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White Paper

Procuring collaborative suppliers

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Question

Procuring collaborative suppliers

To what extent can "gain share" evaluation criteria incentivise suppliers to deliver above and beyond, enhancing the outcome? When do they work, and when do they fall short, supported by practical examples?

Coverage

- **What is collaborative procurement and what are “gain share” criteria?**
- **How to use in procurements and impact of the Act**
- **What to watch out for**
- **The answer**

What is collaborative procurement?



Collaborative procurement

What is a gain share contract and how can it be procured?

- Form of **incentivisation** regime
 - Focus on collaboration
 - Payment based on performance not fixed prices for tasks
 - Sharing of efficiencies generated in the contract
 - Can be coupled with “pain share” arrangements
 - A win/ win or lose/lose?
- Key features in collaborative procurements
 - Open book accounting
 - Shared management of contracts
 - Anti-disputes ethos
 - Aligned interests



Collaborative procurement

Why?

- Traditional customer/supplier contracts don't always generate best results
 - Lack of innovation
 - Cheapest wins
 - Allocates most risk to supplier and supply chain
 - Risk often priced in
- **Can lead to:**
 - Disputes, cost and delay
 - Material changes creating procurement risk
 - Contract failure

Where seen?

- Common in major construction alliancing contracts but also in:
 - Concession contracts e.g leisure
 - Commercial outsourcings where innovation expected/desired
 - Distributable Power Agreements



Gain share

Compare and contrast

- **Fixed cost contracts with gain share for innovation/efficiencies**
 - Bidder wins on best contract price for specified works/services
 - Supplier obliged to target reductions in costs
 - Cost pass through to CA but no incentive for supplier
- **Target cost contracts**
 - Bidder wins on best target price and risk allocation proposals
 - At end of project, actual cost is established
 - Any gains are shared between parties
 - Risk of not achieving savings can be scored
 - Overspend can be shared too – the “pain”

Gain share

Practical issues on scoring price

- Overall contract sum often cannot be fixed in advance
- How to score price if there isn't one?
- Target costs need to be accurate
- What percentage of gain to share (50/50)?
- Need caps e.g first 10% savings to contractor to keep initial target sums accurate

- Standard differential model may not work (cheapest gets full marks)
- Ignores upside/downside proposals and risks taken by bidder
- Risk/contingency needs to be priced into evaluation
- How to establish the MEAT/MAT tenderer?

Setting criteria

Public Contracts Regulations 2015

Procurement Act 2023

- Reg 56 PCR
 - Must award to MEAT
- PA23 – more flexibility – “most advantageous tender” section 23 includes
 - *“price, other costs or value for money in all the circumstances”*
- Reg 67 PCR
 - *“tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with regulation 68, and may include the **best price-quality ratio**, which shall be assessed on the basis of criteria, such as qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question”.*

How to procure

Public Contracts Regulations 2015

Procurement Act 2023

- Could set target price and score quality only (reg 67(4) PCR) and section 23 PA 23 is broader (“*price, other costs or value for money in all the circumstances*” (section 23(5)(d) PA23)
- Difficult (impossible?) to use open or restricted procedures
- Often needs negotiation stages on gain/pain or risk allocations
- Consider CPN or CD
- Competitive Flexible procedure under PA23 allows refinement of award criteria
- Obvious candidate for KPIs in PA23

How to score gain share pricing

- Better performance / efficiencies / risk management = **more money for supplier**
- **Common models which work include:**
 - **Risk/reward compensation model** (payment mechanism) for delivery stage is key
 - Can include **reimbursement of direct costs** if open book – avoid suppliers cutting corners
 - Can include **contribution to corporate overheads** of delivering project
- **Key points for procuring the paymech:**
 - Relate to subject matter and proportionate
 - Needs to work across bidder types/structures
 - Cannot favour incumbent

Practical examples – price/quality ratios

- Most public sector price scoring methodologies take bidders price score and add to quality score
- How to link price and quality (risk/gain share)?
- Price/quality ratio (permitted under PCR reg 67)

How much does each quality point cost?

Target price submitted by bidder (£) ex VAT

Quality score of that bidder

Practical examples – price/quality ratios

Bidder	Target Price	Quality including risk share score / 100	Cost (£) quality mark	Ranking
1	£1,200,000	85	14,118	2
2	£1,320,000	95	13,895	1
3	£790,000	52	15,192	3

Practical examples

- Assessing risk of bidder's proposals through transparent mechanism

Bidder	Target price	Quality marks/100	Risk ratio (disclosed + SME assessed)	Risk assessed quality score
1	£1,000,000	75	:2	32.5 (4th)
2	£1,500,000	75	:1	75 (1st)
3	£3,000,000	90	1:25	72 (2nd)
4	£1,250,000	70	:1.5	35 (3 rd)

The answer

- Gain share procurement models can work well to generate cost saving and innovation
- A move away from cheapest always wins?
- Procuring to incentivise risk-share requires different ways of thinking
- “Standard” price criteria often will not work
- Need to test/model criteria before use on procurement
- Risk of challenge if winner is not MEAT / MAT
- More flexibility under PA 23

Thank you. Any questions?

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