



# **EDUCATION FUNDING AGENCY PROCUREMENT ISSUES**

March 2015

## Contents

Introduction.....	3
Background .....	3
The EFA National Contractors Framework .....	4
Key issue 1 .....	5
The EFA Regional Contractors Framework.....	5
The Procurement.....	6
Selection Stage.....	6
Key issue 2 – did not adhere to PPN 02/13 .....	6
Key issue 3 – may contradict Directive 2014/24/EU .....	6
The initial ITT shortlist (the result from the PQQ) .....	7
The award stage.....	9
Awards.....	9
Key Issue 4 –adherence to Government Construction Strategy.....	11
Other issues .....	11
Recommendations .....	12

## Introduction

As *Making Government business more accessible to SMEs: two years on* highlighted, SMEs are making a valuable contribution to the Public Sector Supply chain, helping to reduce costs and increase innovation.

However, SMEs are still often being discriminated against when attempting to participate in the Education Funding Agency's Capital School Building programme; Perplexingly, the issue seems to be due either to faulty procurement practices or to the procurement team not fully adhering to Cabinet Office Procurement Policy Notices and wider regulations.

This brief report has been written to highlight how Regional Contractors Framework procurement has failed and how the situation moving forward could be improved to increase accessibility of contracts to the SME community.

The report has been co-authored by:

**Roger Newman,** *Senior Partner DeNové LLP* [www.denove.com](http://www.denove.com)

**Paul Bogle,** *Head of Policy and Research, National Federation of Builders Ltd* [www.builders.org.uk](http://www.builders.org.uk)

**Walter Menteth,** *Director, Project Compass CIC* [www.projectcompass.co.uk](http://www.projectcompass.co.uk)

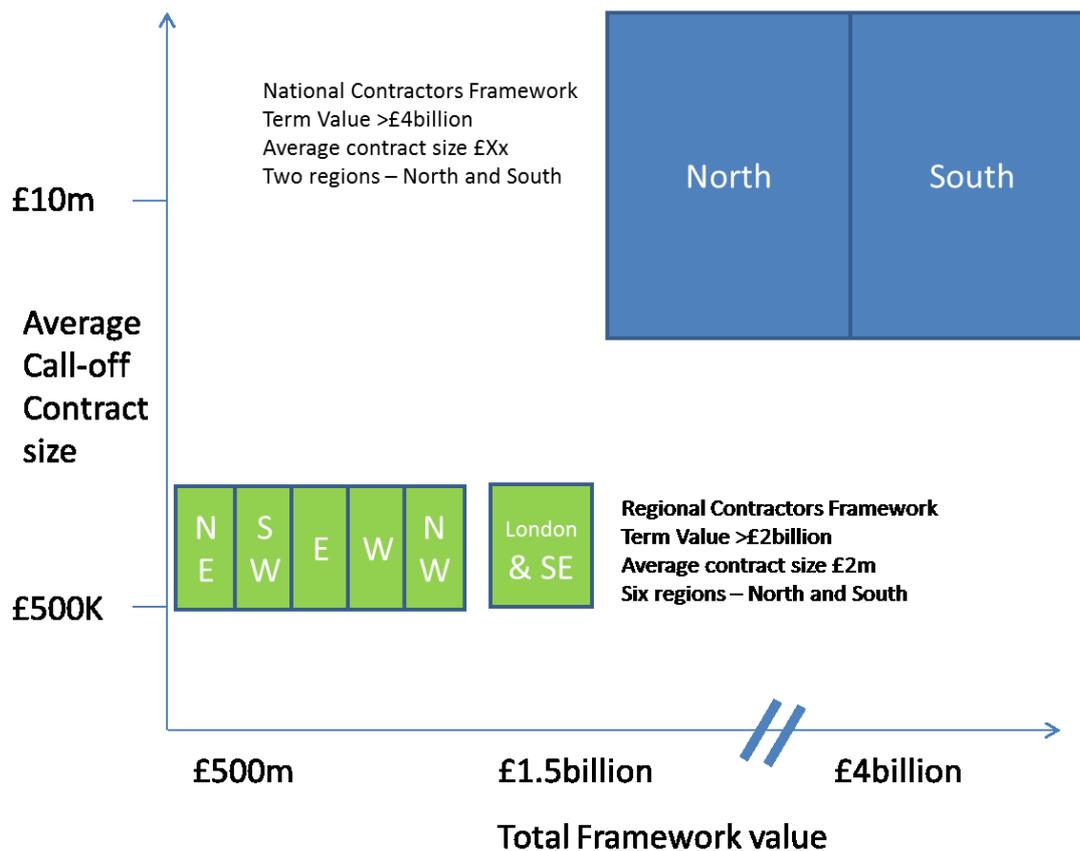
## Background

The EFA runs two different Frameworks through which it procures construction services for schools.

The larger of these two Frameworks is called the EFA Contractors Framework, the smaller is the Regional Contractors framework.

It is the second of these two frameworks that is the subject of this report since it has so evidently failed to deliver against its defined procurement goals.

Please note that to avoid the obvious confusion between the two frameworks; the EFA Contractors Framework will here thereafter be called 'The National Contractors Framework'.



**Figure 1 - the two Contractors Frameworks**

## The EFA National Contractors Framework

Whilst the National Contractors framework is not the subject of this report, it is important to briefly introduce it since it provides background to the establishment of the Regional Contractors Framework.

The Education Funding Agency (EFA) established the National contractors framework in November 2013. This framework was to be used to design and build larger schools and was put in place for either either single or grouped schools projects. The likely expenditure via the framework was £4 billion in capital cost. The framework is due to expire in November 2017.

The companies appointed to the framework are:

Sector north	Sector south
Balfour Beatty Group Plc	Balfour Beatty Group Plc
BAM Construction Ltd	BAM Construction Ltd
Bowmer & Kirkland Ltd	Bowmer & Kirkland Ltd
Carillion Construction Ltd	Carillion Construction Ltd

Galliford Try Construction Ltd	Galliford Try Construction Ltd
Kier	Kier
Sir Robert McAlpine	Sir Robert McAlpine
Wates Construction Ltd	Wates Construction Ltd
Thomas Vale Construction Plc	Wilmot Dixon

**Table 1. The National Framework Suppliers**

### Key issue 1

As can be seen from the list above, this framework failed on two key procurement policies in that it neither consolidates demand enough to achieve the Sir Philip Green report goals of consolidating supply to 'buy as the Crown'. Equally, it totally neglected the SME agenda (although the framework does at least encourage the use of SMEs within the supply chain).

## The EFA Regional Contractors Framework

After lobbying by National Federation of Builders and regional construction companies such as Tolent and Surgo, the EFA agreed to establish a series of regional frameworks to access "the best [contractors] to do smaller jobs".

One of the key stated goals was to enable SMEs and regional construction companies to successfully bid for a role on the framework. Achieving this goal would have gone a long way to ensuring that the EFA's procurement was aligned with the policy or legal requirements of:

- The 2012 Social Value Act
- Section 1 (18,19 & 20) of the National Planning Policy Framework
- The HMG Procurement Pledge

The Regional Framework is a 4 year framework to be used by the EFA, academies, local authorities, dioceses and educational establishments. It is aimed at individual school projects, both new build and refurbishment, with capacity to deliver elemental works.<sup>1</sup>

Contract call-off values are expected to start from as little as £200,000<sup>2</sup> ie well within the capabilities of most construction SMEs.

<sup>1</sup> [www.gov.uk/government/collections/education-funding-agency-efa-regional-framework](http://www.gov.uk/government/collections/education-funding-agency-efa-regional-framework)

<sup>2</sup> <http://solutions-exchange.cabinetoffice.gov.uk/challenge/how-can-education-funding-agency-efa-deliver-regional-framework-which-optimises-local>

## The Procurement

The EFA ran a Pre-Market engagement programme and over 120 bidders attended the market sounding day, clearly demonstrating the industry interest in the proposed framework.

### Selection Stage

From our research we understand that the Selection stage of the procurement failed to adhere to best practise and/or Procurement Policy Notices by setting unnecessarily high Turnover thresholds:

#### Key issue 2 – did not adhere to PPN 02/13

Contractors bidding for the new framework had to have a minimum financial turnover threshold of £25m in each region they bid for.<sup>3</sup>

This figure was low enough that all of the UK's top twenty companies could bid for the work. At the same time, it was unnecessarily high for a framework where the average call-off was expected to be £2m.

As a result, numerous SMEs were not able to bid for places on the framework and/or were not able to bid to regions contiguous to their key regional markets.

Whilst this approach was legal in that it adhered to the Public Procurement Directive, it directly contradicts Procurement Policy Notice 02/13 which clearly states that: ***a potential provider should not be deselected on the basis of turnover size alone.***

#### Key issue 3 – may contradict Directive 2014/24/EU

SME's who attempted to overcome this hurdle by establishing consortia were hampered by the fact that the procurement team set an additional financial threshold which was that consortium members must have had an annual turnover in excess of £10m.<sup>4</sup>

As a company we have not come across this approach before and it is unclear if specifying the participants of a consortium in this way is allowed under the Public Procurement Directive.

As a result of these unnecessary thresholds, only five regional companies made it as far as the ITT stage and of these only three were SMEs.

Seen another way, the table below shows that there were 84 bidders/framework lots shortlisted and only 6 places were occupied by SME/regional construction companies i.e. 7% of the total (even though 99.7% of all building companies are SMEs).

<sup>3</sup> [www.cnplus.co.uk/news/sectors/education/efa-launches-5bn-regional-framework-for-smaller-school-refurb-jobs/8654035.article#.VQFL\\_vysV1Y](http://www.cnplus.co.uk/news/sectors/education/efa-launches-5bn-regional-framework-for-smaller-school-refurb-jobs/8654035.article#.VQFL_vysV1Y)

<sup>4</sup>

[www.architecture.com/RIBA/Contactus/NewsAndPress/Membernews/PracticeNews/2014/July2014/10July2014/EFAregionalframeworkstilldominatedbymajors.aspx](http://www.architecture.com/RIBA/Contactus/NewsAndPress/Membernews/PracticeNews/2014/July2014/10July2014/EFAregionalframeworkstilldominatedbymajors.aspx)

## The initial ITT shortlist (the result from the PQQ)

<b>NORTH-EAST (£500M)</b>	<b>EAST OF ENGLAND (£750M)</b>	<b>LONDON &amp; SOUTH-EAST (£1.5BN)</b>	<b>SOUTH-WEST (£500M)</b>	<b>WEST MIDLANDS (£875M)</b>	<b>NORTH-WEST (£875M)</b>
Bam Construction	Bam Construction	Bam Construction	Bam Construction	Bam Construction	Bam Construction
Wates Construction	Wates Construction	Wates Construction	Wates Construction	Wates Construction	Wates Construction
Kier	Kier	Kier	Kier	Kier	Kier
Willmott Dixon Construction	Willmott Dixon Construction	Willmott Dixon Construction	Willmott Dixon Construction	Willmott Dixon Construction	Willmott Dixon Construction
Bowmer & Kirkland	Bowmer & Kirkland	Bowmer & Kirkland	Midas Group	Bowmer & Kirkland	Bowmer & Kirkland
ISG Construction	ISG Construction	Geoffrey Osborne	ISG Construction	ISG Construction	ISG Construction
Interserve Construction	Lindum Group	Interserve Construction	Interserve Construction	Interserve Construction	Interserve Construction
Miller Construction	Miller Construction	Miller Construction		Miller Construction	John Turner Construction Group
Morgan Sindall	Morgan Sindall	Morgan Sindall	Morgan Sindall	E G Carter & Co	Eric Wright Construction
Shepherd Construction	Shepherd Construction	Shepherd Construction	Skanska	Skanska	Shepherd Construction
Aura North / Sir Robert McAlpine	Clegg Construction	Galliford Try Construction	Galliford Try Construction	Thomas Vale Construction	Galliford Try Construction
Clugston Construction	Clugston Construction	Rydon Construction	Rydon Construction	Seddon Construction	Cruden Group
Robertson Group	R G Carter Construction	Bouygues UK	Bouygues UK	Stepnell	Keepmoat Regeneration
SET Construction Projects	G F Tomlinson Building	Lakehouse Contracts		Speller Metcalfe	SET Construction Projects
		Built Offsite			Conlon Construction
		T&B (Contractors)			
14	14	16	12	14	15

**Table 2. The ITT short-list<sup>5</sup>**

<sup>5</sup> [www.constructionenquirer.com/2014/04/22/firms-bidding-for-5bn-school-revamp-framework/](http://www.constructionenquirer.com/2014/04/22/firms-bidding-for-5bn-school-revamp-framework/)

Note that companies highlighted in orange are also on the National Framework whilst companies highlighted in green are SMEs or regional suppliers.

- No SME or Regional suppliers were shortlisted to the ITT stage of the regional framework in either the East of England or South West regions.
- 42% of the firms selected forward in the South West region comprised candidate firms appointed onto the National framework, also being shortlisted to the ITT stage of this regional framework.
- 37.5% of the firms selected forward in London & the South East comprised candidate firms appointed onto the National framework, also being shortlisted to the ITT stage of this regional framework.

At ITT stage there were 36 candidate firms for 85 lots. (1 firm per every 2.4 lots)

However:-

- 46% (39) of all potential lots were shortlisted to 7 (19%) firms selected for 5 or more lots.
- 60% (51) of all potential lots were shortlisted to 10 (12%) firms selected for 4 or more lots.
- 25% (21) of all potential lots were shortlisted to 21 (60%) firms selected for a single lot.
- 8% (7) of all potential lots were shortlisted to 6 (17%) firms who are SME regional suppliers

At this stage it should have been apparent to the procurement authority that the process was skewed.

## The award stage

The EFA's procurement documents do not appear to be published on Contracts Finder and so it is not exactly clear what went wrong at the ITT stage of the framework procurement. However the result was that the same industry majors that dominated the National Framework, also went on to dominate the Regional framework

## Awards

<b>NORTH-EAST (£500M)</b>	<b>EAST OF ENGLAND (£750M)</b>	<b>LONDON &amp; SOUTH-EAST (£1.5BN)</b>	<b>SOUTH-WEST (£500M)</b>	<b>WEST MIDLANDS (£875M)</b>	<b>NORTH-WEST (£875M)</b>
Bam Construction	Bam Construction	Bam Construction	Bam Construction	Bam Construction	Bam Construction
Kier	Kier	Kier	Kier	Kier	Kier
Bowmer & Kirkland	Bowmer & Kirkland	Bowmer & Kirkland	Bouygues UK	Bowmer & Kirkland	Bowmer & Kirkland
Willmott Dixon Construction	Willmott Dixon Construction	Galliford Try Construction	Galliford Try Construction	Thomas Vale Construction	Galliford Try Construction
ISG Construction	ISG Construction	Bouygues UK	ISG Construction	ISG Construction	Eric Wright Construction
Shepherd Construction	Shepherd Construction	Shepherd Construction	Skanska	Skanska	Shepherd Construction
Interserve Construction	G F Tomlinson Building	Interserve Construction	Interserve Construction	Seddon Construction	Conlon Construction
		Rydon Construction			
7	7	8	7	7	7

**Table 3. The successful bidders<sup>6</sup>**

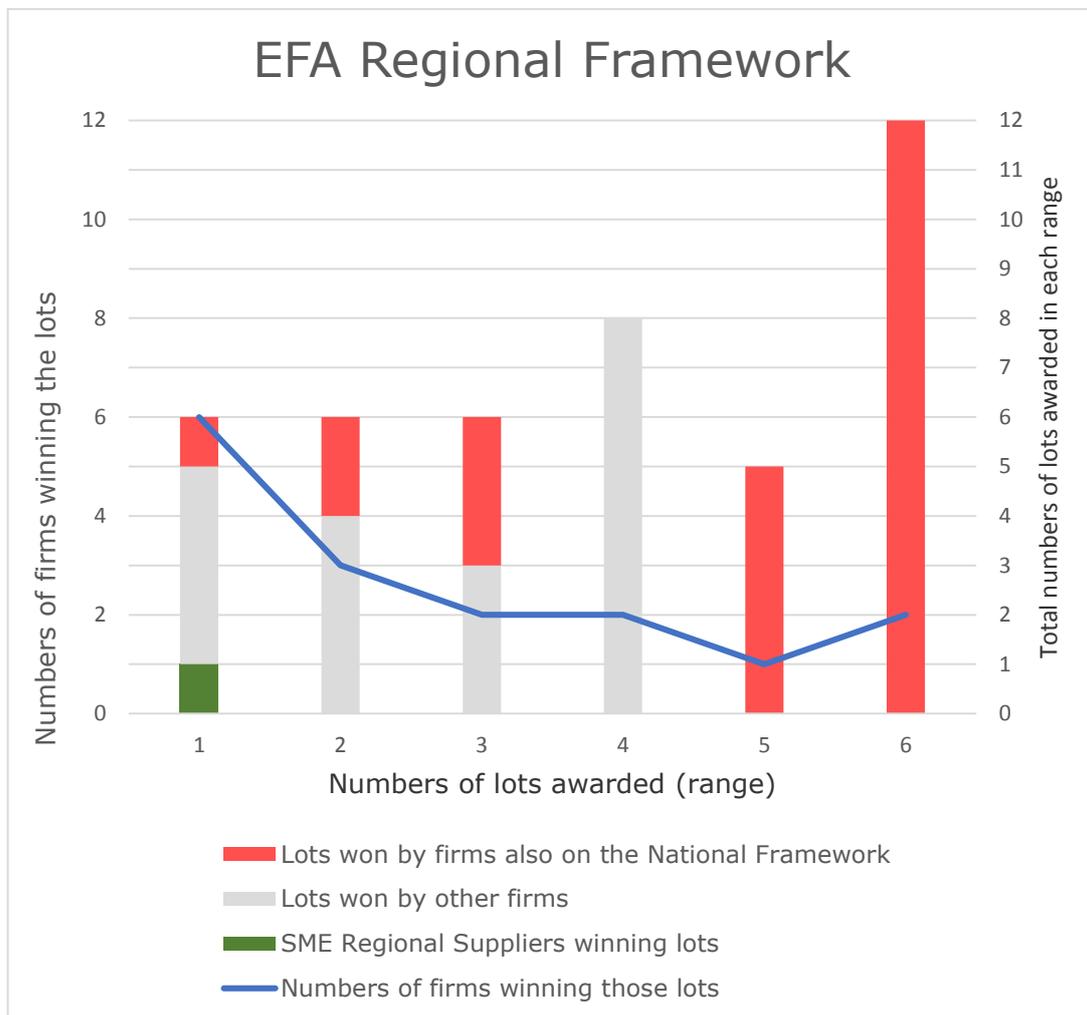
Note that companies highlighted in pink are also on the National Framework whilst companies highlighted in Green are SMEs or regional suppliers.

- No SME or Regional suppliers were awarded onto the regional frameworks for any region other than the North West.
- 57% of the firms selected forward in 4 out of the 6 regions (North East, East of England, West Midlands and North West) were firms also appointed onto the National framework.
- In London and the South East it was 50% and in the South west 43%.

<sup>6</sup> [www.gov.uk/government/collections/education-funding-agency-efa-regional-framework](http://www.gov.uk/government/collections/education-funding-agency-efa-regional-framework)

At award stage 16 firms were appointed onto 43 lots, (1 per every 2.7 lots):-

- 53.5% (23) of all the lots were awarded to 6 (37.5%) firms also on the national framework.
- 72% (31) of all the lots were awarded to 6 (37.5%) firms for 4 or more lots.
- Half (3) of those awarded 4 or more lots also won awards onto both the North and South sector National Framework.
- 14% (6) of all the lots were shortlisted to 6 (37.5%) firms for a single lot.
- 2.5% (1) of all the lots were awarded to 1 (6%) firm who is an SME regional suppliers.



**Figure 2. Summary of awards**

As quoted in Building Magazine, Brian Berry, chief executive of the Federation of Master Builders (FMB), said: ***"Questions need to be asked about the design of the framework and why so few smaller contractors were successful."***<sup>7</sup>

<sup>7</sup> [www.building.co.uk/councils-to-procure-work-on-%C2%A32bn-priority-schools-phase/5069665.article](http://www.building.co.uk/councils-to-procure-work-on-%C2%A32bn-priority-schools-phase/5069665.article)

## Key Issue 4 –adherence to Government Construction Strategy

The procurement certainly failed to adhere to recommendation 1.5 of the Government Construction Strategy, Final Report to Government by the Procurement/Lean Client Task Group which specifically states: *'Ensure (SME) engagement in national, regional and local frameworks'*<sup>8</sup>

## Other issues

In addition to the issues raised above, certain key questions should also be asked of the EFA

- 1) Was the framework assessed by the Government Construction Board as per recommendation 9 of the Final Report to Government by the Procurement/Lean Client Task Group?<sup>9</sup>
- 2) Was the Crown Representative for SMEs' involved in the market sounding?
- 3) Was the framework subjected to oversight and challenge by HM Treasury and by the Cabinet Office through the Major Projects Authority and the adoption of the Integrated Assurance and Starting Gate Review processes as recommended in section 2.1.4 of the Government Construction Strategy<sup>10</sup>

---

8

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61157/Procurement-and-Lean-Client-Group-Final-Report-v2.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61157/Procurement-and-Lean-Client-Group-Final-Report-v2.pdf)

9

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61157/Procurement-and-Lean-Client-Group-Final-Report-v2.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61157/Procurement-and-Lean-Client-Group-Final-Report-v2.pdf)

10

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61152/Government-Construction-Strategy\\_0.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61152/Government-Construction-Strategy_0.pdf)

## Recommendations

The EFA should be given credit for attempting to establish a framework that would use SMEs to create innovation and efficiencies for the EFA's capital programme. However, the framework has failed and a solution needs to be found.

Furthermore, the large and powerful framework operators can engage with the market and offer assurances that policy will be adhered to, but there are no sanctions if mandatory guidance is not followed

We would propose that the EFA meet with Stakeholders in the programme and the National Federation of Builders to agree the best way forward. Options considered should include:

- Working with GDS to create a dynamic framework hosted on the Government Digital Marketplace (similar to the Government G-Cloud) that would enable all builders to participate in the EFA capital programme;<sup>11</sup>
- To comply with the legislative requirements direction be given by Cabinet Office and the Education Funding Agency as to how contractors maybe called off the framework, so that competition would be opened up to only those not having a place on the national framework.
- Education Funding Agency should be encouraged to procure via local authorities for the second phase of the Priority Schools Building Programme (PSBP2). This should be specified for all works below £5 million pounds.<sup>12</sup>
- Cancel the framework and start again, with costs for original bidders being borne by the procuring agency.

DeNové LLP co. reg. No.OC367711  
Project Compass CIC co. reg. No.8529139  
National Federation of Builders Ltd. co. reg. No.4213125

Published by and Copyright ©  
DeNové LLP  
Project Compass CIC  
National Federation of Builders Ltd

March 2015

---

<sup>11</sup> [www.digitalmarketplace.service.gov.uk/](http://www.digitalmarketplace.service.gov.uk/)

<sup>12</sup> [www.building.co.uk/councils-to-procure-work-on-%C2%A32bn-priority-schools-phase/5069665.article](http://www.building.co.uk/councils-to-procure-work-on-%C2%A32bn-priority-schools-phase/5069665.article)