

A CASE STUDY OF JOINT PROCUREMENT AND PROVISION OF LEGAL SERVICES TO A GROUP OF A UNIVERSITIES IN THE MIDLANDS

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A Group of 5 UK Universities in the Midlands undertook a joint procurement process for the provision of Legal Services. The objective was to put in place common Framework Agreements. The Legal Services procured were divided into six lots and one of these was 'Property and Construction'. The lots were assembled into three packages and the contract for each package was awarded to one or more Service Providers. Albeit a service provider is to work for all the collaborating Universities. A competitive 'restricted' two-stage tender process was administered in accordance with the Public Contracts Regulations 2006, SI 2006/5. The Framework Agreements were awarded in 2012 to the most economically advantageous Solicitors' Practices. The participating Universities are being interviewed about the reasons for the joint procurement exercise, any challenges faced in its implementation and lessons learnt so far. Two interviews have been conducted so far and evaluated via content analysis to reveal that advantages to be gained from 'economy of scale' were the main impetus for the collaborative procurement. The negotiations between the Universities which led to the establishment of the collaboration and its subsequent sustenance have been friendly. The challenge identified so far concerns how to distribute work more fairly to legal services providers.

Keywords: bidding, collaboration, competitiveness, contractor selection, corporate strategy, framework agreement, negotiation, procurement; professional service.

INTRODUCTION

The joint procurement of Legal Services by a group of 5 UK Universities in the Midlands is the subject matter of this discussion which is informed by an on-going research that aims to evaluate the process used and challenges encountered thus far. A Group of Universities in the West Midlands meets periodically to discuss/plan collaborative procurement opportunities, share knowledge and best practice amongst other initiatives. This mirrors the recommendation of the 1994 Latham Report that clients should come together in forums (Crowe and Fortune, 2012). A sub-group of these Midland Universities conducted a procurement process for the Provision of Legal Services with the objective being to put in place a Framework Agreement that is fit for purpose and easily accessible by Universities in the Midlands region.

In context, procurement is the act of acquiring or obtaining a product or service (Lester, 2007); often for some consideration. Procurement can apply to any human endeavour e.g. buying a car, obtaining probate services, engaging a contractor to renovate or build a house, etc. In construction, the concept of procurement is popular

and can entail many things e.g. obtaining land for a new project, sourcing the funding, selecting the contractor(s), managing the construction or built facilities, etc. (Murdoch and Hughes, 2008). A procurement system can be: separated, integrated, management-orientated or discretionary (Masterman, 2001). The separated or traditional approach to procurement was formalised in the 19th century and has for long provided a basis for obtaining construction services and products. In the 1960's integrated options like 'Design and Build' emerged and in the following decades, the management options were adopted e.g. management contracting and construction management. Towards the end of the 20th century, forms of procurement that emphasise collaboration emerged e.g. prime contracting, partnering, alliancing and to some extent the Private Finance Initiative. Partnering emerged in the USA in the 1980s from where its use has spread to other countries (Kumaraswamy and Dulaimi, 2001).

Some of the modern forms of construction procurement emphasise managing the supply chain where trust, collaboration and long-term relationships are preferred (Morledge et al. 2006; Manu et al. 2011). As the construction industry had long sought for ways of shrugging off its adversarial antecedents, forms of procurement that emphasise collaboration have been highly welcome. The NAO (2001) for instance, spoke highly of partnering and its ability to achieve greater benefits if its elements of trust and collaboration are allowed to thrive. Surveys (e.g. RICS, 2010) have shown a declining use of traditional contracting and an increasing uptake of other forms of procurement especially the collaborative types. Manu et al (2011) also identified the shift towards the use of more collaborative contracting relationships in the construction industry.

As a move away from traditional procurement where one client will obtain services or products from a supply chain, the UK Government proposed the option where several clients could jointly procure services or products through 'collaborative procurement'.

Collaborative procurement

The 'Government Procurement Service' (GPS) is an executive agency of the UK Cabinet Office, providing procurement guidance and savings. GPS particularly helps the public sector to be better at collaborative procurement, which includes the situation where more than one client is obtaining a service or product simultaneously. Other terms used to describe the concept are cooperative purchasing, group purchasing and consortium purchasing (Keskinocak and Savasanelil, 2008).

Collaborative procurement can be either horizontal, say between competitors or vertical say within a supply chain (Keskinocak and Savasanelil, 2008). An example of vertical collaboration in construction is supply chain management where the prime contracting form of procurement emphasises this principle.

Hitherto, the popular form of (vertical) collaborative procurement in construction has involved one client obtaining products or services from several suppliers. The flip side of (horizontal) collaborative procurement, which is emphasised in this paper, involves several clients obtaining services or products jointly from one or more suppliers. Indeed Boyd (2011) suggests that local authorities should collaborate and aggregate their purchasing so as to achieve reduced costs. Group purchasing has been used in the non-profit sector but it is being adopted, especially in more recent times, in competitive settings. One appeal of collaborative procurement is the cost savings it brings to the process i.e. reduced lead-times and transaction costs (Murray et al., 2011), greater bargaining power with suppliers (NAO, 2010) and greater clients' understanding of the expectations of service suppliers and vice-versa (Avila, 1997).

According to Dicken (2008) the Office of Government Commerce reported cost savings to Government departments of £650m in 2007; through the use of collaborative procurement. Further, an agreement for a shared service centre was signed in February 2013 and it is estimated to deliver savings of up to £600m a year for the taxpayer (HMG, 2013). Collaborative procurement has also been used in e.g. manufacturing and logistics (Keskinocak and Savasaneril, 2008). According to the NAO (2010), collaborative procurement does bring greater value for money and benefits and it is possible to improve on these gains. Meanwhile, the guides provided by the UK Cabinet Office and its establishments, e.g. Efficiency and Reform Group, can be adopted by many sectors and used to improve the benefits derivable from procurement.

RECENT TRENDS IN THE JOINT PROCUREMENT OF LEGAL SERVICES

There is an increasing trend of the joint procurement of legal services by public sector bodies. In this regard the UK Government finalised seven panels that service the entire public sector in 2003: IT, telecoms and e-commerce; property and estates; HR; construction; company and corporate; finance and banking; and general commercial. In its delivery, every successful firm offered a discount of up to 25 per cent on their commercial hourly rates (Rovnick, 2003).

In 2008, the largest public sector panel in Welsh history with a legal spend of over £8million was appointed for 4 years. The panel included the Welsh Assembly Government and 7 other public bodies and the legal services procured were grouped into property and commercial; corporate finance; environmental; employment and litigation (Parker, 2008).

In 2011, four local authorities in the West of England appointed 12 law firms and 20 barristers' chambers to a series of shared legal panels. North Somerset deputy head of legal services Fiona Robertson explained that the creation of shared panels was driven by cost-cutting targets, expected to save between £100,000 and £250,000. She also said "All four authorities deal with the same sorts of issues, so we hope to pool some of that work rather than continually reinventing the wheel." (Butcher, 2011a). Similar initiatives include: five West Yorkshire councils (Freedman, 2011); the South-West Wales Legal Consortium (Butcher, 2011b); the NHS Commercial Alliance legal panel worth up to £20million over 4 years (Butcher, 2011c) and the London Procurement Programme providing legal services to around 60 NHS Trusts in London, the West Midlands and the South of England (Butcher, 2011d).

The foregoing trends suggest an ever increasing uptake of the joint procurement of legal services. Aspects of construction which are covered by such collaborative procurements concern legal advice on purchase of land, disposal of physical assets on land prior to construction and selection of contractors and types of contracts to use therein. Where a client in a big project would have had to procure legal services for one project per time, the collaborative procurement option offers an alternative that is more cost-efficient plus other benefits. Although legal services have scope boundaries, they overlap with as well as stand as a gateway to procurement and contracting in construction projects.

Procurement of legal services by the Universities West Midlands Group

One recent quest of the Universities West Midlands Group was to identify and exploit collaborative procurement opportunities wherein the joint procurement of legal

services was accepted as being readily viable and hence rolled out for implementation. This joint approach was reported as a case study in the Lawyer by Butcher (2011e). This collaboration provided an opportunity to investigate the subject matters of this paper i.e. the rationale and efficacy of the process, difficulties encountered, benefits experienced and opportunities for construction.

Researchable questions

Some suggested questions for research in collaborative arrangements include (Jeroen et al., 2012): what are the barriers to and benefits of such arrangements? Under which conditions are collaborative relationships formed? What are the experiences of participants in collaborative relationships?

In addition, Gosling et al (2012) suggest that companies may fail to implement their supply chain improvement programmes effectively so a review of provision is advocated. Also; how can joint procurement by several clients apply to and benefit them regarding the development of new construction projects? Which procedures are most useful (Cheung et al., 2002); as these influence outcomes? The foregoing research questions were investigated and are addressed in subsequent sections of this paper.

RESEARCH METHOD

A qualitative approach was adopted in order to explore the research objectives in-depth (Fellows and Liu, 2008; Naoum, 2013) i.e. the reasons for the decisions that were and are being made as well as challenges encountered so far and lessons for the future. In addition, the Invitation to Tender is being reviewed as well as the applicability of joint procurement to construction. These details may not be readily packaged in numerical explanations, hence a qualitative exploration. The research is mainly a case study i.e. “a unit of human activity embedded in the real world; which can only be understood or studied when seen in full context” (Gillham, 2000). It is an ‘embedded case study’, i.e. a single case study that captures a typical case (Yin, 2009) of joint procurement by a group of clients.

Interviews were selected as the basis for data collection as they offer flexibility and opportunity for in-depth exploration of issues (Haigh, 2008). The on-going interviews in this research are 'semi-structured' (Farrell, 2011). To progress with the 'one-at-a-time' interviews (Fellows and Liu, 2008), a set of questions was prepared using the research aim and objectives as a basis (Andrews, 2003). The plan is to interview the procurement and/or legal officers of the participating Universities as they form the nexus of personnel who were involved in the negotiation and procurement process and are equally at the forefront of its implementing.

The research is complying with ethical protocols e.g. anonymity of interviewees being ensured plus handling data in strict confidence. Permission to commence the research interviews was sought with our University. The willing involvement of each interviewee was/is being sought. Also, the participants from the universities and tenderers were notified a priori that the University of Wolverhampton intended to evaluate this procurement exercise as a case study at a later date.

The interviews which are expected to take place between April and July 2013 are in progress. To date, two interviews have been conducted and these were with one legal officer (Interviewee 1) and a procurement professional (Interviewee 2). Interview Nos.1 and 2 lasted 40 and 37 minutes respectively and both were tape-recorded and transcribed.

The approach to data analysis which aligns with the research objectives is: to identify examples, phenomena, ideas, activities or explanations (Gibbs, 2007). To extract these, the researchers used the electronic 'cut and shuffle' method proposed for data analysis (by e.g. Gibbs, 2007; Farrell, 2011) in lieu of a software. Contents of the transcripts were cut and shuffled on the basis of 'subject matter' and used as a basis of describing the experiences of the interviewees. Findings from the two interviews and foregoing analysis are discussed below.

JOINT PROCUREMENT BY THE GROUP OF UNIVERSITIES

Each Institution in the West Midlands Group of Universities was allowed to opt in or out of the planned joint procurement while the possibility of joining-in at a later time was also adopted. Five of these Institutions initially opted to collaborate on the joint procurement of legal services and these are: University of Wolverhampton, Aston University, Coventry University, University of Worcester and Harper Adams University College. Going forward with this decision, as Interviewee 1 commented: "the joint procurement [was] ... to get economies of scale in the procurement of external legal services."

The group [of 5] initially shared information amongst themselves in terms of where they were buying legal services from and what sort of rates they were paying. They did this so they could start obtaining a benchmark. They also sought advice from some London universities who had recently undertaken a collaborative procurement exercise for legal services in their area.

The joint framework is worth £4 million to £5 million; a first for the region and was driven by belt-tightening across the higher education sector. Interviewee No.2 explained thus: "The main driver behind this is to collaborate with other universities in order to achieve cost efficiencies and savings for all universities in the region. We also want to provide a flexible framework of service providers that can cover all specialisms of legal services that universities within the region can easily access."

The decision of the participating institutions was to have a Framework Agreement in place with providers who are able to cover all requirements under the category of Legal Services which were split into 6 Lots as in Table 1. A firm could bid for works in Group 1, 2 or 3 of Table 1, i.e. one firm could submit 3 bids.

Table 1: Legal Services Lots

Category	Nature of Service(s) involved
Group 1	Lot 1 - Commercial, contracts, intellectual property rights, data protection Lot 2 - Employment and pensions Lot 3 - Property and Construction Lot 4 - Regulatory, student issues, governance
Group 2	Lot 5 - Patents and trademarks
Group 3	Lot 6 - European Regional Development Funding

The contract period for the provision of services is three years with an option to extend by one year subject to satisfactory performance and mutual agreement of all

the parties. The estimated annual expenditure on legal services by the Group of Universities was identified as about £1 million.

Procurement Process

There was a competitive 'restricted' two-stage tender process which was administered from the University of Wolverhampton on behalf of the participants. The two-stage process was selected because the market was quite large and they needed to reduce the shortlist down before the tender stage. An electronic portal was used to tender and it was done in accordance with European legislation as applicable to a Schedule B service under the provisions of the Public Contracts Regulations 2006, SI 2006/5. The principles and best practice of an OJEU was applied to the process.

The invitation to tender detailed the information required from the bidders. This included a completed Pricing Schedule, detailing how they would provide the Services and their responses to certain 'Scenarios'. The evaluation process aimed to identify the tenders that offered 'best value' and not merely the lowest price. The criteria used to evaluate the tenders were weighted as 1) Price - 35%; 2) Quality - 65% which was further broken down as i) Tender Response evaluation - 35% and ii) Interview and Presentation evaluation - 30%.

About two dozens of firms expressed an interest. Tenders were submitted in September 2011. The selection interviews and presentations at stage 2 of the tender process took place over a full day and two half days. The panel of assessors on behalf of the group of five participating universities consisted of their legal officers and procurement professionals. These same set of personnel were involved in formulating the modus operandi of the collaboration including the pre-defined criteria for selecting the service providers. It is on this basis that these same set of persons were identified as best placed to speak as interviewees on behalf of the consortium.

Award of Contracts

Ten solicitors' practices were awarded Framework Agreements with a commencement date of 1 February 2012. Six legal firms were chosen for Lots 1 to 4; four legal firms for Lot 5 and two firms for Lot 6. Meanwhile a procurement report for sign off and award was drafted as well as a Buyer's Guide.

Accessing construction legal services under the framework agreements

Nomination or competition is used to assign work to legal practices in the framework but each University has the leeway to assign work to firms in either of these two ways. Interviewee 2 explained that for example, if legal advice was required for a new construction project, the recommendation would be to use a mini competition to obtain legal services offers from each of the providers for comparison and choice.

Interviewee 1 explained that "construction is a good example actually where you've got a pre-defined project, you know the scope of the legal input that you need and therefore you work on a fee quotation or a fee estimate for undertaking that work."

THE FIRST YEAR OF PROVISION OF LEGAL SERVICES

The Agreements have been in place for slightly over one year now and their performance is reviewed regularly. A well-supported training day where some of the legal services providers delivered seminars on e.g. commissioning legal services effectively was held in June 2012. Then in March 2013, after just over a year of

activity, the Universities met with all the legal services providers to review the progress of the Framework Agreement. There are plans for two training/networking events to be held each year.

Benefits gained so far

It was pointed out by the interviewees that tangible improvements have been realised over the year and these include cost reduction, compliant spend, greatly improved management information, training and collaboration. Interviewee 1 commented thus: "By joining together, strength in numbers I think it has encouraged the firms to sharpen their pencils in terms of fee rates and it's also given them an incentive to demonstrate to us that the work we need is done in a cost effective way". Interviewee 2 explained that "the rates are 20% less than the average of all the other universities' a year or so ago." This cost reduction theme mirrors Taggart et al's (2012) finding of an increased focus on 'cost' related supply chain factors.

The Universities now have management information that was either inaccessible or unknown prior to the Framework Agreement. The organisations produce and present progress reports on a quarterly basis so quarterly expenditure by Lot, university and legal services provider can be compiled for benchmarking.

There has been a strengthening of relationships between the universities. Interviewee 2 explained that they "can talk to each other and buy this piece of work together and share templates and documents whilst also obviously keeping confidentiality within each university at the same time. So there is a cross networking between the universities' legal experts."

Challenges faced

A challenge encountered so far is the coordination of the distribution of work to all the providers in the Framework Agreement. Some service providers may be getting more work than others under the framework agreement. The Universities are looking at ways to balance the distribution of work to the service providers.

Following the agreement, one of the providers went into administration and was bought by one of the other Framework providers. As these two organisations were initially in the framework agreement, their merger posed no significant challenge.

Potential for Construction and Property Legal Advice

The framework agreements have great potential for construction and property legal advice. Chinyio et al (2011) identified that higher education institutions have significant property portfolios and procure construction projects continuously. Interviewee 1 explained that universities need legal advice for their capital construction programmes for example, on the forms of contract and also for property acquisitions and disposal. His institution alone had spent in the order of £160 to £170 Million in capital works since the year 2000. Legal advice is needed regarding this high volume of work and obtaining it via the framework is more cost and time effective.

Lessons for the future

The frameworks in place have worked effectively. As an illustration of its success, three institutions have joined the collaboration on equal terms as allowed in the agreement. These include Keele University and Newman University College. The group of participating Universities has now grown from 5 to 8.

It is now thought the geographical area of just the West Midlands was too restricted and for example, East Midlands Universities should have been included. There is also a Scottish consortium that is currently endeavouring to procure legal services UK-wide for all universities and colleges.

CONCLUSIONS

This procurement exercise can be argued to have been a success in that genuine cost savings, knowledge-sharing and other benefits have been achieved. As a testament to this, a further three universities have joined the Framework Agreement. For the future, therefore, the universities aim to jointly procure other categories of spend.

By contrast with for example, analyses of traditional contracting or design and build projects, the procurement of legal advice for property and construction is rarely reported. Certainly, there is scope for further research in this area as the current economic squeeze will continue to drive institutions towards using options that are more cost-effective. A greater uptake of collaborative procurement henceforth will most likely be a common thing.

Currently there are thought to be no existing client-side collaborative framework agreements for new build projects in the HE sector. However, there is a huge potential for this collaborative procurement model to be used for some aspects of construction provision. For a start, it could be used in particular, for maintenance services where the needs of the Universities appear to be similar.

REFERENCES

- Andrews, R. (2003) *Research questions*. London: Continuum.
- Avila, E.A. (1997) Demystifying the Local Agency procurement and selection process for professional engineering consultant services. *Journal of Management in Engineering*, 13(2), 92-95.
- Boyd, D. (2011) An evaluation of a system change in the purchasing of construction materials by local authorities. In: Egbu, C and Lou, E C W (Eds.), *Proceedings 27th Annual ARCOM Conference, 5-7 September 2011, Bristol, UK*. Association of Researchers in Construction Management, 695–704.
- Butcher, C. (2011a) Four councils set up shared legal panels. "The Lawyer", 30 May 2011.
- Butcher, C. (2011b) Raft of firms and chambers appointed to South-West Wales Legal Consortium. "The Lawyer", 9 July 2011.
- Butcher, C. (2011c) Bevan Brittan picks up healthy slice of NHS work. "The Lawyer", 11 July 2011.
- Butcher, C. (2011d) Birmingham Council lands NHS panel spot. "The Lawyer", 12 September 2011.
- Butcher, C. (2011e) Midlands universities prepare to launch first joint legal panel. "The Lawyer", 11 July 2011.
- Cheung, F.K.T.; Kuen, J.L.F. and Skitmore, M. (2002) Multi-criteria evaluation model for the selection of architectural consultants. *Construction Management and Economics*, 20(7), 569-580.

- Chinyio, E. Gameson, R. and Suresh, S. (2011) The management of construction stakeholders by Higher Education Institutions (HEIs) in the United Kingdom (UK): A pilot study. In: Egbu, C and Lou, E C W (Eds.), Proceedings 27th Annual ARCOM Conference, 5-7 September 2011, Bristol, UK. Association of Researchers in Construction Management, 485–94.
- Crowe, P. and Fortune, C.J. (2012) A preliminary method of classifying collaborative contractual behaviour in higher education construction projects. In: Smith, S.D (Ed.), Proceedings 28th Annual ARCOM Conference, 3-5 September 2012, Edinburgh, UK. Association of Researchers in Construction Management, 901–11.
- Dicken, P. (2008) Joint buying has saved public sector £650m. Public Finance, Oct 31-Nov 6; p.9 [OGC report].
- Farrell, P. (2011) Writing a built environment dissertation: Practical guidance and examples. Oxford: Wiley-Blackwell.
- Fellows, R. and Liu, A. (2008) research methods for construction (3rd ed.), Oxford: Wiley-Blackwell.
- Freedman, J. (2011) Kirklees Council leads appointment of West Yorks barristers panel. "The Lawyer", 19 May 2011.
- Gibbs, G.R. (2007) Analyzing qualitative data. London: Sage.
- Gillham, B. (2000) Case Study research Methods. London: Continuum.
- Gosling, J. Towill, D. and Naim, M. (2012) Learning how to eat an elephant: implementing supply chain management principles. In: Smith, S.D (Ed.), Proceedings 28th Annual ARCOM Conference, 3-5 September 2012, Edinburgh, UK. Association of Researchers in Construction Management, 633–43.
- Haigh, R. (2008) Interviews: A negotiated partnership. In Knight, A. and Ruddock, L. (eds) Advanced research methods in the built environment. Oxford: Wiley-Blackwell.
- HMG (2013) First Independent Shared Service Centre to deliver government back office savings. [Accessed 11 March 2013]. Available at <https://www.gov.uk/government/news/first-independent-shared-service-centre-to-deliver-government-back-office-savings>
- Jeroen, B.; Hans, V. and Bart, V. (2012) Supplier-contractor collaboration in the construction industry. Engineering, Construction and Architectural Management, 19(4): 342-368.
- Keskinocak, P. and Savasaneril, S. (2008) Collaborative procurement among competing buyers. Naval Research Logistics, 55(6), 516-540.
- Kumaraswamy, M. and Dulaimi, M. (2001) Empowering innovative improvements through creative construction procurement. Engineering, Construction and Architectural Management, 8(5/6), 325-334.
- Lester, A. (2007) Project Management - Planning and Control (5th ed). Elsevier.
- Manu, E.; Ankrah, N.A., Chinyio, E. and Proverbs, D.G. (2011) Control influence on trust and relational governance in the client-contractor dyad. In: Egbu, C. and Lou, E.C.W. (Eds.), Proceedings 27th Annual ARCOM Conference, 5-7 September 2011, Bristol, UK. Association of Researchers in Construction Management, 455–63.
- Masterman, J.W.E. (2001) An introduction to procurement (2nd ed). : London, Spon.
- Moreldege, R.; Smith, A. and Kashiwagi, D.T. (2006) Building Procurement. Oxford: Blackwell Science.
- Murdoch, J. and Hughes, W. (2008) Construction Contracts: Law and Management (4th ed.) London: Taylor & Francis.

- Murray, J.G.; Rentell, P.G.; Holland, T. and Locker, S. (2011) Why Collaborate on Local Government Procurement? The Experience of UK Councils. *Journal of service science and management*, 4(3), 325-333.
- Naoum, S.G. (2013) *Dissertation research & writing for construction students* (3rd ed.). London: Routledge.
- National Audit Office (2001) *Modernising Construction*. London: The Stationery Office.
- National Audit Office (2010) *A review of collaborative procurement across the public sector*. London: NAO.
- Parker, J. (2008) Welsh public sector bodies launch £8m super panel. "The Lawyer", 11 February 2008.
- RICS (2010) *Contracts in use: A survey of building contracts in use in 2010*. London: Davis Langdon.
- Rovnick, N. (2003) Change in fortune for Govt law firms. "The Lawyer", 31 March 2003.
- Taggart, M. Koskela, L. and Rooke, J. (2012) Collaborative supply chain practices during severe economic downturn in the republic of Ireland. In: Smith, S.D (Ed.), *Proceedings 28th Annual ARCOM Conference, 3-5 September 2012, Edinburgh, UK*. Association of Researchers in Construction Management, 687–95.
- Yin, R.K. (2009) *Case Study Research: Design and methods* (4th edition). London: Sage.