



CECA Procurement Report

Directions in policy for the
UK's infrastructure sector

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Contents

01	CONTENTS
02	ABOUT THE AUTHORS
03	INTRODUCTION
04	FORMS OF PROCUREMENT USED BY CECA MEMBERS
06	PROCUREMENT IN THE UK
07	PROCUREMENT IN SCOTLAND
08	PROCUREMENT IN WALES
09	THE CIVIL ENGINEERING CONTRACTORS' EXPERIENCE OF PROCUREMENT
10	INDUSTRY PROCUREMENT CHALLENGES
14	PROCUREMENT RECOMMENDATIONS

About the authors



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Marie-Claude is an experienced communications and policy professional. Having started her career in public affairs consultancy, she moved to a policy role at the Federation of Small Businesses in 2009, before joining CECA as Industry and Public Affairs Manager in 2012, becoming Head of External Affairs in 2014. She leads the team on all policy, public affairs and media relations activity, and also plays a key role in CECA's strategy and business development.

Introduction

Infrastructure procurement in the UK has reached crisis point with the public sector procurement process now the most expensive and one of the lengthiest in Europe.¹

Competition in the UK is fierce. For client organisations undertaking a procurement exercise, distinguishing between contractors and being able to identify the best contractor to undertake a particular project is becoming increasingly difficult.

The procurement process is becoming more complex and prolonged with more selection stages or assessments being introduced to test contractor credentials.

But with both public and private sectors facing increasing pressures on resources, procurement reform is vital if we are to continue to deliver world-class infrastructure projects to secure UK-wide economic growth.

Every £1 billion of infrastructure construction increases overall economic activity by £2.842 billion, but the complexities and management of many procurement processes is driving up costs and deterring many businesses from bidding for work.²

European Union law sets out minimum harmonised public procurement rules which have been transposed into UK legislation. The UK has also built on European legislation using the same approach as the EU. On top of this, the interpretation of the rules often depends on the experience and technical ability of the procurement teams.

While we are unlikely to see a bonfire of EU procurement rules following the UK's decision to leave the European Union in June 2016, CECA believes there is now an opportunity to redesign the UK's compliance with EU law to deliver a simpler approach to procurement.

To this end, we have worked with our members to identify the eight most challenging elements of the procurement process and subsequently propose a series of solutions to address the challenges faced.

The costs of procurement in the UK are escalating and are hitting the public and private purse where it hurts. CECA believes that the recommendations identified in this report will ensure more money is spent on building innovative infrastructure and less money is spent on the administration of a bureaucratic procurement process.

1. CEBR, *The UK public sector's procurement process is the most expensive in the European Union*, July 2013. <https://www.cebr.com/reports/uk-procurement-most-expensive-in-eu/>

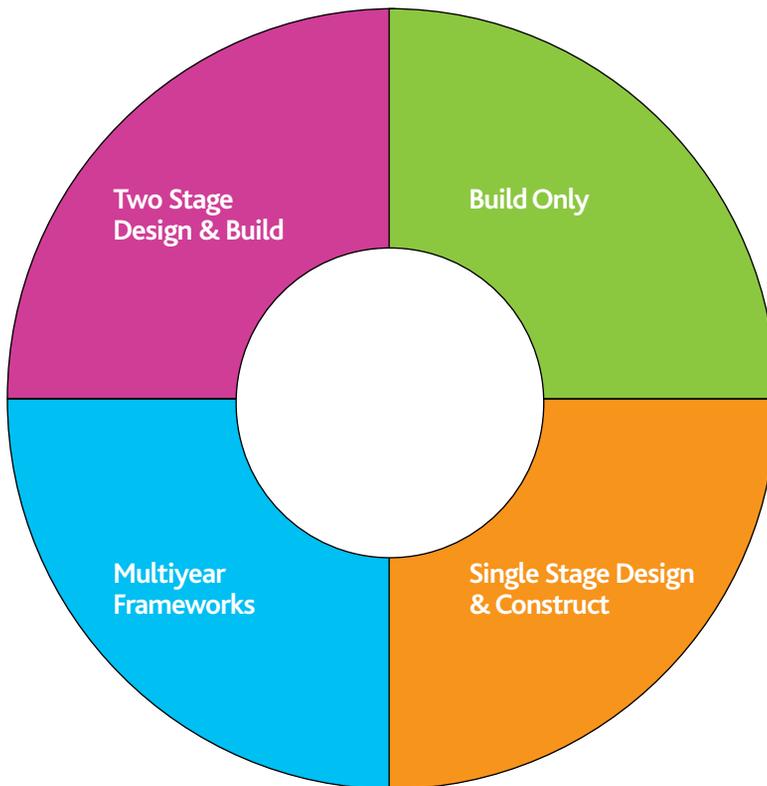
2. CEBR & CECA, *Securing our economy: The case for infrastructure*, May 2013. http://www.ceca.co.uk/media/103459/ceca_cebr_report_-_securing_our_economy_the_case_for_infrastructure_-_may_2013.pdf

Procurement Report

Forms of procurement used by CECA members

Procurement is the process of purchasing goods or services. There are many ways in which the design and construction of an infrastructure project can be procured.

There are four procurement strategies that are most commonly used by clients within the infrastructure sector and these are summarised below. However, it is important to note that there is often some overlap between one strategy and another depending on the work that is being procured.



Build only

The process typically takes 6 weeks for a contractor bid for the work and 20 weeks for it to be analysed by the client.

Single stage design and construct

The process typically takes 12 weeks for a contractor to bid for the work and 20 weeks for the client to analyse the bid.

Multiyear frameworks

The process typically takes 12 weeks for a contractor to bid for the work and 12 weeks for the client to analyse the bid.

Two Stage Design and Build

The process typically takes 6 weeks for the contractor to bid for the work and 12 weeks for the client to analyse it for the first stage.

Procurement of infrastructure in the UK

Procurement by public bodies

UK

The UK Government's key procurement policy requirement is that all public procurement is based on value for money, which is defined as "the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought."³ It is assumed that this will be achieved through competition.

Public sector procurement must, by law, encourage free and open competition and value for money, in line with internationally and nationally agreed rules. Therefore governments tend to align procurement policies within these legal frameworks, but also with wider policy objectives.⁴

In June 2016, the Infrastructure Projects Authority, which is a UK Government body published an updated *Project Initiation Routemap*.⁵ This is a framework that enables public and private sector clients to improve upon their project and programme delivery via addressing common capability gaps.

It has been developed as a result of UK Government research which found evidence that delivery failures in projects can often be linked to their early procurement stages.

It addresses these challenges by providing a framework to enable greater focus in the early stages of projects on establishing and communicating strategic objectives.

3. Guidance, *Public Procurement Policy*, Crown Commercial Service, October 2015, updated June 2016. <https://www.gov.uk/guidance/public-sector-procurement-policy>

4. Ibid.

5. Guidance, *Improving infrastructure delivery: project initiation routemap*, Infrastructure and Projects Authority and HM Treasury, July 2014, updated June 2016. <https://www.gov.uk/government/publications/improving-infrastructure-delivery-project-initiation-routemap>

Scotland

The Scottish Government is undertaking a process of procurement reform moving from 'government-led, public sector owned' to a 'truly collaborative approach', in a period framed by legislative and regulatory changes.⁶

As part of this programme there is a dedicated *Review of Scottish Public Sector Procurement in Construction*. This builds on the findings of an independent construction review which looked at how public bodies in Scotland procured construction projects. The Scottish Government has identified CECA as a key stakeholder in this process and a regular dialogue and working group meetings are taking place with CECA on issues such as community benefits and the introduction of the European Single Procurement Document (EPSD).

The then Deputy First Minister, Nicola Sturgeon, announced in May 2014 that the Scottish Government welcomed the report and would implement the majority of the recommendations.

Implementation of the recommendations is currently being undertaken alongside existing legislation, notably the *Procurement Reform (Scotland) Act 2014*, which seeks to maximise the economic benefits to Scotland from effective and efficient public procurement spend.⁷

Early successes have included the introduction of the Public Contract Scotland (PCS) portal which advertises all Scottish public sector opportunities to provide works or services. CECA has worked with the Scottish Government on several working groups during the introduction and subsequent updating of PCS.

6. *Public Procurement Reform*, Scottish Government, updated 9 August 2016. <http://www.gov.scot/Topics/Government/Procurement/about/Review>

7. *Review of Procurement in Construction – introduction*, Scottish Government, updated 4 March 2016. <http://www.gov.scot/Topics/Government/Procurement/policy/ReviewProcConst>

Wales

Welsh Public Procurement Policy is based on the following principles:⁸

- Strategic;
- Professionally resourced;
- Value for money in terms of economic, social and environmental impact;
- Community benefits;
- Open accessible competition;
- Simplified standard processes;
- Collaboration;
- Supplier engagement and innovation;
- Support achievement of the seven well-being goals for Wales;
- Measurement and impact.

Private sector procurement

The rules governing private sector procurement are far less developed than public sector legislation. But on the whole, CECA members working for private clients operate within the parameters of sector directives, for example, energy and water.

8. *Wales procurement policy statement*, Welsh Government, 12 June 2015. <http://gov.wales/topics/improvingservices/better/vfm/publications/procurement-policy-statement/?lang=en>

The civil engineering contractor's experience of procurement

CECA members carry out up to 80 per cent of all civil engineering activity in the UK, in the key sectors of transport, energy, communications, waste and utilities including electricity and water. While much of our members' procurement experiences are within the public sector, a substantial proportion are in the private sector, and there is significant overlap of common themes between the two sectors.

Analysing the strengths and weaknesses of the public and private procurement process across the UK and CECA has, over the years, worked closely on behalf of its membership to address some key challenges.

Procurement reform has to date been a continuous and slowly evolving process and we welcome the steps public and private sector bodies have taken to date to address our concerns within, what is regarded as the parameters of the law. But still, the costs of bidding for work are challenging for the construction industry as a whole. Our research has found that the cost of tendering for a project is a significant proportion of any potential profit arising from successful completion of the project. In some extreme cases the whole of the profit is taken by the cost of tender. Clearly this is not sustainable. And this problem is further exasperated when one considers an average win rate of 1:4.

In an effort to manage cost of winning work to a sustainable level, many contractors have become very selective in choosing which projects to tender, the result of which is that client organisations have fewer contractors to choose from, defeating the very objective of the selection process.

CECA wishes to support the process by which the best contractor/project solution is selected for a specific project. However we also see the need to find a more sustainable way to achieve these aims.

The UK's decision to leave the European Union provides an unprecedented opportunity to redesign the UK's compliance with EU law to deliver a simpler approach to procurement.

To this end CECA has worked closely with its membership to identify the eight costliest procurement processes our members go through when bidding for work. We believe that by working with our clients to address these challenges, our members will be able to deliver both public and private infrastructure projects with substantial efficiency. This, in turn, will drive forward savings for our clients and free up additional financial resources to invest in skills and innovation within individual companies and the industry as a whole.

Box 1: Industry Procurement Challenges

1. Information requirements disproportional to bid value
2. Lack of client engagement during process
3. Too many bidders
4. Poor tender documents
5. Frameworks that deliver less than forecasted revenue and/or include secondary competition
6. Poor management of the procurement process
7. Quality of feedback post tender
8. Lack of checking and enforcement of undertakings made by contractors in tender documents

1. Information requirements disproportional to bid value

CECA believes that ensuring excellent quality is key in the delivery of world-class infrastructure. Achieving this can be supported by a thorough assessment of a contractor's quality submissions during a tender. However, members have reported that the balance is often tipped too far, and is at times, not proportionate to the value of the bid.

2. Lack of client engagement during the process

A lack of early insight from the supply chain results in the need to over-develop schemes at greater cost, or missing opportunities to enhance outcomes to ensure smoother planning.

Open and fair dialogue between clients and their potential contractors is a recognised and valued element of the procurement process. But a client must always be alert to the potential risk of providing information that may give commercial advantage to one contractor over another.

CECA understands the tight path clients must tread in order to not fall foul of the rules, but is concerned that this often leads to over caution during the procurement process. This, in turn, has negative consequences for both contractors and clients. CECA members have often reported confusion over a particular project specification, and a subsequent lack of clarification from a client leading to inappropriate bids and additional costs down the line for both client and contractor.

3. Too many bidders

In our view the bidding process must maximise competition, but not the number of competitors. Having too few bidders on a shortlist results in poor competition, but at the same time, having too many will lead to good companies dropping out. We have particular concern about the increasing use of open tendering, where any supplier can submit a bid, rather than a prequalified shortlist. This is unlikely to be an appropriate way to secure value.

4. Poor tender documents

Tendering requires extensive information and the exchange of documents. But often members report on the lack of clarity in tender documents which makes it difficult to respond effectively, potentially leading to future problems when the project moves to delivery.

5. Frameworks

Frameworks are agreements with suppliers to establish terms governing contracts that may be awarded during the period of the agreement. A contract is only awarded when an order is placed. Sometimes, mini-competitions arise within a framework agreement where companies bid again for work, because the best value supplier has not been identified.

While the framework process can be advantageous in terms of streamlining potential bidders, CECA members have indicated that they have often spent time bidding to be selected on a framework, only to subsequently not win any work from it at all.

In 2012 a UK Government Construction Strategy working group published a report on the effectiveness of frameworks.⁹ The report studied the benefits that can accrue from the use of effective frameworks in procuring construction and recommended that the principles established by the report be adopted in public sector procurement.

6. Poor management of the procurement process

CECA members have expressed concern about the oversight of a number of procurement experiences they have had. These include a punitive focus, few opportunities for innovation, an imbalance of expectation, distance from bidders and client indecision.

9. Government Construction Strategy, *Effectiveness of Frameworks*, A report by the Working Group on the Effectiveness of Frameworks of the Procurement and Lean Client Task Group, 2012. <http://www.niepbuiltenvironment.org.uk/documents/EffectivenessofFramework-FINAL-VERSION-11-7-March.pdf>

7. Quality of feedback post-tender

This part of the bid process is extremely important regardless of whether a contractor has won or lost a bid. However, members have said that often, upon completion of a bid process it is often forgotten or executed poorly.

CECA believes that there are lessons to be learnt from all bid experiences. As such feedback which captures that learning value is extremely important. It helps companies understand where they can improve their processes as well as where they score highly. This knowledge can then be disseminated across bid teams and captured as knowledge within a business.

8. Lack of checking and enforcement of undertaking made by a contractor in tender documents

As we have indicated above, winning a bid and subsequently being invited to deliver a project is a lengthy and costly process. In order to secure the work, bidders will make a series of innovative commitments including community benefit undertakings, but often delivery on all of these will not be reviewed.

While non-delivery of the agreed infrastructure will not go un-noticed, CECA members have expressed concern over an apparent lack of consistency from clients in checking that every contracted commitment has been completed. This puts competing companies at a disadvantage, if they realise they have lost out to another contractor who over-promised and under-delivered.

Procurement Recommendations

Industry and Government to evaluate procurement law and its operation in the UK post-Brexit

CECA does not advocate scrapping all procurement rules laid down by the European Union, but we believe there an opportunity has arisen to redesign the UK's compliance with EU law and to cement our understanding of both EU and UK driven rules, assumptions and interpretation to deliver a simpler and more rational approach to procurement.



CECA recommends:

CECA recommends governments work with industry and its clients to evaluate how procurement is undertaken in the UK. We suggest this is undertaken in two parts, the first must address immediate concerns, and the second must develop a series of new principles for procurement post Brexit. Both stages must specifically address the needs of SMEs as well as larger businesses.

Government must commit to a timetable of key project deliverables and funding before any major project is procured

CECA understands that at times clients are required to publish tenders with short timescales in order to comply with wider Government policy and expectations. This can result in poorly designed tenders, which are rushed through simply to meet Whitehall demand.



CECA recommends:

Government funding for large-scale infrastructure projects and expectations for their delivery are fully agreed at the start of the project, in order to enable clients to procure work in the best possible way.

UK Government To Be An 'Intelligent Client'

Being an intelligent client means adopting defined behaviours to commission infrastructure projects more effectively.



CECA recommends:

CECA recommends all public sector clients adopt the recommendations outlined in the *Project Initiation Routemap*.¹⁰

CECA also has a role to play in collecting contractor feedback on procurement best practice and sharing it with clients.

10. *Project Initiation Routemap*, UK Government, updated 15 June 2016
<https://www.gov.uk/government/publications/improving-infrastructure-delivery-project-initiation-routemap>

Develop earlier engagement between clients and contractors

CECA believes that in order to develop and build innovative projects that are on time and on budget, clients must engage with their potential supply chains at the earliest possible stage of projects, when key decisions are being made which can save millions on the future cost of delivery.



CECA recommends:

CECA recommends that clients and their supply chains work together to ensure quality pre-market engagement is a pre-requisite of any new procurement process.

An open communications system

CECA believes that research is needed into how clients and contractors communicate with one another during a tender to understand the challenges faced by both parties.



CECA recommends:

CECA recommends that clients and their supply chains develop an open communications system, where the client gets a direct communication path with the contractor, that measures the quality of the information given, when it is given and requests and responses during a tender to identify best practice and areas which require improvement.

Institute pre-procurement sessions between clients and bidders

CECA members often report concerns over the quality of tender documents which makes bidding for work extremely challenging.



CECA recommends:

CECA recommends that each client establish a dedicated pre-procurement session for supply chains to ensure that both parties work together to ensure tender documents are accessible, clear and realistic.

Institute formal post-tender feedback sessions between clients and bidders

Just as with pre-procurement, CECA members see merit in feedback from clients when they have not been successful in their bid.



CECA recommends:

Infrastructure clients should commit to post-tender feedback sessions for all infrastructure work procured in order to drive continuous improvement.

Institute awarded contract metrics

Any change to the procurement process must be measured to build up an evidence base of demonstrable change and to facilitate review where appropriate.



CECA recommends:

CECA will work with its membership and relevant organisations to develop a series of contract metrics that can be easily measured and reported upon post the completion of a contract.

A calculator for quality bids

CECA believes that the volume of tender deliverables must be proportionate to the size of the bid.



CECA recommends:

Industry work together with the UK Government to develop a cost calculator for quality bids to ensure that cost of bidding is understood when tenders are being developed.

Make Two Stage Early Contractor Involvement the procurement norm

CECA believes that the widespread adoption of Two Stage ECI by clients would drive down costs for both clients and contractors.



CECA recommends:

Two Stage ECI becomes clients' go-to procurement solution above defined thresholds.

Regulate bidder numbers

CECA believes that in order to deliver world-class infrastructure in a rational and efficient manner, the number of bidders for tenders must be appropriate.



CECA recommends:

The number of bidders for contracts must be proportionate to their value, and the use of open procedure should be limited.

Clients must decide upon their preferred bidder as quickly as possible in order to notify other competitors to stand down.

Frameworks to support innovation

CECA believes that there are many examples of good frameworks.



CECA recommends:

Frameworks should be based around a clear valued work bank with a commitment to deliver work in the framework.

The number of companies on a framework should be proportionate to the framework's value.

All frameworks should provide one direct award contract to each participant to provide participants an opportunity to recoup some of the bidding costs. Subsequent awards could be based on performance on the direct award and subsequent projects.

The full implementation of the recommendations of *Effectiveness of Frameworks, A report by the Working Group on the Effectiveness of Frameworks of the Procurement and Lean Client Task Group*.¹¹

Pilot potential changes to UK procurement

CECA is aware that a number of our suggested recommendations will need testing ahead of wider roll-out to iron out any challenges in their development and to ensure they are communicated effectively.



CECA recommends:

CECA recommends that government, clients and the infrastructure supply chain pilot any potential change before its implementation.

11. Government Construction Strategy, *Effectiveness of Frameworks: A Report By The Working Group On The Effectiveness Of Frameworks Of The Procurement And Lean Client Task Group*, 2012. <http://www.niepbuiltenvironment.org.uk/documents/EffectivenessofFramework-FINAL-VERSION-11-7-March.pdf>