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White Paper

Collaborative Procurement

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Question

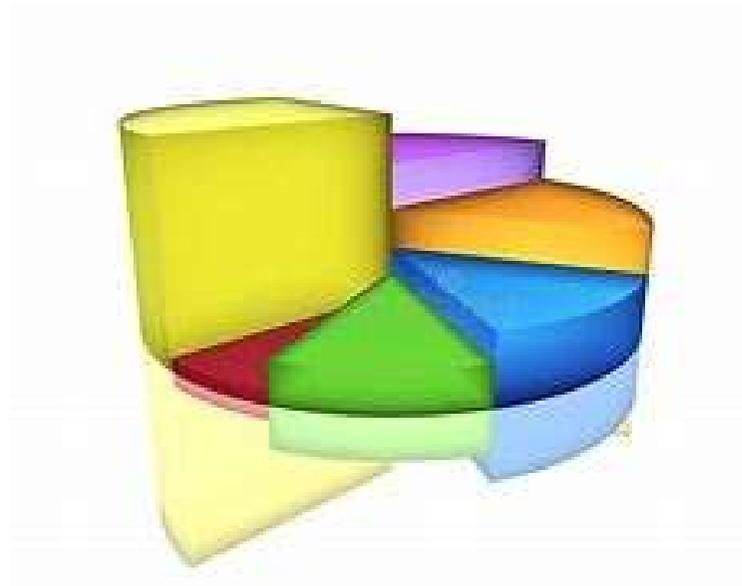
Collaborative procurement

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**
- **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 seen in:
 - Concession contracts e.g leisure
 - Commercial contracts 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
 - Overspend can be shared too – the “pain”

Gain share

Practical issues on scoring price

- 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
- Overall contract sum often cannot be fixed in advance
- Risk/contingency needs to be priced into evaluation
- How to establish the MEAT tenderer?

Setting criteria

Public Contracts (Scotland) Regulations 2015 and Public Contracts Regulations 2015

Procurement Act 2023

- Reg 57 PCR(S) and 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(S)
 - *“must identify the most economically advantageous tender on basis of best price-quality ratio, which must be assessed on the basis of criteria linked to the subject-matter of the public contract in question and must include the price or cost, using a cost-effectiveness approach”*
 - Modified test in reg 67 PCR

How to procure

Public Contracts (Scotland) Regulations 2015

Public Contracts Regulations 2015

Procurement Act 2023

- Difficult (impossible?) to use open or restricted procedures
- Often needs negotiation stages on risk allocations
- Consider CPN or CD
- Competitive Flexible procedure under PA23 allows refinement of award criteria
- Obvious candidate for KPIs in PA23 – can use in PCR(S) too

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 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	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	Tender price	Quality marks/100	Risk mechanism	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 contract models can work well to generate cost saving and innovation
- 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 for non-devolved procurement

Thank you. Any questions?

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