

A CONTEMPORARY EXAMINATION OF FRAMEWORK AGREEMENTS

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The purpose of this paper is to examine the future role of client-contractor Framework Agreements in the wake of an unprecedented downturn in construction activity. The research is based on a review of literature and selected interviews with senior industry practitioners. The Royal Institute of Chartered Surveyors (RICS) publication, *Contracts in Use: a Survey of Building Contracts in Use during 2007* is used to highlight a growing trend for collaborative working arrangements. The logic is that in buoyant market conditions the repeat construction client is trying to secure a number of key business objectives namely; value for money (VfM), predictability and protection of construction supply. In the event of a recession the commercial relationships understandably become fraught. Previous research evidence suggests that market dynamics dictate the management of contractual relations. While contractors continue to secure work via non-binding Framework Agreements clients may be persuaded that traditional procurement arrangements offer better business opportunities. Preliminary results of the investigation demonstrate a number of private sector clients rejecting Framework Agreements in favour of traditional competitive procurement routes. Public sector investment continues to sponsor collaborative working practices via Framework Agreements but there have been an increasing number of clients demanding 'more for less'. The paper will serve as a timely examination of the cause and effect market dynamics can have on client-contractor behaviour and the discernable shift in commercial leverage that will accompany fluctuating levels of construction activity. As a consequence Framework Agreements allied with opportunities for improved supply chain integration may fall victim of the current market cycle.

Keywords: framework agreement, procurement, client, recession.

INTRODUCTION

The importance of construction cannot be understated (Thompson *et al.*, 1998, Cox and Ireland, 2002). Governments have previously drawn on industry characteristics as both a barometer of socio-economic well-being and a stimulus for economic growth (Strategic Forum, 2008). Construction is also a collectivist activity (Moore and Dainty, 1999). Dependant on a diverse workforce and complex inter-firm relationships characterized by arms-length procurement strategies executed within a temporal, project -based setting (Ireland, 2004). Over the past decade the construction industry has witnessed increasing examples of 'collaborative working' practices. In part fashioned from the persuasive appeal of government discourse; partnering, strategic alliances and framework agreements are now familiar expressions within construction vocabulary. Over the past three years construction activity has declined at an

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unprecedented rate. Down from £110 billion in 2007 to an estimated £95 billion for 2010, representing a 14% downturn in construction output (Expeditan, 2009b). The construction sector has underperformed in comparison with the wider economy, construction percentage of the GDP continues to contract, extending an underlying trend first recorded 2005 (Expeditan, 2010). Job losses for 2009 have been estimated to be 164,000, representing one construction employee for every five redundancies (Smith, 2010) with two construction and property firms going in to receivership every week (Chevin, 2010). Tender prices continue to track a downward trajectory leaving prices approaching 20% down from their peak in 2008 (Fordham, 2010). Recovery is widely predicted to be sluggish with the added threat that incremental improvements forecast for 2011 /2012 may be seriously jeopardized if public sector cutbacks to construction spending exceed the £3 billion that market analysts have predicted for 2010 (Expeditan, 2010).

Research rationale

Neoclassical economic theory make strong predictions that relationship theory and social structure play only a fractional role in economic outcomes (Hirschman, 1970, Granovetter, 1985). In the business of construction, economic levers and indicators of economic efficiency predominate the decision-making process (Hodgson and Cicil, 2008). In the aftermath of the sharpest economic slump since the Second World War the pressures facing client-contractor Framework Agreements appear considerable. It is against this backcloth of economic uncertainty that the future role of Framework Agreements in the UK construction industry is reflected upon.

THE COLLABORATION MOVEMENT

To help identify the dominant business management philosophy two competing schools of management thought may be reviewed. Founded in the 1930s, the behavioural or humanistic school of management has promoted the welfare of operative and organizational interests through the notion of working in a cooperative setting. Much of the dialogue has focused on the behavioural cohesion of social groupings, for example integrated team working. Nowadays interpretation of the concept has extended beyond traditional organizational boundaries to capture social constructs of inter-firm co-operation and dependency. A behavioural perspective would couch the corporate partnership in personal terms, often using the metaphor of a 'marriage' and citing key characteristics of trust, cooperation and mutual understanding (Cousins, 2001). Conversely an economic school of thought promotes a strict adherence to market dynamics. Exploring the economic exchange to unravel the commercial gamesmanship enacted within the diverse buyer – seller transactions. Under such conditions an assessment of the transactional relationship is distilled to pricing data, (Uzzi, 1997). Key characteristics would include lowest cost, competition, power and leverage (Cousins, 2001).

Economic uncertainty has a history of re-shaping management interpretation of the business environment. Until the advent of low-priced car imports the automotive sector had employed a system that was short-term and 'intentionally' adversarial (Webster, 1992). In the 1970s the rise of global competition fused with rising costs and escalating market risk, provided a catalyst for collaborative ventures and knowledge transfer (Johnston and Scholes, 1993). Lessons learned from their highly competitive Japanese counterparts raised the spectre of adopting strategic alliances (Cousins, 2001). Not only did collaboration spread operational risk it also curbed the aspirations of would be competitors. The UK recession of the early 1990s again forced

organizations to revisit their economic model, injecting fresh impetus in to the 1980s 'enterprise culture'. A dominant recipe that continues to leave a long-lasting impression on the archetypal relationship model of the UK construction industry (Green *et al.*, 2008). The contemporary collaborative movement would appear to have its roots firmly embedded in the economics of the free market, supporting a capitalist doctrine of efficiency, profitability and corporate survival. The credible appeal of the collaboration movement should not detract from the harsh commercial reality of business success. The *raison d'être* of a privately owned company is to trade in a manner that creates profit for its stakeholders (Cox and Thompson, 1997). Interdependency, whether it's arm's-length, cooperation, coordination or collaboration "should be based on a sound business case not on a utopian ideal of working better together" (Cousins, 2001).

COLLABORATIVE WORKING IN CONSTRUCTION

The UK Government has a track record of sponsoring reports bemoaning the performance record of the construction sector (Murray and Langford, 2003, Ireland, 2004). The construction industry collaborative movement gained eminence in the 1980s with an increase in design and build contracting; a procurement model intended to redress negative aspects of industry fragmentation and professional demarcation. In 1994 and 1998 the Government sponsored publications 'Constructing the Team' (Latham, 1994) and 'Rethinking Construction' (Egan, 1998) reiterated the need for construction clients, designers, contractors and suppliers to work together in a spirit of mutual trust to arrest the malaise and suspicion endemic within industry practice (Pryke, 2009).

Buoyed by widespread support from construction industry forums, 'partnering' became a byword for best practice. Partnering offered a more socially aware construction management model to challenge traditional arm's-length contracting. However there remains a considerable degree of semantic ambiguity associated with the concept of partnering. A vague and all-encompassing concept (Bresnen and Marshall, 2000, Saad *et al.*, 2002) partnering for many practitioners has become largely symbolic. Saad *et al.* (2002) argues that partnering never addressed the underlying business philosophy that motivated construction stakeholders to behave in the manner that they did. This lack of contextual adaptation has distorted the sentiment when trying to import wholesale ideas from other industries (Anvuur and Kumaraswamy, 2008). Tension between supply and demand continues to be a catalyst for much of the confrontational behaviour observed in the construction sector (Thompson *et al.*, 1998, Cox and Ireland, 2002, Oyegoke *et al.*, 2009). Strategic alliances such as Framework Agreements can defuse volatile elements of the commercial transaction. Cultivating a non-adversarial medium "where the exchange partners can operate in a transparent operational manner with long-term relationship commitments and share any resulting commercial value equally" (Cox, 2004).

FRAMEWORK AGREEMENTS

The rising trend in Framework Agreements and other collaborative arrangements such as partnering cannot be divorced from the influences of both Latham in 1994 and Egan in 1998 (RICS, 2006). The emergence of Framework Agreements as part of construction vocabulary can be traced to the 'green shoots of economic recovery' in the early 1990s. A Framework Agreement has been defined as: "an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price

and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies” (OGC, 2008). The ‘agreement’ is not a binding contract in itself. Framework Agreements provide suppliers with access to a stream of work where the pricing model has already been negotiated (Rawlinson, 2009).

The RICS sponsored ‘Contracts in Use: a Survey of Building Contracts in Use during 2007’ enquired for the first time about contracts procured via Framework principles. Survey results reveal that 4.5% of the sample and 2.9% of contracts by value were procured under Framework Agreements (RICS, 2010). Extrapolating these figures in relation to industry output, contracts by value equates to approximately £3.2 billion of construction activity undertaken in 2007. Within the definition, three different types of Framework Agreements predominate; Direct client Frameworks, Frameworks with an agreed commercial model and Frameworks run by intelligent procurement organizations (IPO) (Rawlinson, 2009). Regardless of the distinguishing characteristic embedded within the various configurations the overriding ethos is to administer the interdependent relationship between the client and the provider without automatically reverting to the primacy of the contract and seeking recourse via legal action when problems are encountered (Maylor and Johnston, 2009). An industry champion of construction excellence in Framework innovation and development has been the British Airport Authority (BAA).

Private sector

A private sector organization, British Airport Authorities (BAA) initially developed the concept of the framework agreement in 1993-1994 and embarked on a ‘Framework Programme’ to work collaboratively with a select number of preferred suppliers over a five year period (Potts, 2009). Correspondingly, a number of high profile repeat retail clients also began to adopt framework-like procedures. The second generation of BAA Framework Agreements, set up in 2002 extended the potential private sector partnerships for up to ten years (Potts, 2009). The highpoint of BAA’s experience as a well-informed construction client culminated in the planning, organization and delivery of Heathrow Terminal 5 (T5) (Potts, 2009). BAA had an acute awareness that mega-projects undertaken in the UK had a poor performance record (Davies *et al.*, 2009, Wolstenholme *et al.*, 2008, Potts, 2009). Project success was dependent upon BAA’s unremitting efforts to break free from the shackles of traditional construction industry practice and the ‘old rules of commercial contracting’ (Davies *et al.*, 2009). Understanding these challenges, learning from previous experience and ‘doing it differently’, fashioned a clear and steadfast statement of project intent culminating in the legal framework commonly known as the ‘T5 agreement’. “The T5 agreement is a unique legal contract in the construction industry – in essence it is a cost reimbursable form of contract in which suppliers profits are ring-fenced and the client retains the risk” (Potts, 2007). BAA’s approach to risk management was radical, it removed the likelihood of litigation and signposted a positive message of client goodwill (Potts, 2008). In 2008, in light of lessons learned from the T5 model, BAA embarked on the third generation of their ‘framework supplier agreement’, to develop “a model where one cap doesn’t fit all” (BIS, 2008). In 2009 BAA (under new management) terminated their Framework arrangements. Reacting to current market conditions, some retail clients have also considered reverting to traditional competitive tendering approaches whilst others are being notoriously tough with its framework suppliers (Gardiner, 2010a). This brand of cost-cutting behaviour is not unique to construction. In the automotive industry despite

years of collaborative working initiatives, during periods of economic hardship suppliers are without fail compelled to reduce costs – ‘a tactic known as the squeeze’ (Blake *et al.*, 2003). The ‘squeeze’ of Framework Agreements coupled with BAA’s move away from ‘client-led’ project management may signal a growing desire for clients to take advantage of a buyer’s market (Rawlinson, 2009). Data published by the Office for National Statistics (ONS) demonstrates the scale of the market correction, spending in the private sector is down approximately 20% in 2009 (Gardiner, 2010b), triggering an acute and swift imbalance between construction industry supply and construction client demand. In stark contrast to the private sector, ONS announced that public sector construction expenditure continued to grow by 8% in 2009.

Public sector

Public sector Framework Agreements typically ‘partner’ for a tenure period of four years with the option of an additional two years subject to exceptional circumstances (commonly referred to as 4 + 2). This arrangement is strictly governed by European procurement rules (OGC, 2008). It is important to note that each framework may differ slightly to accommodate the distinctiveness associated with individual project needs. For example, where a framework has been set-up with several preferred and capable suppliers a mini-competition may be performed at the call-off stage (OGC, 2008). A key component of the Official Journal of the European Union (OJEU) Regulations is the requirement for the client selection process to award Framework membership to a select number of prime contractors on ‘the most economically advantageous tender’ (M.E.A.T) criteria (OGC, 2008). A definitive definition of most economically advantageous tender remains elusive. Government departments have published value for money guidelines that appraise both the financial and non-financial attributes of the tenders submitted as the optimum combination of whole-life costs and quality (The Scottish Government, 2008). Due to the intense level of scrutiny, the potential for appeals and the political milieu of public expenditure, lowest tender price remains the simplest performance measure to satisfy government commissioners that the public sector and the British taxpayers are achieving value for money. EU government procurement regulations and UK government procurement arrangements, including PPP / PFI, dissuade long-term buyer–supplier partnerships as this could be construed as unethical (Maylor and Johnston, 2009). Over the past decade Framework Agreements have witnessed considerable public client support especially for high-risk, high-spend construction programmes such as schools, hospitals, roads and other significant capital expenditure programmes (Constructing Excellence, 2005). A review of public capital spending programmes employing Framework principles suggests Framework expenditure has risen noticeably over the past three years (RICS, 2010).

DISCUSSION

The recent turmoil in the construction market coupled with a number of blue-chip construction clients decision to review their strategic sourcing relationships has raised fears that the industry is somehow regressing to the ‘bad old days’. Constructing Excellence’s latest report ‘Never Waste a Good Crisis’ states that “the low penetration of cultural change has been exposed by the economic downturn, with evidence that clients and main contractors are now reverting to type” (Wolstenholme, 2009). It may be posited that there never was a ‘cultural’ change. Sponsorship of collaborative working practice was devoid of any serious attempt to tackle the default business disposition (Saad *et al.*, 2002). The economic philosophy has remained steadfast.

Working in partnership was not calculated to challenge the 'competition is good' mantra. On the contrary integrated project relationships were advertised under a banner of cost savings, value for money and sustainable competitive advantage (Latham, 1994, Egan, 1998, Strategic Forum, 2002).

Strategic Alliances such as Frameworks have a restricted appeal. The spotlight is on repeat construction clients and their interface with major construction organizations (Dainty *et al.*, 2001). Repeat construction clients have a pivotal role to play as prominent sponsors of the building process (Rowlinson, 1999). Without client support for joint venture, consortium and framework agreements integration cannot be realized (Briscoe *et al.*, 2004). Reports of construction clients reviewing their framework status or demanding 'more for less' only serves to reinforce their status as potential change agents. Presently there is very little anecdotal evidence to indicate repeat clients have the ambition or desire to become a 'construction client of choice'. A client of choice requires intellectual capacity to progress beyond 'partnering with teeth'. Clients are proactive and understand that in the procurement of a construction project there will need to be learning on the job and trials will be needed as part of the budget (Maylor and Johnston, 2009). The BAA Heathrow Terminal 5 Framework model exemplified the prerequisite for client capacity and capability. A notable component to BAA's innovation and success was its enthusiasm to develop significant in-house capability; a luxury not usually afforded most clients and a bone of contention for BAA's new owners (Ferrovial) and incumbent management regime. Steven Morgan, BAA's recently appointed Capitals Project Director made reference to BAA's distinctive hands-on approach to managing projects by stating "I don't want to be a contractor" (Wright, 2009, Chevin, 2009). A clear rebuke to the construction project management know-how developed within BAA's project division and the framework platform. Informed clients understand commercial solidarity within the network of buyer-supplier exchange relationships creates economic opportunities that are difficult to replicate via the open market, contractual agreement or vertical integration (Uzzi, 1997). The upshot is promoting in-house construction intellectual know-how in a market bereft of financial resources may prove very difficult to justify.

Behavioural traits such as trust and mutual understanding contribute only 'fractional drag' (Granovetter, 1985) in the corporate decision-making process (Granovetter, 1985, Uzzi, 1997). To espouse values of trust and understanding is to appeal to the wider societal ethic of cooperative spirit. This is not misplaced in the business environment but it is often misguided. There exists a dissonance between the 'marriage' of personal relationships bounded by faith and kinship and the 'management' of inter-firm partnerships governed by contractual conditions (Cox and Thompson, 1997). Executive decisions based on humanistic values can often prove to be counter-intuitive when executed within a business situation. Looking towards game theory for a potential solution it may be 'durability rather than trust' and the 'shadow of the future' (Welling and Kamann, 2001) that prove to be revealing. Knowing that decisions taken today will have potential consequences for tomorrow can provide a powerful and lasting incentive to work cooperatively (Axelrod and Keohane, 1985, Welling and Kamann, 2001).

It is inescapable that financial pressures will place construction procurement under the value-for-money microscope. However to imply that sourcing strategy for construction is a straightforward choice between; arm's length, adversarial procurement or a collaborative, non-adversarial arrangement is naive. Arm's length relationships need not be adversarial, conversely collaborative frameworks may be

completely inappropriate. Collaboration can improve performance but this costs money in terms of coordination, communication, adaptation and commitment (Cousins and Lawson, 2007). Given a particular set of conditions, traditional contracting may offer the most apt procurement route for the client and contractor. A point supported by the continued popularity of traditional contracting in the UK (Saad *et al.*, 2002, RICS, 2006, RICS, 2010). Similarly Framework Agreements have not been championed because they create harmonious and pleasant working environments; they are ‘evolving’ because stakeholders, particularly repeat construction clients recognize and circumstances often dictate that collaborative arrangements present opportunities to capitalize on reduced project costs and secure operational efficiencies. In many ways Frameworks Agreements are analogous with Larson *et al.*’s (2008) commentary ‘Partnering in flight’. Framework Agreements are not a static entity; they are a ‘work in progress’ continually crafted by experience, understanding and situation where “circumstances are contingent” (Cox, 1999).

Over a fifteen year period BAA has worked on three generations of Framework Agreement, the Department for Health in England has recently launched Procure 21+, a successor to Procure 21 and the Welsh Health Estates (WHE) have just completed a Framework evaluation in readiness for their second edition of ‘Designed for Life: Building for Wales’ Framework Agreements. Both organizations have liaised closely with Health Facilities Scotland (HFS) and continue to provide support and advice for Framework Scotland, (HFS, 2008). Paradoxically it is this process of socialization that may irrevocably interlace the Framework model within the fabric of construction procurement. Ever-increasing levels of institutional conformity will emit strong signals within the construction sector of social fitness and legitimacy. Acting as others do will “avoid social censure, minimize demands for external accountability, improve their chances of securing necessary resources and raise their probability of survival” (Greenwood *et al.*, 2008). Following this path of institutional analysis would contest the economic assertion that ‘competition eliminates institutions that have become inefficient’ (DiMaggio and Powell, 1991).

CONCLUSIONS

Now that the construction client’s unofficial flag bearer of industry best practice (BAA) have turned their back on the “corporate beauty pageant of pre-selected framework partners” (Wright, 2009), the burning question is; what next for Framework Agreements? Framework Agreements are already the subject of intense scrutiny in a ‘more for less’ ‘show me the money’ politically charged environment. From the initial reaction of leading construction stakeholders it may be inferred that the socially aware, humanistic approaches to construction procurement only receive a sympathetic foray in to working practice during periods of economic optimism. Only to be quickly shed in favour of hard-nosed business economics when confronted with growing contractual risk and shrinking company profits. Reaction of this kind typifies a deep-seated commercial faith in an economic school of reasoning. As a consequence construction clients, contractors and suppliers continue to have confidence in the free-market qualities of self-interest, competition and supply and demand. Any claim of cultural change would appear to be largely rhetorical. Yet for some commentators, “building strategic relationships with a limited number of key suppliers is conceptually the right thing to do” (Cousins and Spekman, 2003). Prophecy of a long shadow of recession may kindle a commercial solidarity that attests to be the defining characteristic of construction firms that continue to survive and even thrive. The recession of 2008 will serve to encourage construction stakeholders to renegotiate,

rework and possibly ‘rebrand’ the framework concept; until the next economic milestone.

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