

# FRAMEWORK AGREEMENTS IN A POST-RECESSION ECONOMY

Steve Donohoe<sup>1</sup> and Jeremy Keith Coggins<sup>2</sup>

<sup>1</sup> School of Architecture, Design & Environment, University of Plymouth, Drake Circus, Plymouth, PL4 8AA, UK

<sup>2</sup> International University of South Australia, GPO Box 2471, Adelaide, South Australia 5001, Australia

Framework Agreements (FAs) in the UK Construction Industry emerged following influential reports into construction following influential reports into construction by Sir Michael Latham and Sir John Egan respectively. Throughout the 1990's and into the new millennium FAs were increasingly used as a procurement strategy in the construction industry due to their so-called "win-win" ethos for construction clients and contractors. This culminated in the Joint Contracts Tribunal (JCT) publishing "binding and non-binding" forms of FAs in 2005. Following a recent global worldwide economic recession it is pertinent to ask the question whether FAs represent an idea whose time has come and gone or if FAs have survived as a procurement strategy and if so, in what way. This study looks at the effect of a major economic recession on the use of FAs and questions whether or not FAs remain a viable sustainable procurement option? A quantitative survey of consultants and contractors was carried out to establish opinions of interested stakeholders. The findings indicate that whilst FAs are still used by significant stakeholders many have abandoned FAs in favour of traditional price based competition. Key factors in the UK Government's vision for the construction industry are strong integrated supply chains and productive long term relationships. The renegotiation or abandonment of FAs since the recession would suggest that the long term vision on the government is in some jeopardy.

Keywords: construction contracts, law, procurement, Framework Agreements, recession

## INTRODUCTION

Glover (2008) explained that a Framework Agreement (FA) is an agreement which is reached between two parties to cover a long term collaborative agreement. The FA in the construction context is used where a client has a long term programme of work and wishes to set up a process to facilitate individual construction projects or supply of materials during a specific period or term. Glover (ibid) cited an example of the British Airports Authority (BAA) who wished to procure £9.5 billion of construction work over a ten year period (2006 -2016) and set up FAs with a number of construction contractors. Thus FAs are typically used where construction clients have a portfolio of works to be undertaken and can be particularly useful to clients who desire to carry out a single tendering process and thereby eliminate the need for serial multiple tendering. The obvious benefit to the client is the reduction in tendering costs. Reddy and Williams (2014) discussed obtaining economies of scale through the

---

<sup>1</sup> sdonohoe@plymouth.ac.uk

use of FAs stating where a contractor or consultant is likely to obtain a steady stream of work over a period of years this is likely to be reflected in the price charged.

It is argued that the use of the FA may enable a contractor or consultant to work more effectively over time as they become more experienced and familiar with a particular type of work (Greenhalgh and Squires, 2011). FAs should also lead to better communication as parties become more accustomed with how the other party works. As procurement strategy in the construction industry better communication ought to lead to less adversarial relationships leaving the parties to concentrate on the project. Therefore the use of FAs is perceived to offer benefits to clients, contractors and consultants alike. Several researchers have detected a shift in emphasis from cost to value in the context of procurement in the last twenty years (Holt, *et al.*, 1995; Wong *et al.*, 2000, Walraven and de Vries, 2009).

Before the economic recession of the 1990's single stage competitive tendering dominated the UK construction industry, featuring short-term, adversarial relationships between client and contractor. Flanagan *et al.*, (2007, p996) acknowledged that lowest price bidding was "problematic" and cited the guidance of the Construction Industry Research Information Association (CIRIA, 1998) as a practical means to help. The understanding of deficiencies in lowest price tendering led to calls for alternative ways of doing business in the construction industry. Two influential reports (Constructing the Team 1994 ('The Latham Report') and Construction Task Force 1998 ('The Egan Report')) recommended the use of partnering arrangements including FAs to encourage long term collaboration between clients and contractors as opposed to short term adversarial arrangements. It was posited that the encouragement of long term arrangements would produce greater quality and maximise value to clients. Tennant and Fernie (2010, p685) observed "increasing examples of collaborative working practices" which they stated to be "...fashioned from the persuasive appeal of government discourse; partnering, strategic alliances and Framework Agreements ... [and] are now familiar expressions within construction vocabulary". In the fast changing environment in which organisations operate today teams and team-based philosophy are becoming increasingly commonplace (Sheard and Kakabadse, 2002). Tennant and Fernie (op cit.) consider FAs as part of the lexicon of modern day construction which shows that a relatively unknown concept has become widely accepted and understood in a short period of time.

### **Characteristics of Framework Agreements**

Bennett and Peace (2006) argued that FAs represent an extension of the partnering concept advocated by the Latham and Egan. The FA works on the basis that contractors are appointed to a framework and then a construction client considers the members of the framework as preferred bidders. Individual projects are "called off" the framework and carried out by the selected contractor in accordance with terms and conditions which are pre-arranged.

FAs generally last for a maximum of four years although it is possible for any length of time to be used. Where a construction client is a public sector organisation or entity the FA maybe subject to EU Procurement rules which restrict the maximum length of time to four years unless there are "justifiable exceptional circumstances".

Appointments to a framework generally involves an intensive and rigorous pre-qualification procedure aimed at identifying contractors who are "fit to proceed" and capable of delivering a quality output throughout the duration of the project. Those

contractors who are successful will be invited to submit a response to specimen project documents in competition with each other. Those deemed successful will be approached to enter into a FA where price and quality are negotiated and agreed in advance with respect to future projects. Clients enter into FAs for numerous reasons. Some wish to secure capacity for future projects whilst others seek to transform the way they procure construction services.

Critics of FAs have highlighted the large upfront costs which are incurred due to the nature of the intensive pre-qualification process and the fact that in some cases inclusion in a framework does not necessarily lead to orders for construction work (Broome, 2002; Doloi, 2009). Constructing Excellence have warned that clients who see frameworking as just a convenient way of shortcutting the procurement process will not reap any of the continuous improvement benefits (Construction Excellence, 2013).

### **Legal Issues and Framework Agreements**

There have been law suits generated whereby unsuccessful contractors have sought compensation for lost opportunity. In *Harmon CFEM Facades v Corporate Officer of the House of Commons* (1999) an unsuccessful contractor was awarded damages for lost opportunity. Banks and Bowsher (2011) queried the notion of whether damages were a complete remedy and suggested that the courts possess powers to set aside FAs due to "faulty procedures". Banks and Bowsher (*ibid.*) cited the Northern Ireland Court of Appeal cases of *Henry Brothers (Magherfelt) Ltd v Department of Education for Northern Ireland* (2011) and *McLaughlin and Harvey v Department of Finance and Personnel* (2011) respectively where FAs have been set aside by the courts. As these cases occurred in Northern Ireland they are not necessarily binding in England and Wales although they are highly persuasive.

At the time of writing the implications of the Northern Ireland Court of Appeal decisions means that procurement law, especially those matters concerning FAs in the public sector, is not completely settled. However, one must be mindful of Akenhead J's comments in *European Dynamics SA v HM Treasury* (2009) who said "One has to bear in mind that if any public procurement could be stopped by injunction because there was merely a serious issue to be tried, without more, the public authorities would be invariably targeted by the unsuccessful tenderers and public procurement would or could grind to a halt".

In summary it would appear that whilst the courts are somewhat reluctant to set aside FAs, they can and will do so in certain circumstances.

Despite the potential legal difficulties referred to previously it would appear that FAs have gained popularity during the last 20 years for both private and public sector clients. Flanagan *et al.*, (2007); and Kadefors *et al.*, (2007) highlighted the deficiencies of awarding work based on the lowest tender with the latter re-stating the connection between lowest tenders selection and the incidence of arguments and disputes involving variations. Kadefors *et al.*, (*ibid.*) considered that partnering arrangements (including FAs) encapsulated a different approach from traditional methods of procuring construction work. Qualities such as communication, honesty and commitment were felt to be more important rather than lowest price. Watt, *et al.*, (2010) found that past project performance and technical expertise to be the most important factors in contractor selection and they reported that tender price had been overtaken in importance by factors which were directly linked to project value.

These studies suggested that there has been a marked change in the way contract evaluation is carried out in the construction industry during the last twenty years. Though it would appear that cost is still an important consideration, some researchers emphasised a move away from cost being the dominant feature in procurement to a more holistic approach where clients make decisions based on value (Ohno and Harada, 2006, Scott et al 2006, Waara and Bröchner 2006, Abdelrahman *et al.*, 2008, Elyamany and Abdelrahman 2010, Yu and Wang 2012). However recent work by Loosemore and Richard (2015) stressed that many construction clients lack "sophistication and insight" and are locked into a lowest price mentality when procuring construction works. Loosemore and Richard (*ibid*) maintain that in the reality of the modern day construction the potential for investment in innovation is restricted to the relatively few large companies who are lucky enough to deal with sophisticated clients who procure buildings on a frequent basis. The vast majority of the industry are left to work with clients who procure buildings very rarely, who want the lowest possible price for their investment and who do not see them as a key long-term asset in the success of their core business. This view supports a contention that only a few large enlightened organisations have moved past the lowest price mentality and that the majority of those involved in the construction industry remain steadfastly adhered to traditional ideas and practices.

### **Economic conditions and Framework Agreements**

Prior to 2009, the UK had experienced five major recessions in the post war period. The usual economic definition of a recession is two or more quarters of successive negative growth in Gross Domestic Product (GDP) In January 2009 the government confirmed that the UK economy had entered recession as GDP had fallen consecutively during the 3rd and 4th quarter of 2008 (Office of National Statistics, 2009). Rhodes (2015) reported that in 2014 construction output was £103 billion representing 6.5% of the UK's Gross Domestic Product (GDP). It was stated that construction output in 2015 was still below the first quarter of 2007 by 2% (Rhodes, 2015).

It has been argued that FAs once established ought not to be renegotiated as a renegotiation represents a move away from the key principles of partnering (Bennett and Peace, 2006) Since the publication of Bennett and Peace's influential work there has been a significant downturn in the global economy and turbulence in world financial markets. This led to a number of construction clients both private and public sector abandoning FAs in order to secure savings on construction projects.

In 2013 the UK's Local Government Association published guidelines to its members (UK Local Authorities) entitled "Making savings from contract management" in which it heavily promoted the idea of renegotiation to secure lower prices. The central argument is that in times of austerity contractors may be more willing to share the pain of reduced funding (LGA, 2013, p5). The LGA also recommended the use of review or removal clauses in procurement contracts as without such clauses contractors have less incentive to renegotiate (*ibid.*). Numerous case studies were presented by the LGA featuring significant savings achieved through renegotiation.

A research question to be asked is whether FAs have any role in modern construction procurement since the recession. This question is relevant to all practitioners and academics involved in construction management as it is important in that it may influence how construction is procured in the foreseeable future.

## METHODOLOGY

According to Seymour *et al.*, (1997) research into the subject of Construction Management ought not to be constrained to any particular approach. In this study a mainly quantitative approach based on a survey questionnaire was used. However, according to Gomm (2008) the idea of doing research is "to provide readers with vicarious experience of other people's lives" so qualitative semi-structured and open questions were added to give what Patton (2002) calls a richness and vividness to the subject matter. It is acknowledged that the benefits of a mainly quantitative approach relate to scientific respectability and the confidence attached to this, however this approach relies on hard data and therefore lacks the richness and depth of some qualitative approaches (Denscombe, 2003).

Denscombe (2003) considers that the survey questionnaire to be suitable for data collection where a breadth of study is required and a current state of affairs needs to be established. A total of 300 questionnaires were sent out by email to participants. As Flanagan *et al.*, (2007, p992) observed "the term 'construction industry' is very complex". For the purposes of this study the participants were chosen from Building Magazine's top 150 contractors and 150 consultants respectively. Before sending out the electronic questionnaires a brief pilot survey was sent out to one firm of consultants and one contracting firm. As a result of the pilot minor changes were made to the questions. Neither firm involved in the pilot took part in the full survey.

The questions probed the nature of construction activity, whether the respective businesses operated nationally or regionally and whether the businesses operated in the private sector or public sector. Further questions were asked about experiences of FAs and participants were invited to share their experiences both positive and negative. Many participants indicated that their FAs had been renegotiated and the authors felt that this represented an interesting area for further study. Finally the participants were asked whether they thought the recession had affected FAs and whether they felt that FAs would play a role in construction procurement in the future.

The importance of this work should be seen in light of the UK Government's vision for the future outlined in Construction 2025 and other policies. It is a question that attempts to separate the reality from the rhetoric.

## DISCUSSION

A total of 99 questionnaires were returned (n=300) A response rate of 33%. Of these 58 were from consultants and 41 from contractors. Of the 58 consultants 25 indicated they that operated nationally, 31 operated regionally and 2 did not answer the question. Of the 41 contractors 14 said they operated nationally and 27 indicated that they operated regionally. Of the consultants who said that they were regionally based (n=31) the largest group (14) were based in the South East, 9 in the Midlands, 6 in the North West, 2 in the North East and surprisingly none were recorded in the South West, Scotland, Wales and other places respectively. Of the 27 "regional" contractors 10 were based in the South East, 7 in the Midlands, 6 in the North West , 2 in Scotland, 1 in South West, 1 other (stated as "Northern Ireland") and 0 for Wales. These returns show a good mixture of nationally and regionally based participants taking part in the survey.

One of the questions asked for participants' main sector of business. Most consultants put when asked to identify answers such as "General projects" or "All" Contractors who answered this question were more specific and the results are shown in table 1.

Participants were asked whether they had been involved in FAs during the last 5 years. The answer to this question revealed that 22 (out of 58) consultants said "yes" and 13 (out of 41) contractors indicated that they had been involved in FAs. This represents percentages of 38% (consultants) and 31% (contractors) respectively. Of the 22 consultants 8 indicated that they operated in the Private Sector; 9 in the Public Sector and 5 indicated both. For the Contractors the corresponding figures were 4, 6 and 1 respectively. This was pleasing because it confirmed that there was a good range of participants who were involved with FAs.

*Table 1: Contractors Main Activity*

Type of business	
"General" or "All"	9
Commercial	12
Retail	6
House building	9
Refurbishment	1
Infrastructure	1
Heavy Engineering	1
Did not indicate	2
Total	41

Further questions asked participants to consider greatest strengths and weaknesses of FAs respectively. The majority of consultants and contractors both ranked "long term collaborative agreements" as the greatest strengths of FAs whilst there was a difference between consultants and contractors where weaknesses were considered. Most consultants considered "the reduced competition due to exclusion of otherwise competent contractors" to be the biggest weakness whilst contractors felt that the resources and time consumed in bidding for inclusion with no actual work guaranteed" to be the greatest weakness.

The next question dealt with whether or not renegotiation of FAs had taken place in the last five years. Interestingly approximately one third of consultants and contracts said "yes" which means that there has been no renegotiation in the majority of FAs. This was an interesting point because it seems to run contrary to what has been reported in the technical press.

Further questions probed whether or not tender selection criterion had changed in the last five years. 68% (40 out of 58) of consultants said "yes". 71 % of contractors (29 out of 41) agreed with this. A follow up question was used to explore reasons with the majority of participants giving the main reason as the desire of clients to achieve cost savings due to the economic conditions. This would confirm a view that the use of procurement methods is affected by economic conditions. This might be felt to be a truism but the interesting point is that not all of them are affected. The next question dealt with what should happen to FAs during economic recession contractors. The findings are presented in Table 2 below:

Table 2 Use of Framework Agreements in economic recession

	Adhere to	Re-negotiated	Abandoned	Other, please state
Consultants	11	6	3	3
Contractors	4	4	2	1*

(Note: 2 contractors did not answer this question)

Although the majority of consultants support the view that FAs ought to be adhered to in times of recession this standpoint appears to have less support from contractors. The reason might be that contractors who lower prices to secure work are locked in to long term disadvantageous FAs.

A related question sought to find how participants felt about how FAs might fare in the future i.e. whether their use might increase /remain the same or decrease in use. The majority of consultants (9 out of 22) felt that the use would remain the same but only slightly less (8 out of 22) felt that they would decrease in use. Only 22% (4 out of 22) felt that use of FA would increase. In the case of contractors 6 out of 13 felt that use would remain the same and 6 (out of 13) predicted a decrease in use. Only 1 though that the use of FAs would increase. Whilst the number of participants is small it gives an interesting insight into the likely future use of FAs.

A final question invited consultants and contractors to make comments. Most comments indicated that whilst they expected FAs to be used as a procurement method for the foreseeable future both consultants and contractors felt that enthusiasm for FAs had waned. Reasons varied but many contractors expressed the view that having spent a large amount of time and resources to enter the FA they were disillusioned that in many cases the procedure did not translate into extra orders. Consultants expressed the opinion that some clients has used the FAs not as they were originally intended but as a mechanism to drive down construction costs to levels that were unviable for contractors. Comments were made (by both contractors and consultants) that economic uncertainty would lead to more renegotiation and in some cases complete abandonment of FAs but that where strong measurable collaborative working had been carried out then FAs would continue. Many felt that the four year period under EU legislation to be too long and ought to be reduced to two years. Many consultants involved in public sector FA expressed views that uncertainties regarding procurement law needed to be resolved in order to restore confidence.

## CONCLUSIONS

Despite the widespread publicity and the publication of Latham, Egan and other reports, the use of FAs is not as commonplace as one might have otherwise assume. The results of the survey illustrate a deep difference between consultants and contractors. Many consultants see the use of FAs as an opportunity to save their clients money on projects whilst contractors are reluctant to be locked in to unviable long term arrangements. This position is not helped through the uncertainty of recent case law decisions. Solutions are possible but they have to involve realistic time scales for agreements to work and a move away from the dominance of low cost tendering and suicidal profit margins. In respect of FAs in the public sector clarification of legal rules would be beneficial to all construction industry stakeholders. The Government's key policy document which sets out the how it sees the future of the UK construction emphasises the need for the industry to be "underpinned by strong integrated supply chains and productive long term

relationships" (Construction 2025, p18). This implies that FAs are a key part of achieving the goals of Construction 2025 and yet this study, despite its small scale nature, suggests a dichotomy between the vision of the government and the willingness of the construction industry to participate fully in achieving the vision of Construction 2025.

## REFERENCES

- Abdelrahman, M, Zayed, T and Elyamany, A (2008) Best value model based on specific project characteristics. *Journal of Construction Engineering and Management*, **134**(3), 179-188.
- Bennett, J and Peace, S (2006) *Partnering In The Construction Industry*. Oxford: Butterworth-Heinemann.
- Broome, J (2002) *Procurement Routes for Partnering: A Practical Guide*. London: Thomas Telford Ltd.
- Bryman, A (2008) *Social Research Methods 3rd Edition*. Oxford: Oxford University Press.
- Cohen, H (2008) JCT framework agreement: Same again: Try the 2007 vintage. *Building*, (2008), Issue 1. Available at <http://www.building.co.uk/jct-framework-agreement-same-again?-try-the-2007-vintage/3103405.article>, [Accessed 10/1/2016].
- Construction 2025: *Industrial Strategy: Government And Industry In Partnership* (2013) UK Government, London: HMSO.
- Denscombe, M (2003) *The Good Research Guide 2nd Edition*. Maidenhead, UK: Open University Press.
- Doloi, H (2009) Analysis of pre-qualification criteria in contractor selection and their impacts on project success. *Construction Management and Economics*, **27**(12), 1245-1263.
- Egan, J [Sir] (1998) *Re-thinking Construction, Report of the Construction Industry Task Force*. London: HMSO.
- Elyamany, A and Abdelrahman, M (2010) Contractor performance evaluation for the best value of Superpave projects. *Journal of Construction Engineering and Management*, **136**(5), 606-614.
- Flanagan, R, Lu, W, Shen, L and Jewell, C A (2007) Competitiveness in construction: A critical review of research. *Construction Management and Economics*, **28**(3) 231-239.
- Gomm, R (2008) *Social Research Methodology: A Critical Introduction 2nd Edition*. Basingstoke, Hants: Palgrave MacMillan.
- Glover, J (2008) *Framework Agreements: Practice and pitfalls*. London: Fenwick Elliott.
- Greenhalgh B and Squires G (2001) *An Introduction to Building Procurement*, Spon Press Ltd, Oxon, UK
- Holt, G D, Olomolaiye, P O and Harris, F C (1995) A review of contractor selection practice in the UK construction industry. *Building and Environment*, **29**(2), 241-248.
- Kadefors, A, Bjorlingsson, E and Karlsson, A (2007) Procuring service innovations: Contractor selection for partnering projects. *International Journal of Project Management*, **25**(4), 375-385.
- Latham, M, [Sir] (1994) *Constructing the Team*. London: HMSO.
- Local Government Association (2013) *Making Savings from Contract Management*. Available at [http://www.local.gov.uk/documents/10180/11417/Making\\_savings\\_through\\_contract\\_management.pdf/e56aeb46-7d56-4327-b8ff-8824d136aff7](http://www.local.gov.uk/documents/10180/11417/Making_savings_through_contract_management.pdf/e56aeb46-7d56-4327-b8ff-8824d136aff7) [Accessed 1st March 2016].



- Loosemore, M and Richard, J (2015) Valuing innovation and infrastructure: Getting clients past a lowest tender mentality. *Engineering, Construction and Architectural Management*, **22**(1), 38-53.
- Murdoch, J and Hughes, W (2008) *Construction Contracts: Law and Management, 4th Edition*. Oxford: Taylor & Francis.
- Newcombe, R. (2003) From client to project stakeholders: A stakeholder mapping approach. *Construction Management and Economics*, **21**(8), 841-848.
- Ohno, T and Hadara, Y (2006) A comparison of tendering and contracting systems for public works between Japan, the United States and EU Countries. *Government Auditing Review*, **13**, 49-71.
- Office for National Statistics (2009) *Quarterly National Accounts, 4th Quarter 2008*. Available at <http://www.statistics.gov.uk/pdfdir/gna0309.pdf>
- Patton, M Q (2002) *Qualitative Research and Evaluation Methods*. Thousand Oaks, CA: Sage Publications.
- Reddy, C and Williams, O (2014) *In Brief: Framework Agreements*. Lewis Silkin, UK
- Rhodes, C (2015) *Construction Industry: Statistics and Policy, Briefing No. 01432, 6 October 2015*. London: HMSO.
- Scott, S, Molenaar, K, Gransberg, D and Smith, N (2006) *Best Value Procurement Methods For Highway Construction Projects, Report 561*. Washington DC, USA: Transportation Research Board, National Research Council.
- Seymour, J, Crook, D and Rooke, J (1997) The role of theory in construction management: A call for a debate. *Construction Management and Economics*, **15**(1), 117-119.
- Sheard, A G and Kakabadse, A G (2002) From loose groups to effective teams. *Journal of Management Development*, **21**(2), 133-151.
- Tennant, A and Fernie, S (2010) A contemporary examination of Framework Agreements. In: C Egbu (Ed.) *Proceedings 26th Annual ARCOM Conference, 6-8 September 2010, Leeds, UK*. Association of Researchers in Construction Management, Vol. 1, 685-94.
- Waara, F and Bröchner, J (2006) Price and non-price contractor selection. *Journal of Construction Engineering and Management*, **132**(8), 797-804.
- Watt, D J, Kayis, B and Willey, K (2010) The relative importance of tender evaluation and contractor selection criteria. *International Journal of Project Management*, **28**(1), 51-60.
- Walraven, A and de Vries, B (2009) From demand driven contractor selection towards value driven contractor selection. *Construction Management and Economics*, **27**(6) 597-604.
- Wong, C H, Holt, G D and Cooper, P A (2000) Lowest price or value? Investigation of UK construction clients' tender selection process. *Construction Management and Economics*, **18**(7), 767-774.
- Yu W and Wang K (2012) Best value or lowest bid? A quantitative perspective. *Journal of Construction Engineering and Management*, **138**(1), 128-134.

### List of Cases

- European Dynamics SA v HM Treasury (2009) EWHC 3419 (TCC)
- Harmon CFEM Facades v Corporate Officer of the House of Commons (1999) 67 Con LR1
- Hedley Byrne v Heller & Partners [1964] AC465
- Henry Brothers (Magherfelt) Ltd v Department of Education Northern Ireland (2011) NICA59

*Donohoe and Coggins*

McLaughlin & Harvey Ltd v Department of Finance & Personnel (2011) NICA 60.