

Improving public procurement for construction SMEs





Foreword

by Jim Gilmour
National President of the FMB

The construction industry continues to falter after the deepest and most sustained economic downturn most of us can recall and unfortunately, the industry's small and medium-sized (SME) firms are being unduly affected. The Federation of Master Builders (FMB) is committed to doing all that it can to identify ways to improve the fortunes of construction SMEs, which is why we have published this research into the barriers currently facing SMEs when attempting to win public sector construction contracts in England.

Although there is admittedly less public sector construction work around at the moment, it is only right that SMEs have fair access to any opportunities that do arise and in this report we put forward a number of sensible and achievable recommendations to help

make this a reality. It is important to note that some public sector clients have a firm understanding of the benefits that procuring from SMEs can bring to their local communities and are subsequently pretty good at it, although others are not so good. As part of this research, we have highlighted best-practice case studies where we can in the hope that all local authorities, housing associations, schools and NHS Trusts will learn from the success of their counterparts. I urge all public sector clients to enact our recommendations. By maximising opportunities for construction SMEs, public sector clients will also maximise the potential for their local communities to grow and prosper.

Jim Gilmour
National President of the FMB

“The Federation of Master Builders is committed to doing all that it can to identify ways to improve the fortunes of construction SMEs”



Foreword

by Cllr Peter Fleming
Chair of the Local Government Association
Improvement and Innovation Board



The Local Government Association (LGA) welcomes this report by the FMB as it highlights the important role small businesses have in supporting local economic growth. Councils have been particularly hard hit by the cuts in public sector funding, experiencing a reduction of 33% in their funding over the current Spending Review, impacting on their ability to commission works with suppliers. However, councils are committed to investing in their local communities and recognise that it is vital that SMEs are successful in winning public sector construction contracts as they employ local people including under apprenticeship schemes, and they also typically spend money with local suppliers.

In the recent Department for Business, Innovation and Skills 'best councils to do business with' awards scheme, which recognised those councils taking a supportive approach to engaging SMEs in procurement, Halton Borough Council was commended for awarding more than 80% of its business to SMEs, while others paid suppliers within ten days, avoiding complex bureaucracy.

The direct cuts in councils' funding and the separate cuts to nationally-sponsored construction schemes such as the end of the Building Schools for the Future Programme, as well as a reduction in funding for house building. This results in reduced opportunities for SMEs and increasing pressure on them to bid successfully for those contracts that are being tendered. Therefore councils need to ensure that where they are tendering for work, local SMEs have a fair chance of winning these contracts.

The procurement process needs to be open and transparent to ensure that contracts are awarded fairly and on merit. However, the public sector can improve the process and better support local businesses to do

so successfully. A number of councils have introduced supplier open days training sessions and guidance to help SMEs better understand the process. Initiatives such as "Find it in Sandwell" or Birmingham City Council's "Buy for Good" all help SMEs and local suppliers to identify tendering opportunities. Councils can also review and streamline their procurement processes, making these clear and accessible, for example making sure that, where possible, businesses can complete pre-qualification questionnaires (PQQs) online. NEPO, which represents the 12 North East unitary councils, worked with the Federation of Small Businesses and the North East Chamber of Commerce to simplify their PQQ. This is now online on the NEPO Portal and enables suppliers to input the required information, upload certificates, and their responses are stored for future use.

As well as supporting councils to streamline procurement processes, the LGA is working with the Cabinet Office to lobby Brussels on the revised EU procurement regulations to remove bureaucracy and make the process as straight-forward as possible.

We support this report by the FMB as it highlights some of the good practice already in place in a number of councils as well as reflecting some of the frustrations that their members experience in trying to win contracts from the public sector. The LGA and its members want thriving local communities and with the help of the FMB we can help more councils learn and adopt best practice. Together, we will make it easier and more cost-effective for them to do business, support their local community and stimulate economic growth.

Cllr Peter Fleming

Chair of the LGA Improvement and Innovation Board

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Executive summary

Public sector construction contracts are worth more than £37bn per year, which is a considerable 38% of all construction output.

Despite a government pledge that at least 25% of all central government contracts should be awarded to small and medium-sized (SME) businesses by 2015, many construction SME firms are finding it tough to win public sector work. There are numerous economic and environmental benefits to be gained from using small, local businesses, so by relying only on large businesses, many parts of the public sector are failing to take full advantage of the legacy opportunities that can be created by good public sector procurement. This report examines the barriers facing SMEs when attempting to secure public sector construction contracts and makes a number of recommendations to clients and industry on how these barriers could be overcome.

Success rate of small firms when competing for public sector work

Although small firms dominate the construction industry in terms of both output and employment, this is not usually reflected in the success rate of SMEs when tendering for public sector contracts. According to our research, 41% of construction SMEs are only successful 10% of the time or less when bidding for public sector contracts and a significant 55% of firms have seen their success rate decrease over the past five years. Research by the FMB suggests that increased transparency and openness around the extent to which public sector clients are procuring their products and services from SMEs would gradually contribute to greater access – it would help reward best practice and challenge poor practice.

RECOMMENDATIONS



Recommendation – all public sector clients should publish quarterly statistical data on the value and proportion of work awarded to SMEs by sector.

Recommendation – central government should work with the rest of the public sector to develop guidelines for how statistical data on SME spend by public sector clients is captured and presented in order to ensure a standardised approach and an ability to make meaningful comparisons.

The pre-qualification process

Pre-qualification schemes are used by both private and public sector clients to aid them in the procurement process. They allow clients to carry out the initial evaluation and assessment of potential suppliers in terms of their capability to complete the desired task, whether it be to provide a product or service. Pre-qualification Questionnaires (PQQs) are an integral part of the supplier assessment process however, their introduction has had the unintended consequence of increasing the cost and time burden on SMEs and thus, in many cases, reducing their access to public sector contracts.

Almost half of all those members responding to the FMB's public procurement survey describe their experience of completing PQQs for public sector clients as being "quite negative" or "mostly negative".

“There are numerous economic and environmental benefits to be gained from using small, local businesses”



FMB members report that they have encountered PQQs that are more than 100 pages long and ones that contain unintelligent or poorly worded questions that make them even more off-putting and time-consuming to complete. If an SME does decide to regularly bid for public sector contracts, it will typically be required to become a member of various pre-qualification schemes and thus fill out multiple PQQs over the course of the year. PQQ forms must be standardised to limit the negative impact they have on SMEs and this should be done via the use of PAS 91 as a basis for all construction PQQ forms.

RECOMMENDATIONS

Recommendation – all public sector clients, including local authorities, should use PAS 91 (2013) as the basis for their construction PQQs.

Recommendation – central government to properly promote to all public sector clients the benefits of using PAS 91.

Recommendation – public sector clients should not request a firm to complete a PQQ more frequently than once per year and only more frequently when there is a significant change to the relevant circumstances of the firm or additional information is required due to the specific nature of the contract.

Recommendation – the FMB to support members by developing guidance and associated training to help them through the PQQ and tendering processes.

Framework agreements

SMEs accept that, as part of the public sector's desire to reduce construction costs by 2015, framework agreements will continue to be used as a means by which to help deliver so-called efficiency savings and reduce consultancy and construction costs. However, it is clear that framework agreements are perceived as a barrier to SMEs attempting to win public sector work, with 51% of FMB members reporting that their workloads have decreased as a result of the introduction of frameworks. Many FMB members report that they are often rejected for work under a framework agreement because public sector clients are being overly cautious when assessing a firm's capacity to deliver, particularly when it comes to points being awarded based on a firm's turnover.

Where framework agreements make it impossible for smaller firms to become the principal contractor, it is essential to be part of the supply chain in order to access the market. However, this is not always easy according to construction SMEs in general and micro-businesses in particular. FMB members report that main contractors are often less willing to deal with good, experienced smaller firms and prefer to sub-contract to those that will accept almost any terms and conditions dictated by the main contractor, such as poor payment practices.

In order to overcome some of the additional barriers created by the use of framework agreements, there are some examples of smaller firms coming together to form consortia in order to improve their chances. However, this model will not suit every construction SME, particularly micro-businesses as the associated legal and professional costs of setting one up will be disproportionate when compared to the value of the contracts they are typically suited to. Public sector clients should desist from the wholesale 'bundling' of contracts to increase opportunities for SMEs to act as principal contractors on smaller contracts, and use their influence to ensure fair access and payment practices are applied throughout the supply chain.

RECOMMENDATIONS

Recommendation – all public sector clients should build on their commitment to fair payment in principle by mandating, via the contract terms, the payment of the Tier 2 contractor by the Tier 1 contractor within 30 days to help ensure fair payment principles become a reality throughout the supply chain.

Recommendation – public sector clients should require details of all Tier 2 spend by any appointed Tier 1 contractor on a framework in seeking to demonstrate and evidence who they spend and procure with. This information should be published by the public sector client in order to promote transparency and accountability.

Recommendation – the FMB to work with the Construction Industry Training Board (CITB) to develop training which will assist in the formation of consortia.

Recommendation – the FMB to work with public sector clients to ensure that efforts by construction SMEs to form and bid for work via a consortium are well received and supported by the client.

RECOMMENDATIONS

Recommendation – public sector clients should review the limitations they impose when assessing the financial viability of SMEs attempting to get on to a framework. Public sector bodies should emulate the approach taken by the private sector and deem a SME firm's turnover to be suitable in all cases where the contract is no more than 33% of the firm's annual turnover.

Recommendation – public sector clients should determine appropriate 'lots' and desist from the wholesale 'bundling' of contracts in order to maximise opportunities for SMEs to act as the principal contractor.

Performance of public sector procurement teams

Public sector spending cuts have significantly reduced the amount of resource available to public sector clients and this is most likely to have increased pressure on their procurement processes. One impact of this lack of resource available to public sector bodies, particularly local authorities, is the limited supply of feedback to those who are unsuccessful, which is a commonly cited problem by construction SMEs. However, FMB research shows that, in terms of local authorities, 50% of respondents describe the expertise of the procurement staff as being "average" and 22% describe them as "good" or "excellent". Further still, 44% of FMB members stated that local authority procurement teams adhere to statutory timescales for responses "most of the time" and 9% said that this is "always" the case.

Despite this, there are concerns about the provision of detailed and timely feedback to unsuccessful bidders in the procurement process. Unfortunately, this feedback is not always effectively communicated by public sector clients, if at all. In the survey, 40% of FMB members report that they "rarely" receive advice or feedback from their local authority regarding their participation in the procurement process and 19% "never" receive such feedback. However, this could in some cases be due to construction SMEs failing to realise that, under the EU Remedies Directive 2009, they are entitled to it.

Although suppliers are able to challenge public sector procurement practices via the Cabinet Office's Mystery Shopper Scheme, this is often seen as being ineffective by construction SMEs as any recommendations by central government to the public sector client do not necessarily have to be taken on board and, unless deemed extremely serious, are not followed up by the Cabinet Office.

RECOMMENDATIONS

Recommendation – public sector procurement teams should provide detailed written feedback to unsuccessful firms that request such feedback, within 15 days of receiving a request.

Recommendation – the Cabinet Office should follow up on any recommendations made to public sector clients within six months of the complaint being made via the Mystery Shopper Scheme to find out if their advice has been taken on board. The Cabinet Office should then publish the results and maintain a list of those public sector bodies that are not adhering to agreed public procurement practices.

Visibility of public sector contracts

Of those members responding to the FMB survey, 69% said that they find it "quite difficult" or "very difficult" to find out about public sector contract opportunities. To improve visibility, the Government now publishes and updates at regular intervals a pipeline document that provides detailed projections of public sector spend on central government construction contracts. However, the projects are often too large for the vast majority of construction SMEs to consider and therefore this document appears to be of little use to the majority of firms in the industry. In fact, of those members responding to the FMB survey, 81% said they are not even aware of the Government Funded Construction Pipeline.

Other means by which construction firms can find out about public sector contracts are via online portals such as Contracts Finder, which advertises contracts worth more than £10,000. However, not all public sector clients use this portal and SMEs find themselves having to



continually search a number of different sites to ensure that they are entirely up-to-date with the opportunities suitable for their business. FMB members have a desire for the means by which public sector contracts are advertised to be more streamlined, and although the development of regional portals by local authorities is a step in the right direction, these portals are not used by all public sector clients within any given region.

RECOMMENDATIONS

Recommendation – all public sector clients should use their regional online portal to advertise opportunities to buyers.

Lessons to be learned: Public procurement in Wales

Public procurement practices vary widely across England, Wales, Scotland and Northern Ireland and therefore the experience of construction SME firms operating in the various nations can also vary widely. In Wales, there is evidence to suggest that the Government is making some headway in its attempts to increase engagement in public procurement by construction SMEs, particularly in relation to the Supplier Qualification Information Database (SQiD).

The SQiD in Wales is set to make a real difference to small construction firms that are attempting to engage in the public procurement process and the key reason for this is that, unlike in England with the implementation of PAS 91, the Welsh Government is prepared to mandate the use of the SQiD by all public sector

clients. Central government in England has made no such equivalent statement of intent, mandating the use of PAS 91 by central government departments only – unfortunately this somewhat timid approach can be all too easily ignored by the rest of the public sector.

Myths surrounding EU public procurement rules

EU public procurement rules do not need to be a barrier to SME engagement in public sector procurement. It is the role of the FMB, the LGA and other professional bodies to ensure all those involved in public procurement are properly informed about any limitations created by the rules and this role will be particularly important once the latest version of EU Public Procurement Directive is released in 2014

RECOMMENDATIONS

Recommendation – the FMB to work with public sector clients to ensure that procurement teams and construction SMEs are properly informed regarding the various limitations imposed upon them by the revised EU Public Procurement Directive.

SME-friendly local authorities – encouraging best practice

Many public sector bodies are procuring a high percentage of their goods and services from smaller firms and a number of best-practice examples have been highlighted in this report.

Introduction

Public sector construction contracts – which cover construction spend by clients in the public sector, including central government, local government, housing associations and NHS trusts – are worth almost £37bn per year, which is a considerable 38% of all UK construction output.

However, despite the Government's stated intention that 25% of all public sector contracts should be awarded to SMEs¹ by 2015², many small construction firms are finding it more difficult than ever to win public sector work². Instead, the major contractors, which currently account for only one third of the industry in terms of employment, are, for various reasons, dominating the public sector market to the detriment of many local economies. 52% of all those working in the construction industry are employed by firms employing less than 115 people and a considerable 33% are employed by firms employing less than 13 people³. Therefore, it is alarming that, in many cases, these firms are finding it increasingly difficult to access their fair share of public sector work.

The Public Service (Social Value) Act requires public authorities to have regard to economic, social and environmental well-being in connection with public services contracts; and for connected purposes⁴. It is widely accepted that the use of local firms creates local employment opportunities and other local economic benefits. Typically small firms are responsible for the vast majority of apprenticeship training in the construction industry, with 60% of apprentices being employed by micro-businesses⁵. By relying only on large businesses, many parts of the public sector are failing to take full

advantage of the legacy opportunities that can be created by good public sector procurement. Local firms understand where to source local materials and are not required to travel long distances. Therefore, there are many economic and environmental benefits to be gained from using smaller, local businesses.



The key problems facing construction SMEs when attempting to engage in the public procurement process include the resource-intensive pre-qualification process; the poor implementation of framework agreements by some public sector clients – which can result in the exclusion of smaller firms – and a lack of visibility of public sector contracts suitable for SMEs.

These barriers are in the context of one of the most devastating economic downturns in living memory. Construction is often described as a “weather vane” industry in that, when recession hits, it is one of the first to show signs of experiencing difficulties. Equally, when a recovery comes, it is usually the first to display “green shoots”.

However, these so-called “green shoots” continue to evade the construction industry which is almost £17bn smaller than it was in its peak in 2007. 2013 is set to be another challenging one for the sector, with industry forecasts predicting a further decline in output of 2.1% following on from the 8.1% fall seen in 2012⁶.

¹ A SME is a company that employs fewer than 250 people in line with the European Commission's definition

² HM Government, *The Coalition: our programme for government* (June 2010)

³ ONS *Construction Statistics - No. 13, 2012 Edition* (figures for Q3 2011)

⁴ *Public Services (Social Value) Act 2012*

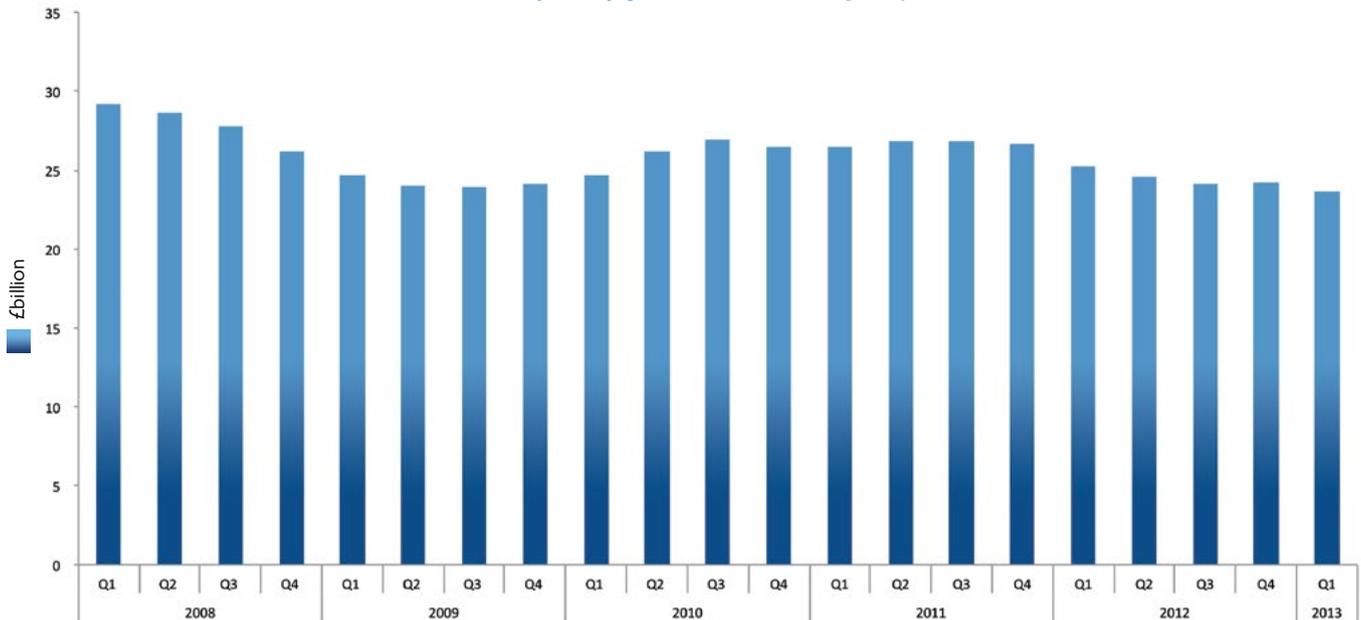
⁵ *Construction Industry Training Board (2012), Employer Panel: Employer attitudes and motivations to learning and training (Wave 12)*, Unpublished

⁶ *Construction Products Association, Construction Industry Forecasts 2013 – 2017* (April 2013)

“Public sector contracts are worth almost £37bn per year which is a considerable 38% of all UK construction output”



Volume of total construction output in Great Britain: Constant (2005) prices, seasonally adjusted



Source: ONS Output in the Construction Industry, March Q1 2013

It is important to note that the economic downturn has had an equally devastating effect on the public sector. The anticipated fall in industry output in 2013 is largely due to the impact of public sector spending cuts. This has resulted in a:

- Huge reduction in total value of construction work on offer from the public sector. This means that there is simply less work for construction firms to compete for, which continues to have an acute and disproportionate effect on SMEs in general and micro-businesses⁷ in particular. To put it another way, the cake is smaller and therefore the SME slice of the cake is also bound to be smaller. As such, austerity continues to hinder public sector construction and the latest industry forecasts indicate that public sector spend on construction is anticipated to be 18%, or £7 billion, lower in 2013 than it was in 2010. Public sector housing starts fell 19% in 2012 and a further fall of 4% is expected in 2013. Publicly funded education and health sectors are both expected to fall 15% during 2013, having already fallen 24.9% and 19.2% respectively in 2012⁸.

- Significant reduction in the overall amount of resource available for public sector clients. For instance, since 2010 more than 260,000 jobs have been lost in local government through redundancies and the deletion of vacant posts⁹. This is likely to be putting additional pressure on the procurement processes of many local authorities and may be a contributing factor to the amount of resource they are able to dedicate to supporting SMEs through the procurement process.

Public sector procurement practices vary widely across England, Wales, Scotland and Northern Ireland, as well as varying significantly within England itself. This research focuses on public sector procurement in England, but also looks at some of the lessons to be learned from the experience of those seeking to improve access for SMEs to public sector construction contracts in other parts of the UK. The development and implementation of the Welsh Supplier Qualification Information Database (SQulD) will be discussed on pages 30 and 31 of the report.



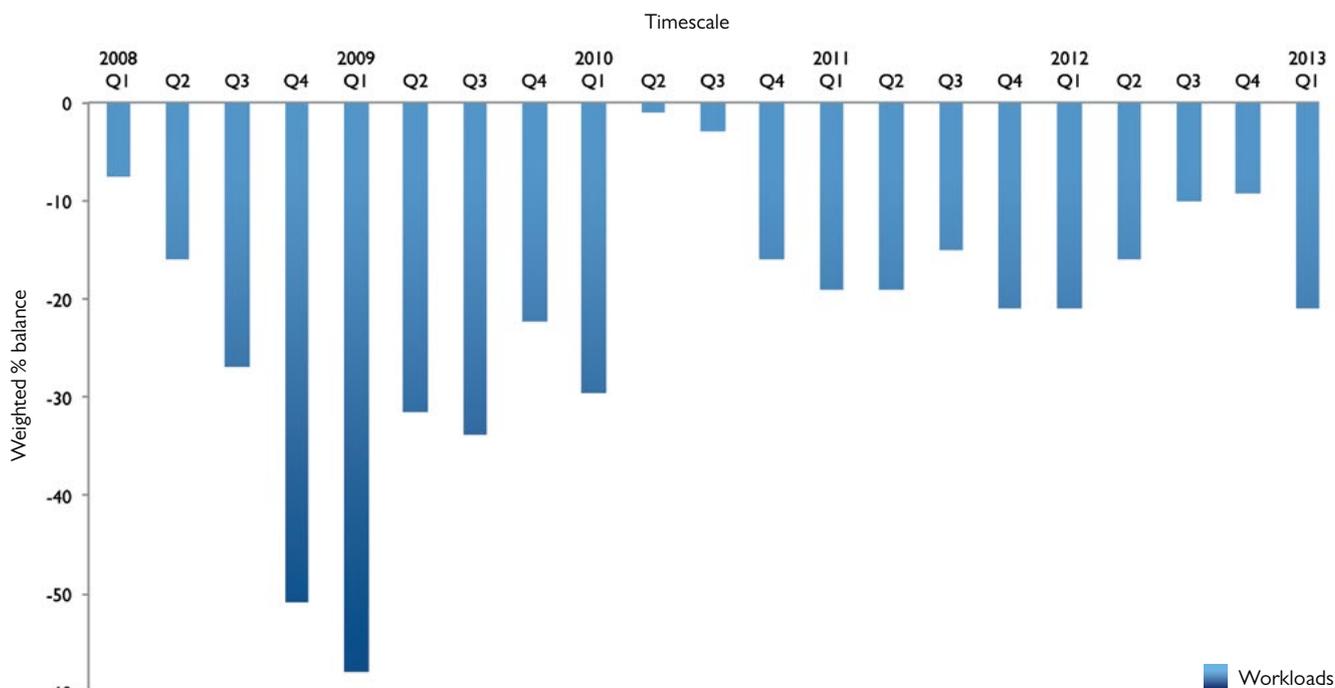
This report is aimed at improving access for construction SMEs to public sector contracts by raising awareness of the barriers that exist and also identifying best practice for how these obstacles can be overcome. The FMB has developed a number of what it believes to be constructive and achievable recommendations for local authorities and other public sector clients to use in order to address this issue. The FMB is delighted to be working with the LGA which is equally committed to improving the procurement process in order to deliver fair access to SMEs, best value for the tax payer and support for local economies across England.

SMEs are particularly struggling and have been throughout the economic downturn as evidenced by the FMB's quarterly state of trade surveys. The workloads of construction SMEs have been hard hit since the downturn took hold of the construction industry in 2008. Early 2009 was a particularly difficult time for small builders though four years on, there has been little by way of an improvement. Even now, it is still the case that a greater proportion of FMB members are reporting lower workloads than are reporting higher workloads.



7 A micro-business is a company that employs fewer than ten people in line with the European Commission's definition
 8 Construction Products Association, Construction Industry Forecasts 2013 – 2017 (April 2013)
 9 UNISON press release, End the squeeze on Local Government (19th March 2013)

SME workloads in United Kingdom



Source: FMB State of Trade Survey, Q1 2013



Success rate of small firms when competing for public sector work

SME construction firms typically access public sector markets via two routes – they either bid for and win small contracts and therefore act as the principal contractor or alternatively, they act as Tier 2 or Tier 3 sub-contractors to the main contractor. The type of public sector work carried out by construction SMEs acting as the principal contractor would typically include a social housing refurbishment contract for a local authority or housing association, a contract to build a new school classroom, or a repair and maintenance contract on a local hospital building.

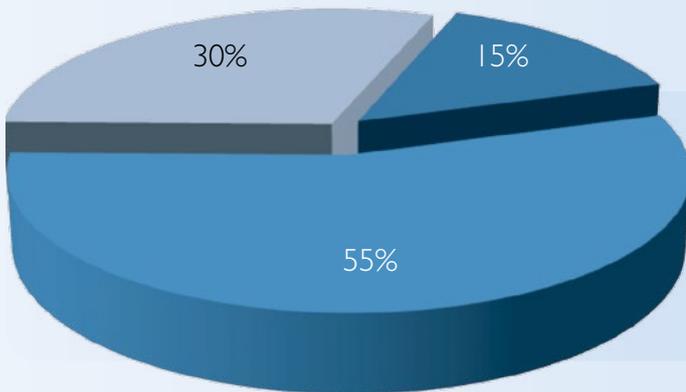
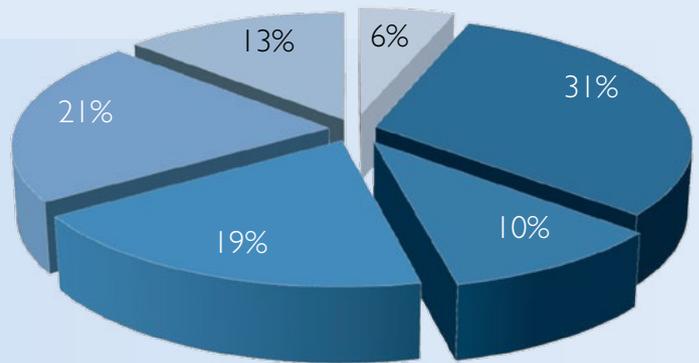
Although small firms dominate the construction industry in terms of both output and employment, this dominance is not usually reflected in the success rate of SMEs when tendering for public sector contracts. More than 50% of all those working in the construction industry are employed by firms employing fewer than 115 people and a third are employed by companies employing less than 13 people¹⁰.

Of those members responding to the FMB survey, 41% of construction SMEs are only successful 10% of the time or less when bidding for public sector Contracts, and 55% of firms have seen their success rate decrease over the past five years. Although, as previously stated, this is partly down to the fact that there is significantly less public sector work to compete for, our research indicates that there are a number of other barriers that are inhibiting construction SMEs.

Central government has an “aspiration” that a quarter of all central government spending should go to SMEs by 2015, but Cabinet Office statistics show that we are still some way off from this being a reality with direct SME spend at 10% in 2011/12¹¹. This target has been beaten by other public sector clients, such as Worcestershire County Council, which identified that 80% of the council’s third-party spend ends up within the local economy and that 70% of its total spend is with SMEs. However, this is clearly not the case across the board.

When competing for public sector work, my firm is successful:

- 5% of the time or less
- 6 to 10% of the time
- 11 to 25% of the time
- 26 to 50% of the time
- 51 to 75% of the time
- 76 to 100% of the time



How has your success rate changed in the past five years?

- Increased
- Decreased
- No change

Research by the FMB suggests that increased transparency and openness around the extent to which public sector clients are procuring their products and services from SMEs would gradually contribute to greater access – it would help reward best practice and challenge worst practice. As such, all public sector clients should commit to publishing data on direct and in-direct spend with SMEs on a quarterly basis so central government, members of the public and suppliers themselves can see how they are performing. Guidelines should be developed by central government regarding how this information should be captured and presented, in order to ensure a standardised approach and an ability to make meaningful comparisons.

In a similar vein and following a recommendation from Lord Young¹², the Prime Minister’s adviser on Enterprise, the Government is now running an annual ‘best councils to do business with’ awards scheme. This is a chance for local authorities to showcase the good work they are doing to engage SMEs in the public procurement process, and will hopefully go some way to spreading best practice.

RECOMMENDATIONS

Recommendation – all public sector clients should publish quarterly statistical data on the value and proportion of work awarded to SMEs by sector.

Recommendation – central government should work with the rest of the public sector to develop guidelines for how statistical data on SME spend by public sector clients is captured and presented in order to ensure a standardised approach and an ability to make meaningful comparisons.

¹⁰ Construction Statistics - No. 13, 2012 Edition (figures for Q3 2011)

¹¹ Cabinet Office statistics, Direct and Indirect Spend with SMEs (February 2013)

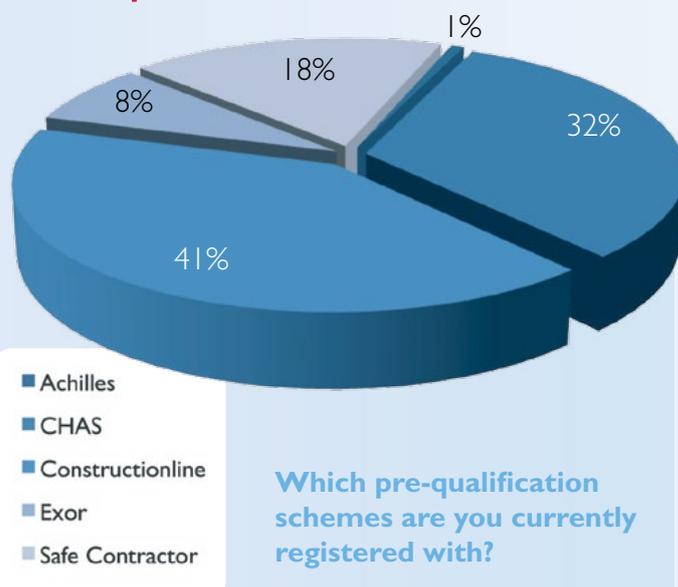
¹² Lord Young, Growing your business: a report on growing micro-businesses (May 2013)

“Increased transparency and openness... would gradually contribute to greater access”



The pre-qualification process

Pre-qualification schemes are used by both private and public sector clients to aid them in the procurement process. Essentially, they allow clients to carry out the initial evaluation and assessment of potential suppliers in terms of their suitability to complete the desired task, whether that is to provide a product or service. Well known pre-qualification schemes used by public sector clients procuring from the construction industry include Constructionline, CHAS, Safe Contractor, Exor and Achilles, but there are many more that are currently being used by local authorities and others.



Pre-qualification Questionnaires (PQQs)

PQQs are an integral part of the pre-qualification process – they are issued by the pre-qualification scheme as part of a restricted procedure in order to short-list capable suppliers before inviting them to tender. Suppliers, including construction firms, are assessed according to pre-set criteria based around such factors as their financial position, ability to deliver, quality standards, and their policies on such issues as health and safety, sustainability and training opportunities. PQQs have been in existence for several years as a means by which to increase transparency and consistency in the procurement process – although PQQs are used by both public and private sector clients, their values are arguably particularly important in the public procurement process where tax payers' money is being invested.

PQQs have certainly formalised the procurement process but due to various issues around their implementation, they have, in many cases, had the unintended consequence of increasing the cost and time burden on SMEs and thus, in many cases, reducing their access to public sector contracts. The problem is three-fold:

- These forms can be extremely resource intensive to complete, particularly for an SME and even more so for a micro-business that may not be able to afford to employ any administrative staff. There have been examples of some forms being up to 100 pages long although they should be much shorter. The PQQ will typically ask detailed questions about the firms' capabilities and suitability for the work and this, in itself, is off-putting to SMEs and therefore they can serve as a barrier to small companies considering whether or not to compete for public sector contracts.
- A number of FMB members report that they have encountered PQQs that contain unintelligent or poorly worded questions that make them more off-putting and time-consuming to complete. For instance, one FMB member reported that their local authority asked them "for examples of sustainability on recent sites", specifying that the answer should use just two examples and exceed no more than 600 words. The member had to clarify what the local authority meant by "sustainability" as there is no agreed industry meaning and, more generally, felt the question was far too broad to effectively answer in the stated word limit.



CASE STUDY

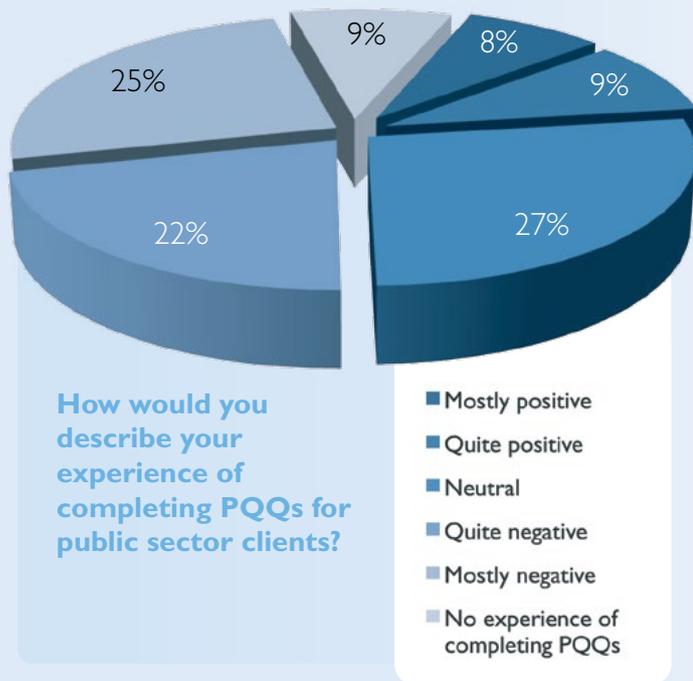
FMB member operating in Barking

"A huge amount of time and energy is required to engage in the pre-qualification process. Our company employs four administrative staff who spend much of their time completing PQQs and therefore we are relatively successful, but many SMEs do not have this type of office-based support. Also, when our company isn't successful, it's rare for us to receive feedback from the public sector client, which makes things difficult when you're trying to review your approach and improve your chances of success next time around."

- Different public sector clients use different pre-qualification schemes which often use different PQQs. This means that if an SME does decide to regularly bid for public sector contracts, it will typically be required to become a member of various pre-qualification schemes and thus fill out multiple PQQs over the course of the year – each scheme charges a fee to register and if you feel compelled to join several, these costs soon add up to a considerable financial burden. Registration costs are typically decided according to the size of the firm's turnover and for Constructionline, these can range from £108 for a firm with a turnover of up to £249,999 and £468 for firms with a turnover of between £1m and £2m. Following registration, each PQQ can take numerous days to properly complete. Worse still, many public sector clients require that, if a firm is not a member of their chosen pre-qualification scheme, it must complete their own unique and specific PQQ form which again, does not necessarily follow any standardised format and will therefore take a great deal of time for the SME to properly complete.

Almost half of all those members responding to the public procurement survey describe their experience of completing PQQs for public sector clients as being "quite negative" or "mostly negative". Of these, 27% report that the single biggest issue they face is the length of time it takes to complete the forms and 25% report that the complexity of the PQQs and the level of detail required are the most prevalent issues.

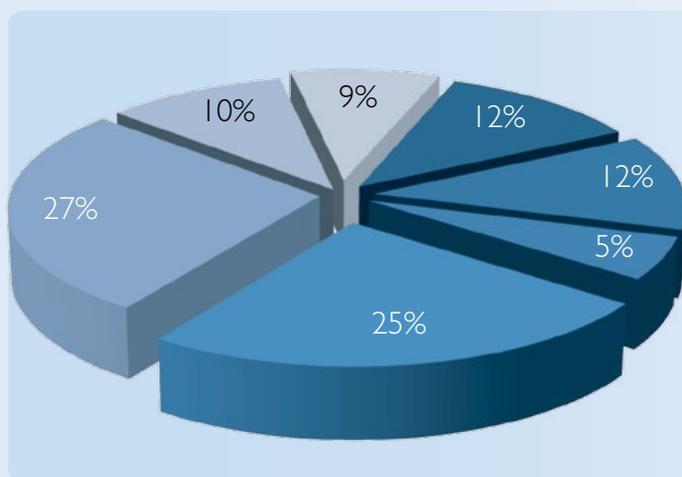




Publicly Available Specification (PAS) 91

Central government recognises that the use of standardised PQQs would help alleviate the burden on construction firms, most notably SMEs, that wish to compete to win public sector contracts and this is clear in its recommendation that public sector clients use the PAS 91 document as a basis for their PQQ forms. However, there is evidence to suggest that they have not done enough to properly promote the benefits of its use to public sector clients.

PAS 91, which was developed in collaboration by government and industry, including the FMB, provides a set of questions to be asked by buyers of potential suppliers to enable pre-qualification for construction projects. It also specifies requirements for the consistent use of those questions across projects of varying sizes and types.



If you face any difficulties when engaging with the pre-qualification process, what would you consider to be the single biggest problem?

- I do not face any difficulties
- Cost of registering with pre-qualification schemes
- Plurality of pre-qualification schemes
- Complexity of PQQs and the level of detail required
- Length of PQQs and time it takes to complete them
- Use of different PQQs by different clients
- Apparent lack of expertise from procurement staff



CASE STUDY FMB member operating in London

“Our company is currently on a Ministry of Justice (MoJ) framework and now that we’re on the framework, it’s generally an easy partnership to partake in. However, at the procurement and tender stages, we were left confused and frustrated. Continuity appears to be lacking, with the weighting of criteria being different for every tender. Some were being subjectively evaluated and others based solely on price, while others took equal account of both.

One of the supposed values of working within a framework partnership with clients is having the freedom to award contracts without the need to re-advertise and re-apply the selection and award criteria. This alone will lead to all parties saving the substantial time and cost of repeat bidding. Resources have been saved for the MoJ through not having to re-advertise contracts, but time and money are still being directed at the selection and award criteria, through the use of qualitative evaluation.”





“It is essential that central government does more to actively promote the adoption of PAS 91 by all public sector clients”

However, not all pre-qualification schemes use PAS 91 in this way and central government has no mandate to enforce its use other than to central government departments. The procurement processes of the rest of the public sector lie within the individual local authority, housing association or NHS Trust which is largely to blame for the lack of standardisation. It is therefore essential that central government does more to actively promote the adoption of PAS 91 by all public sector clients. This seemingly simple change could, in itself, have a hugely positive impact on construction SMEs, which typically do not have enough resource to dedicate the required level of time to continuously complete widely varying PQQs.

One of the pre-qualification specialists that is most commonly used by public sector clients – Constructionline – has announced that it will adopt PAS 91 following the publication of the updated document. This is a huge step in the right direction in terms of encouraging all pre-qualification specialists to use PAS 91 as a basis for their PQQs. In the FMB’s survey of members, 66% of respondents stated that they are currently registered with Constructionline, making it the most commonly used pre-qualification scheme, followed by CHAS at 52% and Safe Contractor at 29%. The FMB is determined for this move to be emulated across the board until using PAS 91 as the basis for PQQs is standard practice for all public sector clients.



CASE STUDY

FMB member operating in Leicestershire

“My local authority recently advertised a contract for minor structural repair work, but because they use Exor and I’m not currently a member, I was required to complete a 100-page PQQ in order to bid for the contract. I simply didn’t have the time and so didn’t compete for the work.”

RECOMMENDATIONS



Recommendation – all public sector clients, including local authorities, should use PAS 91 (2013) as the basis for their construction PQQs.

Recommendation – central government should properly promote to all public sector clients the benefits of using PAS 91.

Recommendation – public sector clients should not request a firm to complete a PQQ more frequently than once per year and only more frequently when there is a significant change to the relevant circumstances of the firm or additional information is required due to the specific nature of the contract.

Recommendation – the FMB to support members by developing guidance and associated training to help them through the PQQ and tendering processes.



Framework agreements

In May 2011 the Government published its Construction Strategy and the main focus for this strategy was reforming the way in which government procures construction across all sectors in order to reduce costs by up to 20% by 2015¹³. Both SMEs and micro-businesses accept that, as part of this, framework agreements are here to stay and will continue to be used by public sector clients as a means by which to help deliver so-called efficiency savings and reduce consultancy and construction costs. However, it is clear that framework agreements are perceived as a barrier to construction SMEs attempting to win public sector work. This could be partly down to their increased use coinciding with the economic downturn – meaning that there is simply less public sector work being carried out. Nonetheless, 51% of FMB members report that their workloads have decreased as a result of the introduction of frameworks.

A number of common problems have been cited by FMB members in terms of reasons why their company struggles to get onto the framework for public sector work, most notably:

- Size of firm – points are awarded at the pre-qualification stage of a framework agreement based on the capacity of the firm, including whether or not it has the skills required to successfully deliver the contract. However, many FMB members report that they are often rejected for work by public sector clients due to their annual turnover apparently being too small to cope with the size of the contract being offered. For instance, one FMB member reported that his local authority will only allow his firm to tender for works of up to £100,000 in value, despite his company having an annual turnover of £16m. This type of example was echoed by many members suggesting that public sector clients are being overly cautious when assessing a firm's capacity to deliver in terms of its annual turnover. As such, public sector clients should review the limitations they impose when assessing the financial viability of SMEs attempting to get onto a framework. Public sector bodies should emulate the approach taken by the private sector and deem a SME firm's turnover to be suitable in all cases where the contract is no more than one third of the firm's annual turnover. Note that this is still a safe approach, with some members reporting that with good cash flow, they have successfully delivered contracts of up to 100% of their annual turnover over 12 months.



CASE STUDY

FMB member operating in West Yorkshire

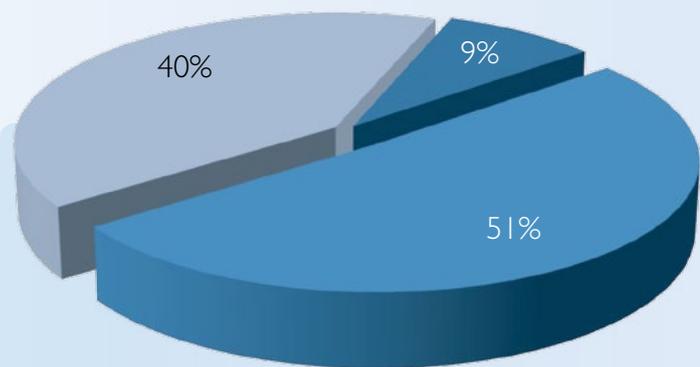
“Around 40% of my firm's turnover used to come from health sector work. Since the ProCure21+ framework agreement was introduced this work has been lost as we're unable to get on to the framework as it's too big for our turnover. Working for the main contractor isn't worthwhile as it results in the usual long payment terms as well as being screwed down on price. Contractors have been known to be brought in from afar and only a handful of local contractors have worked for the main contractor successfully.”

“It is clear that framework agreements are perceived as a barrier to construction SMEs.”

¹³ Government Construction Strategy (May 2011)



- Supply chain issues – where framework agreements make it impossible for smaller firms to become the principal contractor, it is essential to be part of the supply chain in order to access the market. However, this is not always easy according to construction SMEs in general and micro-businesses in particular. FMB members report that main contractors are often less willing to deal with good, experienced smaller firms and preferred to sub-contract to the smallest businesses that would accept almost any terms and conditions dictated by the main contractor, such as poor payment practices. There are clear examples from within the industry where SME sub-contractors have had to wait in excess of 200 days before being paid by the main contractor. Some framework owners have developed Supply Chain Engagement Programmes (SCEPs) designed to help SMEs build partnerships with Tier 1 contractors. Although this is clearly a positive step, more needs to be done to properly engage with supply chains and ensure they are not just being dictated to.



How has your firm's workload changed as a result of the introduction of framework agreements by public sector clients?

- Increased
- Decreased
- No change



CASE STUDY

FMB member operating in Somerset

“As a small building firm, we’re unable to make direct contact with the procurement officers who are responsible for giving out contracts that would suit us. We’re asked to join organisations like Exor and Contractor Plus and after a minefield of application forms and a standard fee, you are eventually sent jobs, such as to resurface the M5. Our annual turnover is £150,000 and in the private sector we take on jobs in excess of £25,000, with testimonials to back up the work carried out. Unfortunately, in the public sector we’re only permitted to carry out works of up to £5,000 which, having had no offers, must be few and far between.”





CASE STUDY FMB member operating in London

“A London-based local authority had awarded a construction framework contract for a term of four years back in 2010. As part of the local authority’s requirements, all appointed contractors were to offer local firms the opportunity to participate in the works likely to be sub-contracted. My company was, and still is, part of a list maintained by the local authority of local businesses and individuals based in the borough available and willing to work on this cyclical four-year opportunity.

We had also previously achieved ‘approved sub-contractor status’ to all of the successfully appointed framework contractors. The local authority also expressed a desire that such organisations and individuals should be given an opportunity to tender for work with the appointed contractors. The local authority also advised that sustainability and socio-

economic deliverables would be a key element of the contracts delivery process and that economic development, local labour, apprenticeships and training featured as a high priority.

Now in the third of a four-year programme, we have not been offered a single opportunity to deliver any work, despite receiving a firm offer of work from one of the appointed contractors, and entering into extensive commercial dialogue with another. Repeated requests for transparency of ‘actual’ procurement to Tier 2 suppliers have either been denied or not responded to. At the time of writing, and as a consequence of our dire experience, we have had to seek similar work on the other side of London which has, and continues to decimate, our sustainable construction criteria and in turn, reflects badly on our environmental strategy.”



“It certainly is possible for frameworks to have a positive impact on SME engagement, but only when implemented correctly... unfortunately this is not always the case”

As part of the work stemming from the Government’s Construction Strategy, a working group of the Procurement and Lean Client Task Group was established to examine the effectiveness of frameworks. Based on the evidence of framework performance that was collected during this investigation the working group identified that effective framework agreements should result in a high proportion of value of work being undertaken by SMEs¹⁴.

In terms of framework planning, the working group concluded that one of the key features of an effective framework was the need to agree a SME and supply chain engagement strategy in advance to:

- Ensure engagement in national, regional and local frameworks;
- Emphasise the involvement and integration of Tier 2/3 suppliers within the framework and design team;
- Ensure both a transparent approach and client engagement with the supply chain;
- Ensure local sourcing, fair payment provision throughout the supply chain and to measure and monitor engagement.

As for framework procurement, the working group stated that public sector clients must:

- Simplify procurement processes to encourage greater SME involvement;
- Ensure obligations in the framework agreement that bring certainty to delivery of SME engagement, strategy (fair payment, collaborative values flow down the supply chain, pipeline visibility, performance management);
- Provide mechanisms for greater client influence over negotiations with its supply chain.

It certainly is possible for frameworks to have a positive impact on SME engagement but only when implemented correctly. Unfortunately this is not always the case, but the FMB has developed a number of recommendations that will help limit the detrimental impact they can sometimes have on construction SMEs.

RECOMMENDATIONS

Recommendation – public sector clients should review the limitations they impose when assessing the financial viability of SMEs attempting to get on to a framework. Public sector bodies should emulate the approach taken by the private sector and deem a SME firm’s turnover to be suitable in all cases where the contract is no more than 33% of the firm’s annual turnover.

Recommendation – public sector clients should determine appropriate ‘lots’ and desist from the wholesale ‘bundling’ of contracts in order to maximise opportunities for SMEs to act as the principal contractor.

Recommendation – all public sector clients should build on their commitment to fair payment in principle by mandating, via the contract terms, the payment of the Tier 2 contractor by the Tier 1 contractor within 30 days to help ensure fair payment principles become a reality throughout the supply chain.

Recommendation – public sector clients should require details of all Tier 2 spend by any appointed Tier 1 contractor on a framework in seeking to demonstrate and evidence who they spend and procure with. This information should be published by the public sector client in order to promote transparency and accountability.

¹⁴ 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 (March 2012)

“It is important to note that the consortia approach is a “solution” created out of necessity”



Working together – SME consortia

In order to overcome some of the additional barriers to construction SMEs attempting to win public sector work, resulting from the increased use of framework agreements, there are some examples of smaller firms coming together to form a consortia in order to improve their chances. Consortia can allow small firms to overcome ‘turnover’ limitations as their combined turnover is far greater than it would be if bidding as an individual company. One particularly successful example of this is the Builders Consortium South West (BCSW), which is made up of four small construction firms (see case study on Devon County Council).



CASE STUDY

**Jon Williams, Category Manager,
Procurement and Estates Team,
Devon County Council**

“The Construction Framework South West (CFSW) was set up back in 2009 and it’s been very rewarding for both Builders Consortium South West (BCSW) and CFSW to work together to deliver construction projects in our area. The BCSW consortium was set up by four local construction SMEs and has given them the ability to compete with larger regional and national builders for projects. The BCSW and CFSW have learnt from each other, in terms of approaches to delivery, building greater Skills and improving marketability. The BCSW has been involved in projects to deliver a new build multi-agency user building in Cullompton and a major refurbishment of a specialised short break accommodation centre, with a combined value of more than £2 million.

Devon County Council’s experience with the CFSW was complementary to our previous experience with lower value building work – the Devon Maintenance Panel Arrangement (DMPA) to deliver responsive maintenance and building works of up

to £5,000, with its ‘local panels’ made up of a total supply chain approaching 100 contractors, most of which are SMEs. The DMPA delivers seven core trades and has now successfully operated since 2008 delivering works to the County Council as well as a range of other public bodies in Devon. It gives SMEs good access to a range of works that they can deliver very efficiently. Devon County Council also operates the ‘Devon Standing List of Approved Contractors (SLoAC) to allow contractors to compete for projects of between £5,000 and up to £1m. This arrangement is also very well populated by SMEs that are successful at securing work through this arrangement. Again, the SLoAC is used by a range of Devon’s public bodies.

Devon County Council considers it highly important to give SMEs fair access to public sector work we have worked with SMEs via a series of road shows to encourage them to join arrangements that will give them access to a wider base of work. We’re proud that we’ve created arrangements that give SMEs the ability to compete for work and as a council, we have been rewarded with an enthusiasm to work positively with us to deliver work programmes.”





CASE STUDY

FMB member operating in Lincolnshire

“My company was instrumental in trying to help set up a consortium of local construction companies to bid for work for our social housing provider (SHP). The consortium met with representatives of the SHP who initially were very keen in the idea of using local companies but the further down the line we went, the more barriers we faced. Health and safety records, trading records and training programs were all asked for but, because we were new a consortium and not a single individual company, we were unable to provide them. We looked at setting up an ‘umbrella company’ but we were still asked the same questions. I felt they were very quick to hide behind EU procurement laws.

However, having said all that, we have had a limited amount of success with our local authority, which did break their tenders down to come under the EU procurement rules and members of the consortium now carry out some of their disabled adaptation works. We will still keep pushing for more local procurement because I genuinely believe that it offers more to the community in which we live. We employ locally, buy locally and train local apprentices – and if we make any money, we spend it locally.”

Despite this and other positive case studies relating to SME consortia, it is not necessarily a straightforward solution for SMEs with this approach giving rise to a number of its own problems:

- The consortium approach is fundamentally unsuited to a significant proportion of SME construction firms, particularly micro-businesses, as the associated legal and professional costs of setting one up will be disproportionate when compared to the value of the contracts they are typically suited to. Further still, the costs of setting up and maintaining a consortium of SMEs could undermine their ability to present themselves as a value-for-money option when compared to a larger contractor. It is important to note that the consortia approach is a “solution” created out of necessity and if the various barriers to SMEs attempting to win public sector work were removed, such an approach would be redundant.
- There is still a great deal of nervousness from small construction firms – despite being eager to access more public sector work, they are wary of collaborating with their local competitors. Furthermore, many cite a lack of information or experience regarding how a consortium would work in practice. In light of this, the onus is on industry bodies such as the FMB, and CITB, the industry training board, to play a greater role in encouraging and offering guidance to SMEs where appropriate.
- When a SME construction consortium is created, the public sector clients do not necessarily view it as hoped. There is evidence to suggest that some clients view SME consortia as unstable ‘shells’. The public sector client can deduct points in the pre-qualification process due to the fact that the consortium has no proven trading history. This is regardless of whether or not the construction SMEs which constitute the consortia have a long trading history with an excellent track record on health and safety, training and apprenticeships.

RECOMMENDATIONS



Recommendation – the FMB to work with the Construction Industry Training Board (CITB) to develop training which will assist in the formation of consortia.

Recommendation – the FMB to work with public sector clients to ensure that efforts by SME construction firms to form and bid for work via a consortium are well received and supported by the client.





Performance of public sector procurement teams

As previously highlighted, public sector spending cuts have significantly reduced the amount of resource available to public sector clients and this is most likely to have increased pressure on their procurement processes. A staggering 260,000 jobs have been lost in local government through redundancies and deletion of vacant posts since 2010¹⁵. This has had a massive impact on the capacity of local authorities, many of which are finding themselves increasingly stretched.

Impact of public sector spending cuts

FMB members argue the reduction of resource on the client side has resulted in more minor public sector contracts being bundled together and awarded to one main contractor rather than being issued as individual tenders, the latter clearly requiring more resource on behalf of the client. Smaller individual tenders allow more SMEs to tender as the main contractor which is the preferred approach for many small firms.

The benefit of an SME firm acting as the principal contractor are numerous and include:

- Local firms create local employment opportunities and other local economic benefits;
- Small firms are responsible for the majority of apprenticeship training in the construction industry;
- Local firms understand where to source local materials and are not required to travel long distances, meaning that there are both economic and environmental benefits to be gained from using smaller, local businesses.

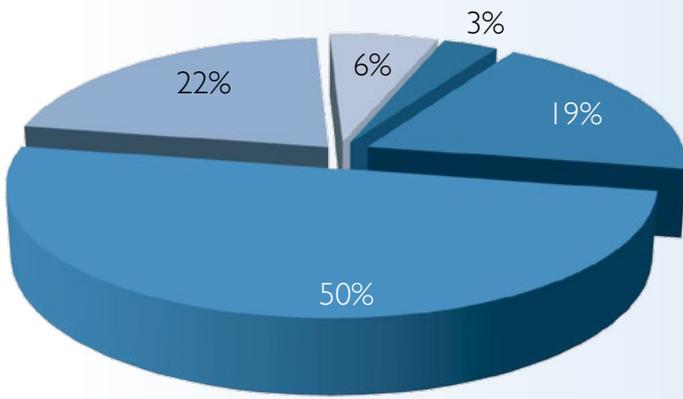
Importance of timely and detailed feedback

One impact of the aforementioned lack of resource by public sector bodies, particularly local authorities, is the limited supply of feedback to those who are unsuccessful which is a commonly cited problem by SME construction firms. However, FMB research shows that, in terms of local authorities, 50% of respondents describe the expertise of the procurement staff as being “average” and 22% describe them as “good” or “excellent”. Further still, 44% of FMB members stated that local authority procurement teams adhere to statutory timescales for responses “most of the time” and 9% said that this is “always” the case.

When FMB members were asked about the single biggest problem they face when engaging in the pre-qualification process, only 9% cited the apparent lack of expertise from public sector procurement staff. These results are all the more note-worthy given the squeeze on public sector budgets in recent years. However, there is room for improvement by public sector clients, particularly around the issue of feedback to those companies that have been unsuccessful in the bidding process.

¹⁵ UNISON press release, *End the squeeze on Local Government* (March 2013)





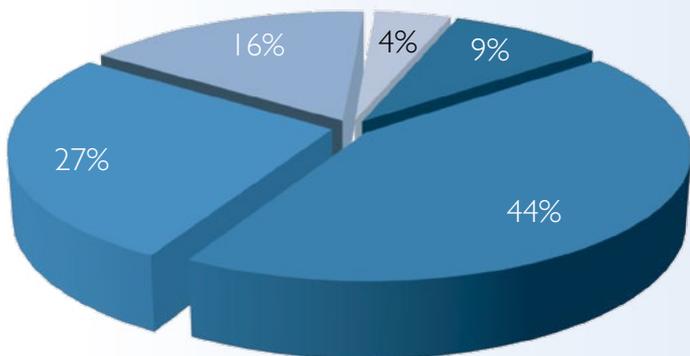
On average, how would you describe the expertise of the local authority procurement staff you have dealt with?

- Excellent
- Good
- Average
- Poor
- Completely inadequate

Construction SMEs accept that, due to fair competition, they will not win every public sector contract they bid for. However, when they are not successful, they do require timely and constructive feedback from the relevant procurement team to ensure that, when they are a genuinely suitable option, they are doing all that they can to demonstrate this fact to the public sector client.

Unfortunately, feedback is not always effectively communicated by public sector clients, if at all. For instance, 27% of those FMB members responding to the survey reported that local authorities “sometimes” adhere to proposed and/or statutory timescales for responses and 21% stated that this is “rarely” or “never” their experience of receiving feedback.

More concerning still, 40% of respondents reported that they “rarely” receive advice or feedback from a local authority regarding their participation in the procurement process and 19% “never” receive such feedback. However, this could in some cases be down to construction SMEs firms failing to realise that, under the EU Remedies Directive 2009, they are entitled to such feedback. Having said that, some FMB members report that they have failed to receive feedback even when it has been requested. As such, this report seeks to highlight to construction SMEs their right to feedback when requested and urges public sector clients to provide such feedback in all cases within 15 days.

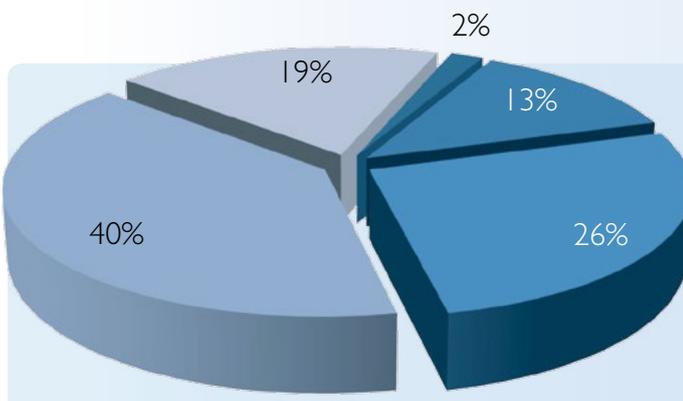


In your experience, do local authority procurement teams adhere to proposed and/or statutory timescales for responses?

- Always
- Most of the time
- Sometimes
- Rarely
- Never

RECOMMENDATIONS

Recommendation – public sector procurement teams should provide detailed written feedback to unsuccessful firms that request such feedback, within 15 days of receiving a request.



How often do you receive advice or feedback from a local authority regarding your participation in the procurement process?

- Always
- Most of the time
- Sometimes
- Rarely
- Never



CASE STUDY

FMB member operating in London

“For well over 18 months we pursued appointment to a London-based Supply Chain Engagement Programme, namely the Supply Chain Management Group (SCMG). Our requests for the process of engagement and appointment were repeatedly disregarded and as such we brought the matter to the attention of the Minister for Business, who proved to be extremely helpful and in turn referred the matter on our behalf to the Mystery Shopper Scheme. Although the reasons for opting into this scheme were initially, not of our making, we were quietly contented with the end result. Although the scheme is a somewhat protracted process relying heavily on ‘goodwill’ and ‘natural’ response times from the requisite third party, it remains an intriguing tool in which to vent frustrations with the public procurement process, of which there are many.

My only hope is that the name and shame culture instigated by the recommendations proposed in this report is maintained and followed up at a later date by the Cabinet Office via the Efficiency and Reform Group. Ideally a six to 12 month follow-up period should suffice wherever recommendations are made, with appropriate measures implemented should no action be evidenced by the defaulting party.”

RECOMMENDATIONS



Recommendation – the Cabinet Office should follow up on any recommendations made to public sector clients within six months of the complaint being made via the Mystery Shopper Scheme to find out if their advice has been taken on board. The Cabinet Office should then publish the results and maintain a list of those public sector bodies that are not adhering to agreed public procurement practices.

Cabinet Office Mystery Shopper Scheme

The Cabinet Office Mystery Shopper Scheme has been in operation for more than two years, yet it is unclear how effective it has been at making sure that small companies are in the best possible position to compete for public sector contracts. The scheme is aimed at helping businesses tell central Government where there are still issues and firms can remain anonymous if they so wish. In March 2012, the Government announced an extension to the service to include issues relating to unfair practices in the supply chain. Suppliers can use this service anonymously to escalate issues about problems in Government supply chains to the Cabinet Office. The role of the Mystery Shopper Scheme is to:

- Provide a clear, structured and direct route for suppliers to raise concerns about public procurement practice when attempts at resolving issues with a contracting authority or a first-tier supplier have failed;
- Provide feedback to enquirers on their concerns;
- Help the Cabinet Office identify areas of poor procurement practice so it can work with the contracting authority to put them right, and help ensure similar cases do not arise in future;
- Take action to reduce the likelihood of similar issues arising in other authorities;
- To hold government to account on progress.

Although suppliers are able to challenge public sector procurement practices via the Cabinet Office’s Mystery Shopper Scheme, this is often seen as being ineffective by construction SMEs as any recommendations by central government to the public sector client do not necessarily have to be taken on board and unless deemed extremely serious, are not followed up by the Cabinet Office. The scheme would be deemed more helpful if central government were to follow up on its recommendations to the public sector client within a stipulated time period so as to determine whether or not the recommendations have been taken on board. This would help add continuity and transparency to the process and hopefully maximise the likelihood of achieving best-practice.

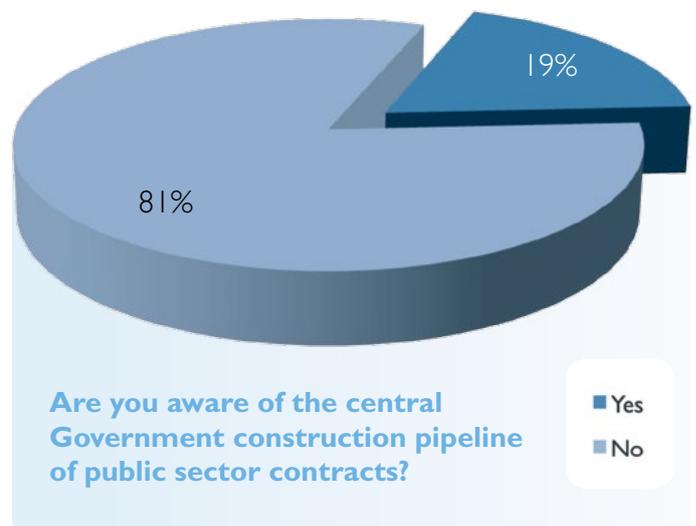




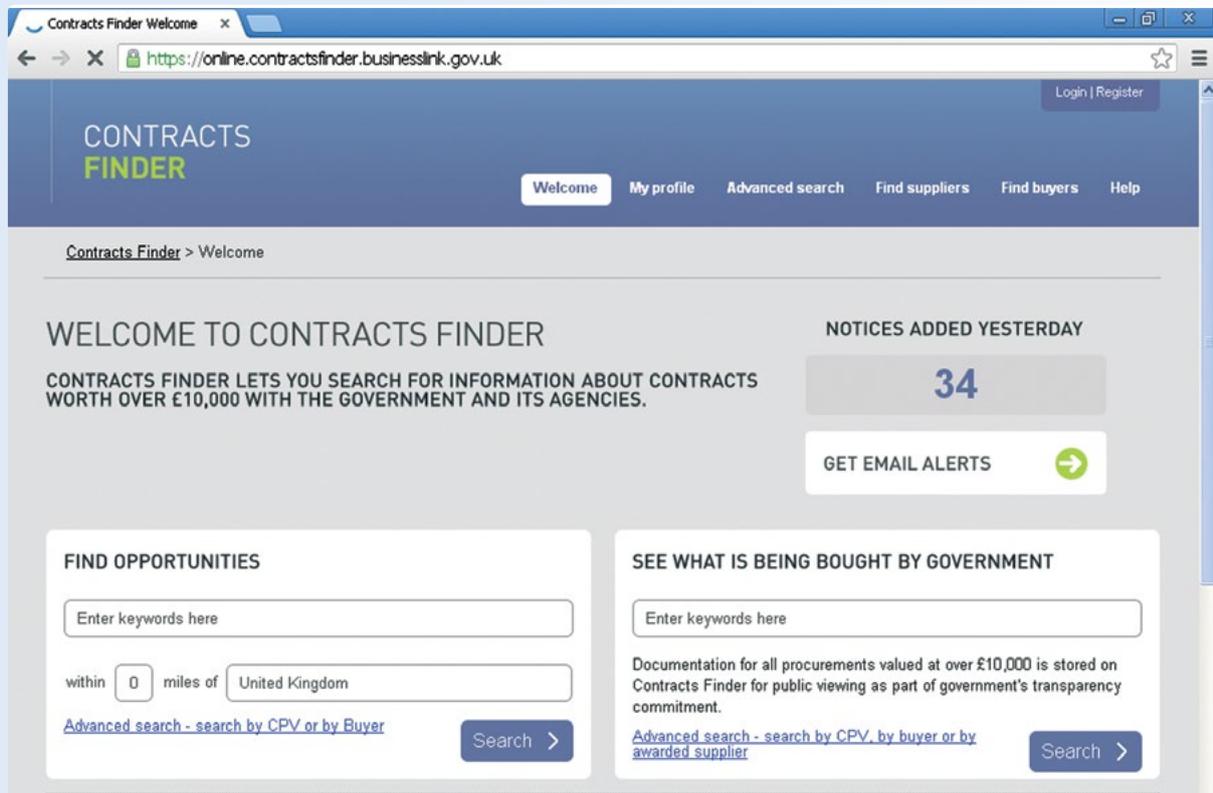
Visibility of public sector contracts

Since the end of 2011, the Government has been publishing and updating at regular intervals a pipeline document that provides detailed projections of public sector spend on construction. This is aimed at helping the industry see what is ahead and giving it the confidence to plan their business investment accordingly. The pipeline document includes more than 600 projects and programmes – around £40bn of investment over four years to 2014/15 and is accessible via the HM Treasury website.

The Government Funded Construction Pipeline document, in its current format, is often a historical account of major central government projects awarded or an optimistic view of projects that have yet to become a reality. The document is subject to six-monthly updates coinciding with Budget statements or Spending Reviews and although plans are in progress to increase the visibility and usability of the document, it is presently too unwieldy, lacks detail and the projects are too large to be suitable for the vast majority of construction SMEs, particularly micro-businesses. Of those members responding to the FMB survey, 81% said that they are not aware of the Government Funded Construction Pipeline.



“The pipeline document is too unwieldy, lacks detail and the projects are too large to be suitable for the vast majority of construction SMEs”



Crucially and somewhat fundamentally, the government cannot mandate the participation of public sector clients such as local authorities, housing associations and the NHS which could offer project sizes and types that by and large SMEs are very likely to contribute real benefits to. The current plans to develop a user friendly central government micro-site are welcome however project size, contract bundling, framework agreements and SCAPE are all mechanisms decreasing the opportunity for SMEs to participate in government-funded projects in a main contractor's capacity.

Other means by which to find out about public sector contracts

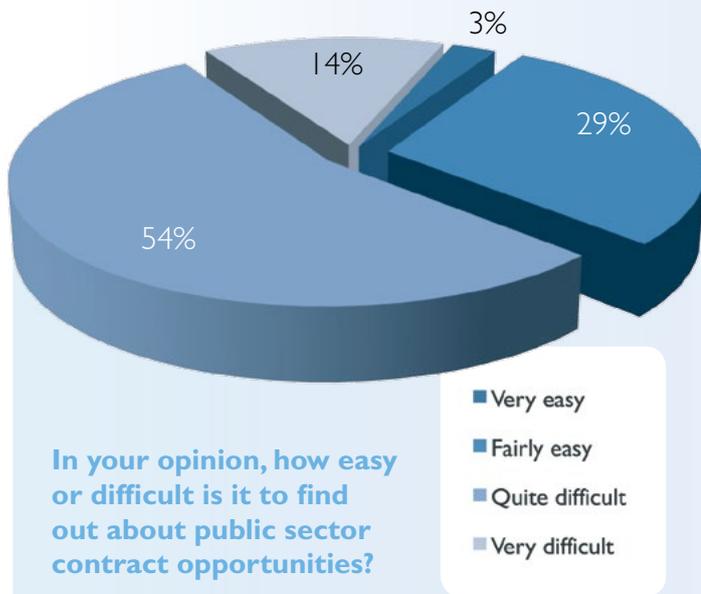
Another means by which construction firms can find out about public sector contracts is via online portals such as Contracts Finder, which advertises contracts worth more than £10,000. However, not all public sector clients use this portal and SMEs find themselves having to continually search a number of different websites to ensure that they are always up-to-date with the opportunities suitable for their business. Of those members responding to the FMB survey, 69% said that they find it "quite difficult" or "very difficult" to find out about public sector contract opportunities.

CASE STUDY

FMB member operating in Berkshire

"The Government Funded Construction Pipeline (GFCP) document is, at present, of little benefit to a company such as ours. Our company is a general contractor employing around 25 people in Berkshire with a projected turnover of £1.5m this year. The projects illustrated on the GFCP only represent central government spend (excluding local authorities and housing associations), are of magnitude significantly larger than would be reasonable or practical for us to undertake and contact details for the procuring authorities are vague or non-existent.

We would generally undertake projects in the £50,000 to £250,000 bracket which are often quick response and turnaround schemes so accurate "real time" information is key to gaining real benefits from the document. The six-monthly update process is too infrequent to be helpful and particularly where sub-£1m projects are concerned. The forthcoming micro-site replacing the spreadsheet is a welcome improvement and will hopefully contain appropriate project contacts, unbundled contracts where possible and real time information regarding project status and award."



“SMEs find themselves having to continually search a number of different websites to ensure they are always up to date”

FMB members have a desire for the means by which public sector contracts are advertised to be more streamlined and although the development of regional portals by local authorities (see case study to the right) is a step in the right direction, these portals are not used by all public sector clients within any given region. It would therefore be helpful if their use was standard practice in order to reduce the time SMEs spend searching for opportunities to work for public sector clients.

¹⁶ Local Government Association, *Buying into communities: Jobs, skills training and business opportunities from council contracts* (November 2011)

CASE STUDY

Promoting small business opportunities through supplier portals

A supplier opportunity portal is a website used by multiple buyers to advertise bidding opportunities. Councils have collaborated to develop regional portals in many parts of the country. Including:

North East:
www.qtegov.com

North West:
www.thechest.nwce.gov.uk

Yorkshire and the Humber:
www.scms.secure.alito.co.uk

East Midlands:
www.sourceeastmidlands.co.uk

West Midlands:
www.wmcoe.bravosolution.co.uk

South West:
www.supplyingthesouthwest.org.uk

South East:
www.businessportal.southeastiep.gov.uk

London:
www.procure4london.gov.uk

There are also local portals, for example:

Find-it-in-Birmingham
www.finditinbirmingham.com

and Supply Hertfordshire
www.supplyhertfordshire.g2b.info/hpf

Increasingly the regional portals are being linked to Contracts Finder which is the government portal for lower value requirements:
www.contractsfinder.businesslink.gov.uk

Supply2Health advertises NHS 'Part B' contracts for clinical services:
www.supply2health.nhs.uk ¹⁶.

RECOMMENDATIONS

Recommendation – all public sector clients should use their regional online portal to advertise opportunities to buyers.



Lessons to be learned: Public procurement in Wales

Public procurement practices vary widely across England, Wales, Scotland and Northern Ireland and therefore the experience of construction SME firms operating in the various nations can also vary widely:

- Scotland – the rules governing public procurement in Scotland are under review and therefore the situation is currently extremely fluid. Quality of access to public sector contracts by construction SMEs should be reviewed once the Procurement Reform Bill has been enacted;
- Northern Ireland – although a great deal of work has been done to improve the public procurement process in Northern Ireland by attempting to standardise PQQs, some construction SMEs report that, similar to England, not all public sector clients are adhering to this. Therefore, a similar review of public sector procurement practices in Northern Ireland should be carried out with recommendations tailored to public sector clients operating in this part of the UK.

- Wales – there is evidence to suggest that the government is making some headway in its attempts to increase engagement in public procurement by construction SMEs in Wales, particularly in relation to the Supplier Qualification Information Database (SQulD). It will therefore be useful to examine the development and implementation of the SQulD for the purposes of this research report.

SQulD

There is clearly great political will in Wales, particularly on a national level, to improve the success rate of small, local businesses when bidding for public sector contracts. This was demonstrated by the Welsh Government's decision to commission John McClelland CBE to carry out a review into how to strengthen the impact of Welsh procurement policy. McClelland made a number of recommendations and the Welsh Government has taken them extremely seriously, stating that unless Welsh public sector clients adhere to them willingly, central government will legislate to ensure they are enacted¹⁷.

17 Written Statement by the Welsh Government, Maximising the Impact of Welsh Procurement Policy – Wales, Jane Hutt, AM, Minister for Finance and Leader of the House (December 2012)



One of McClelland's key recommendations was that "overall implementation of the SQuID tool should be a priority" for the public sector¹⁸. Similarly to PAS 91, the SQuID is a standard set of questions to be used by public sector clients as a basis for their PQQs. It was designed to make the procurement process easier for SMEs by providing a standard set of selection stage questions, from which public sector procurement professionals select to create their pre-qualification questionnaire, which ensures consistent and quality questions with reduced development time.

In total, 52% of public sector contracts in Wales are awarded to Welsh companies, although it is unclear what the term "Welsh company" actually means. Companies that have a base in Wales but HQs elsewhere are often called Welsh companies so the figure could actually be lower. In contrast German companies win 98% of public contracts in Germany and the figure is 97% in France.

Although this in itself is helpful, to date, the SQuID has been mostly been available in hard copy format only. As a full and complete SQuID PQQ can amount to 20,000 words once completed, this has been an issue. To help combat this, the intention is that the SQuID will be accessible online – essentially operating as an online database containing the PQQ details of all those companies that are vying to win public sector contracts. This online access will no doubt create a sea change in the abilities of SME construction firms to submit PQQ applications as their response can be captured and stored for future use, thereby reducing the time and cost required to complete the process.

The SQuID in Wales is set to make a real difference to construction SMEs that are attempting to engage in the public procurement process and the key reason for this is that, unlike in England with the implementation of PAS 91, the Welsh Government is prepared to mandate the use of the SQuID by public sector clients. Central Government in England has made no such equivalent statement of intent, and should do much more to promote and encourage the use of PAS 91 to the rest of the public sector.

The introduction of the SQuID in Wales has helped reduce the need for construction SMEs to use vast amounts of time and money completing a plethora of PQQs for various public sector clients and the FMB urges clients in England to learn from the experience of their Welsh counterparts and adopt PAS 91 as a basis for their own construction PQQs in order to achieve a similarly positive outcome.



CASE STUDY

FMB member operating in Cardiff

"The introduction of the SQuID is certainly a step in the right direction by the Welsh Government and demonstrates its strong commitment to supporting small businesses. This simplified template is aimed at providing an equal playing field for SMEs and assisting them in their pursuit of public sector contracts by reducing the burden of the overly onerous and costly bid process. The former lack of standardisation of old processes ultimately prohibited SMEs and played to the advantage of the national contractors who had the necessary resources to invest in the prequalification process.

However, from my experience, the application of the SQuID varies between procurement departments and some still insist on expanding the requirement ultimately to the detriment of SMEs, whereas others such as the City and County of Swansea's recent Residential Contractors Framework procurement process follow the Welsh Government Public Procurement guidelines explicitly, which ultimately provides equal opportunity for all.

My firm has benefited from such opportunities but we have also had to invest in this area, there is free advice and support available through bodies such as the government-sponsored "Supplier Development Services", as well as a whole host of consultants who will provide advice for a fee. Our approach has been to up-skill our existing staff, ask questions of the specific procurement department during the process and always seek feedback on both successful and unsuccessful applications."

¹⁸ John F McClelland, *Maximising the Impact of Welsh Procurement Policy* (August 2012)





Myths surrounding EU public procurement rules

Public procurement is highly regulated by the European Union and, over the years, the European procurement rules have become increasingly complicated. The problem has also been exacerbated by a continuous stream of European Court cases – the consequence of this is widespread uncertainty for both public sector clients and their suppliers.

The LGA is working hard to refute some of the common myths surrounding the impact of European procurement rules.

“The EU public procurement rules can be confusing and are sometimes held up as a reason for not doing more. Many of the supposed obstacles are myths – though there are clearly some legal obligations that councils must observe. Councils up and down the country have already demonstrated what can be achieved.

Under the EU rules councils are largely free to decide what they buy to meet their needs (in the business case). But they face constraints on the procurement strategy (how they buy it). The guidelines outline the legal constraints and the opportunities. There is most room for manoeuvre in the case of lower value procurement and so-called Part B services. When it comes to larger contracts that must be advertised EU-wide there are fewer constraints than is often believed. In particular there are four persistent myths that need to be dispelled:

- 1) The EU rules prevent large requirements being sub-divided to make them small business-friendly. On the contrary, the ‘European Code of Best Practices’ (EU guidance) specifically mentions sub-division into ‘lots’ as a way of opening access to small firms. Value for money is the chief consideration here.



- 2) 'Social clauses' cannot be drafted into contracts. There are, in fact, two types of clauses that can be used to open up jobs, skills training and business opportunities: contract performance conditions and 'social' specifications. As 'Buying Social' (the latest EU guidance) explains, social clauses relevant to what the council is buying can be included in contracts.
- 3) Councils may not examine the track record of prospective bidders in this area. This can be done through the pre-qualification questionnaire (PQQ). Specifically, where this helps demonstrate capability to perform the contract, prospective bidders can be asked to supplement information on completed contracts by identifying what they have achieved in terms of jobs, skills and business opportunities.
- 4) 'Social' contract award criteria are not allowed. This has been considered by the European Court and it is clear in 'Buying Social' that relevant social award criteria can be applied if the requirements have been written into contract specifications. This enables bidders' jobs, skills and supply chain proposals to be considered when deciding which tender is the 'most economically advantageous' from the council perspective."¹⁹

Like framework agreements, EU public procurement rules do not need to be a barrier to SME engagement in public sector procurement. It is the role of the FMB, the LGA and other professional bodies to ensure all those involved in public procurement are properly informed about the limitations created by the rules and this role will be particularly important once the latest revisions to the EU Public Procurement Directive are complete.

¹⁹ Local Government Association, *Buying into communities: Jobs, skills training and business opportunities from council contracts* (November 2011)

“The LGA is working hard to refute some of the common myths surrounding the impact of European procurement rules”

RECOMMENDATIONS



Recommendation – the FMB to work with public sector clients to ensure that procurement teams and SME construction firms are properly informed regarding the various limitations imposed upon them by the revised EU Public Procurement Directive.



SME-friendly local authorities – encouraging best practice



CASE STUDY Leicestershire County Council

Leicestershire County Council (LCC) has actively pursued an SME-friendly approach to procurement. This included taking part in a major 'Selling to the Public Sector' project, which commenced in April 2010 and came to a close at the end of March 2012. This had the purpose of encouraging and supporting SMEs across Leicestershire responding to contract and supply chain opportunities. The project involved one-to-one support for SMEs and the delivery of workshops covering, for example:

- Public sector contracts: how to prepare effective PQQs & tenders;
- Adopting a strategic approach in selling to the public sector;
- Public procurement: demystifying the process;
- Navigating the public sector procurement maze;
- Writing winning bids for public sector contracts;
- Winning public sector business: collaboration, policy documents and PQQ and tender responses.

LCC has delivered 'How to do business with the council' presentations to SME/VCO forums.

It is now standard procedure to hold 'bidders conferences' for potential tenderers for adult social care contracts. These events are attended by LCC's Countywide Infrastructure Organisation –

Voluntary Action Leicestershire (VAL) – who offer advice on completing tenders and joint/consortia bidding. Working with the Eastern Shires Purchasing Organisation and VAL, LCC recently created an SME/VCO-friendly prequalification questionnaire, which is a lighter version of the standard PQQ document.

LCC has also developed request for quotation templates for both services and goods, to be used for contracts with a total value of between £20,000 and £100,000. These templates are lighter than those used for the formal tender process that is required for all contracts with a total value of over £100k. Further, LCC's Financial Vetting Guidance is SME-friendly requiring sound business judgement rather than mechanistic application of formulae.

Where it affords value for money, requirements are divided into SME-friendly lots. For example, LCC's reactive maintenance requirement was packaged into discrete 'lots' within a single invitation to tender, which invited tenders for one of the three to six places on the ten framework agreements (lots/trades) from air conditioning, through gas and electrical services to roofing services. LCC publishes a list of all its contracts with a total value of over £10,000 (a contracts register), which can be used to identify sub-contracting opportunities with the county council's prime contractors.





CASE STUDY Welland's small business awareness programme

Many district councils are active in promoting opportunities to local businesses in order to stimulate local economic activity.

The Welland Procurement Unit (a shared service in the East Midlands) has developed an awareness-raising programme to encourage small businesses, specifically including sole traders, to bid for council work.

In collaboration with the Federation of Small Businesses, the Unit has developed a workshop-based model. Local entrepreneurs are encouraged

to bid for small parcels of council work, an approach which means that new entrants to the public sector market should not encounter significant barriers to bidding. This is being piloted through Blaby District Council in Leicestershire.

For larger opportunities, potential suppliers are offered pre-qualification and tender templates which exemplify the level of response expected, in order to demystify the tendering process and to encourage their participation. A key aim has been to avoid jargon and complexity which can deter small companies from seeking council work.

Methodology

In March and April 2013, the FMB surveyed its members in England on their experiences of the public procurement process. The survey received more than 450 responses and the results have been analysed and discussed with a working group of FMB members with experience of public sector procurement.

Case study examples were also garnered via the working group and have been evidenced in this report, alongside the survey results. The FMB has also worked with colleagues at the LGA in order to identify best practice examples of how local authorities are succeeding in engaging smaller companies in the public sector procurement process.

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Federation of Master Builders

The Federation of Master Builders (FMB) is the largest trade association in the UK building industry. Established in 1941 to protect the interests of small and medium-sized construction firms, the FMB is independent and non-profit-making, lobbying continuously for members' interests at both national and local levels.

The FMB is a source of knowledge, professional advice and support for its members, providing a range of modern and relevant business services to save them time and money. The FMB also offers practical advice and support to the general public on choosing and working with a builder.



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