniques and lessons from other industries?

- Agree processes for developing trust and raising issues through early identification and collective resolution of problems so as to confront issues without being confrontational (12.1)
- Apply systems for consensus-building and decision-making that encourage team members to air views and suggestions openly (12.2)
- Agree how team members hold each other to account in terms of behaviours or performance without jeopardising collaborative working relationships (12.3)
- Consider the benefits of independent advice and team coaching (12.4)
- Consider techniques that improve collective performance in other industries (12.5).



Collaborative Procurement Guidance: Key Points

