

Barriers to Two Stage Open Book

The scene was set for our second workshop by Professor David Mosey, Director of the King's College London Centre of Construction Law and Dispute Resolution and consultant to Trowers & Hamblins LLP. He is the co-author of the Cabinet Office 'Project Procurement and Delivery Guidance to using two stage open book and supply chain collaboration'.

David reiterated the benefits of the collaborative two stage open book process in a rising market. In particular, he highlighted the importance of ensuring the whole team are appropriately trained in how this procurement process operates, including distinguishing between inflationary pressures that may be masking other underlying issues.

The workshop was initiated by three speakers each giving a different perspective of the barriers to the collaborative two stage open book process.

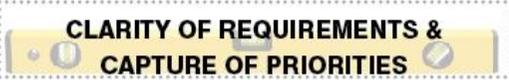
- From a Contractors perspective - John Homer, Executive Director Morgan Sindall
- From a Consultants perspective - Kevin Williams, Director Faithfull & Gould
- From a Client's perspective - John Collingwood, Cluster Programme Manager for Hampshire County Council

All three mentioned lack of Trust being a barrier to the two stage open book process. The workshop was facilitated by our Edward Currie, Regional Programme Manager for the SEaL Framework. Each table was allocated two barriers and asked to debate key issues and offer options for resolution.

There was a strong consensus that the Culture of the Framework must be understood and operated from the start of the collaborative process. It was also agreed that Training on how to use the Framework for all users is an essential component to optimise value.

Highlights from the round table discussions are listed below.

The full list of Barriers is contained in *Appendix C*.

	 CLARITY OF REQUIREMENTS & CAPTURE OF PRIORITIES	 DESIGN CREEP	 UNREALISTIC TIMETABLES
ENABLERS	Invest time and money up front. Set the project key parameters – i.e. cost, programme or quality. Ensure Designers are made accountable for delivering a design that meets the Employers Requirements.	Ensure thorough brief delivered / received & tested Implement robust change control Robust Gateway Reviews to check proposals meet Employers Requirements	Sign up to deliver to pre-construction programme More transparency, sharing and listening Make decisions early enough to clearly define requirements i.e. sectional or partial possession
BLOCKERS	Programmes often unrealistic. Who is the appropriate Client representative and what input do they have into design.	Can de-rail the first stage as it puts pressure on the programme and budget Lack of clear picture leads to scope creep Built in risk within second stage.	Superficial programmes Having serious conversations late in the day (programme) means less options available
ACTIONS	Collate and publish current market intelligence. SEaL data presented at the recent Local Government Association (LGA) Conference.	Develop guidance on benefits of undertaking due diligence reviews at contractor appointment	Develop guidance on collaborative planning workshops

Appendix C

Barriers to the collaborative two stage open book procurement process were debated in round table discussions, including additional observations from the floor. As before, 'enabler', 'blocker' and 'action' headings were defined:

i. Clarity of requirements and capture of priorities

Blockers

- Programmes often unrealistic
- Who is the appropriate Client representative and what input do they have into design
- Not clear who is defining what is required
- Who is responsible for making decisions
- On D&C projects contractors tend to leave it to the designers to lead the process
- Clients do not get promised roles i.e. M&E coordinator

Enablers

- Invest time and money up front
- Identify all the stakeholders
- Do not allow designers to tell you what you need
- Set the project key parameters – i.e. cost, programme or quality
- Ensure Designers are made accountable for delivering a design that meets the Employers Requirements
- Ensure Project Board / Principals meeting established to govern the project and to ensure clarity of requirements.

Key stakeholders should be included

- Set Employers Requirements prior to appointing consultants, as this will inform their appointment
- Contractors to ensure they appoint suitably qualified and experienced Design Manager
- Contractors to be held accountable for providing all of the resources promised
- Employers to define their requirements and provide clear briefs to their Architects
- Apply current Market Intelligence

Actions

- Apply current Market Intelligence

ii. Design creep

Blockers

- Can de-rail the first stage as it puts pressure on the programme and budget
- Client needs to set clear objectives / requirements from the start
- Lack of clear picture leads to scope creep
- Lack of understanding of individual roles within two stage open book process
- Engagement late in the pre-construction timetable results in design creep towards the end of design
- Built in risk within second stage

Enablers

- Ensure thorough brief delivered / received & tested
- Due diligence review – to be carried out by the contractor on award
- Implement robust change control
- Detailed check of Employers Requirements ensures design meets Employers Requirements
- Review and update RACI regularly to ensure clear accountabilities and responsibilities for all parties, particularly for decision making
- Engage end user / operator & Client at the appropriate stage of the pre-construction process
- Regularly test cost of the design with the cost plan

Actions

- Develop guidance on benefits of undertaking due diligence reviews at contractor appointment

iii. Unrealistic timetable

Blockers

- Superficial programmes
- Having serious conversations late in the day (programme) means less options available
- One timetable when school needs to open / receive pupils
- Basic needs schools need to be delivered early, leaving too late to address is inefficient

Enablers

- Sign up to deliver to pre-construction programme
- More transparency, sharing and listening
- Make decisions early enough to clearly define requirements i.e. sectional or partial possession

Actions

- Develop guidance on collaborative planning workshops

iv. Lack of Trust - inappropriate behaviours

Blockers

- Transparency of budget / cost
- Very tight profit margins drives risk adverse approach from contractor and protection of financial position
- Poor information upon which to base design – e.g. surveys
- Trust = Cost certainty, without one you will not get the other
- Lack of joint cost management and ownership
- Ownership of risk drives behaviours
- Poor preparation during design period
- You're my Consultant sort it out

Enablers

- Create the 'ability' to be transparent at given points in time
- Clarity of the ownership of risk, and the ability to agree and regularly review
- Clarity on the level of design information and the assumptions that are based around cost, time and quality
- Regularly test the cost plan against scope
- Ensure appropriate culture is created between all parties and not simply maintaining a position
- Create culture of joint ownership of the cost plan and not simply passporting a problem from one party to another

Actions

- Develop guidance around start up workshop culture

v. Poor procurement

Blockers

How do you build good understanding when the cheapest price wins
Cop out, lack of responsibility, lack of management, strategy
Consultant is mediation part
Don't get this with an educated client

Enablers

- Client needs to ensure they have appointed educated / experienced team
- Do not get this with good quality of project management

Actions

Develop guidance on developing collaborative procurement strategy

vi. Unrealistic budgets

Blockers

- 'More for less' in a rapidly changing economy – cheap does not equal value !
- Contractor owns the cost plan, but client owns the risk

Enablers

- Carry out due diligence process at appointment
- Need incentivisation on contractor – pain / gain

Actions

- Develop a schedule of common Top 10 risks – This has been completed
- Refer to published NACF cost benchmarking report

vii. Lack of competition in the second stage – does open book truly exist ?

Blockers

- Unclear responsibility for managing and checking the package returns
- Accuracy of cost plan to scope
- Lack of clarity about project objectives changes during project phases
- Surprises from supply chain returns

Enablers

- Carry out due diligence review to ensure cost plan aligns with project scope before work commences
- Cost check items during the procurement phases
- Ensure that a RACI is carried out and regularly reviewed to ensure there is a clear responsibility for managing and checking the package returns
- Ensure that consultants Terms of Reference align with the two stage open book approach
- Client to set clear project objectives and regularly review with the whole team i.e. that budget must be met
- Form direct relationships with supply chain and try to joinup supply chain synergies across programmes or work

Actions

- Develop commonality of cost planning approaches to build familiarity
- Develop understanding of philosophy that the cost plan is jointly owned by all parties and objective to jointly deliver the project within the cost
- Create culture where everyone's ideas are respected and valued

viii. Unfair allocation of risk, pass it all onto the contractor – experienced clients so share the risk

Blockers

- Risk on Risk
- Bad project management
- Ensuring value (for who?)

- Trust and transparency – candid conversations and sensor check open and honest
- Creating bad taste and distrust on default (tools to mitigate)
- In current market – supply chain has power
- Contractors have to front this and stuck between rock and a hard place

Enablers

- This is a perception – harder to change
- Unrealistic requirements for supply chain to adhere to when working for larger contractor – accreditation process is not flexible enough

Actions

- Risk has a price – make sure Client is clear what price is risk and therefore giving ability to share risk
- Refer to available cost benchmarking data

ix. Onerous contract terms imposed by the client

Blockers

- Contractors step down (pass on) contract terms – given to them

Enablers

- Un-amended terms and conditions – pre-construction activities and contracts
- Fair liquidated and ascertained damages
- Fair payments and adherence to down supply chain
- Project bank accounts – charter
- Fair share of risk embodied in contract
- Action use standard forms
- Collaborative ethos embodied within the contract mechanism
- Incentive – gain share – drive
- Performance plus better outcomes

x. Failing to optimise 'economies of scale'

Blockers

- Barrier not making pipeline visible
- Making packages 'attractive'
- Good programme – follow on not allowed to be pulled apart
- Standardisation across programmes
- Consistency of approach, 'kit of parts'
- And insert compartments into projects
- Supply chain selected too late once own contractor supply chain – 3 quotes?
- Not using wider supply chain

Enablers

- Sight of pipeline – real and secures early commitment – work together for common goals
- Meet the pipeline events before contractor specific 'meet the buyer'
- Using BIM to breakdown barriers
- Commit to reduced selection of components and solutions
- Offsite solutions – design/manufacture/assembly efficiencies
- Supply chain visible to client teams, could form part of the mini competition process
- 'Retail' approach to schools – drive down / fewer choices

Actions

- Work with Clients to ensure up to date pipeline published
- SAVE Scheme and other Supply Chain initiatives

xi. How does the public sector make itself more attractive to the market?

Blockers

- Poor relationships with contractors
- Are there true working relationships
- Long tender lists and a lot of resource required to be selected
- Budgets are often ill informed

Enablers

- Time needs to be invested to develop meaningful relationship with main contractors, such as through a Framework
- Clients need to find ways to establish working relationships and get to know the contractors, how?
- Reduced number of contractors on tender lists, a truly competitive process with a few contractors is much better than a non competitive process with a number of contractors
- Simplify tenders / mini competitions
- Consider weighting of quality / cost in contractor selection process
- Ensure budgets are realistic and tested in current market conditions rather than use historic figures
- Consider a method of incentivising; pain / gain share, increased opportunities for bidding, good payment terms and additional packages of work

xii. Why is package procurement such a dark art?

Where is the transparency & no surprises culture?

Blockers

- Lack of transparency and poor communication leads to surprises
- Quality of information being sourced up and down supply chain determines the level of risk
- Contractors take a view on risk when exploring normalisation (lack of collaboration). Normalisation process important – joint process
- Lack of common process
- Initial financial numbers lead to expectations being unchecked / unrealistic
- People remember the first thing they are told

Enablers

- Better quality information / recognition of quality of information being used – training
- Share information before final answer given; agree what, how and when
- Agree behaviours required by all parties in respect of process
- Define & Agree Procurement Strategy

Actions

- Develop guidance and templates on package procurement process and behaviours

xiii. Training - Lack of understanding of the process / colocation

Blockers

- Set out culture of team (Client sets this)
- Operation from the start
- Independent authorising / authoring
- Do what you say you are going to do

- Lack of consistent message and approach throughout organisations
- Individuals who are traditionalists
- Lessons learnt not passed on
- How do we truly obtain supply chain buy in

Enablers

- Ensure there is appropriate introduction to using the two stage open book arrangements between Clients, Consultants and Contractors - 360° standard training
- Develop consistent processes / systems for sharing project information
- Develop processes for rapid reaction to issue resolution
- Principal meetings – ensure team understand how to operate the two stage open book process
- Maintain training log to ensure process is understood and delivered by all engaged parties
- Reinforcing one-team approach, same message to all
- Try to address cultural differences ‘head on’ agreeing acceptable behaviours at start up meetings and agreeing process to discuss issues as they arise without escalating too fast
- Job swap / share opportunities
- Reinforce culture of Framework – believe in

Actions

- Framework Management Team (FMT) to review guidelines and working practices, presentations, and training programme. Develop more accessible lessons learned resources

A full list of the different perspectives is listed below:

From a Contractors perspective:

1. Clarity of requirements and capture of priorities
2. Design creep
3. Change in priorities
4. Unrealistic timetable
5. Trust - inappropriate behaviours

From a Consultants perspective:

1. Lack of trust – constantly challenging / questioning the consultant
2. Poor procurement – how do you build up an understanding when cheapest price wins?
3. Unrealistic budgets and ‘more for less’ in a rapidly changing economy – cheap does not equal value!
4. Lack of competition in the second stage – does open book truly exist?
5. Unfair allocation of risk, pass it all onto the contractor – experienced clients so share the risk
6. Onerous contract terms imposed by the client

From a Client's perspective:

1. Where is collaboration when the going gets tough? – reverting to type
2. My designers cannot talk with yours
3. Poor supply chain capacity – you’re in a framework, join up!
4. Failing to optimise ‘economies of scale’
5. How does the public sector make itself more attractive to the market?
6. Why is package procurement such a dark art?

Where is the transparency & no surprises culture?

Additionally, from the floor:

Training - Lack of understanding of the process / colocation