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Examining the Effects of Post Tender Negotiation in UK's Public Sector Procurements: An Empirical Study

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Abstract

The use of Post Tender Negotiation (PTN) procedure in the United Kingdom (UK) public sector procurements is restricted to exceptional cases. The proponents of these restrictions, including the European Union (EU) and the UK's Office for Government Commerce (OGC) cite ethical reasons. They argue that the procedure could stifle competition as the actions of the buyer could be unethically tilted in favour of certain suppliers. This paper argues that the restrictions deprive public sector buyers from reaping the benefits associated with the procedure and recommends relaxation of the restrictions. This is because findings from this study indicate positive effects of PTN for both buyer and supplier. The buyers can use the PTN procedure to negotiate for VFM procurement, while the suppliers can modify a bid to negotiate for contract which is within their resource capabilities to execute. Furthermore, the ethical reasons cited for the restrictions are narrowly premised as evidence in literature suggests that individual's ethical behaviour may be due to cultural beliefs and not necessarily rules set by authorities.

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1. Introduction and Background

Post tender negotiation (PTN) is a procedure within the tendering process which is used for procurement of goods and services. The procedure provides the opportunity for the procuring institution to further negotiate with potentially value for money (VFM) bidders¹. Yet, the application of PTN in the UK public sector procurement is significantly restricted to exceptional circumstances. The (Office of Government Commerce) OGC's position is that, the PTN procedure should not distort competition to affect the tendering process' integrity². The UK National Health Service (NHS) for instance, prohibits the use of the procedure for price negotiations³. This is in line with EU Directive 2004/18 where competitive dialogue and negotiated procedures are the only procurement interventions where the PTN procedure could be used⁴ OGC also adheres to Directive 2004/18 hence, sparingly application of PTN in UK public sector procurement⁵. Studies done in the area of PTN procedure are limited. Published research works have mainly focused on tendering processes^{6, 7}. Others have also concentrated on the processes involved in bidding^{8, 9}. The few available studies on the PTN procedure have focused on explaining PTN without much focus on the procedure's vital role particularly, how it affects public sector procurements^{10, 11}. It is therefore necessary to carry out a study to ascertain the effects of the PTN procedure, particularly how the procedure can be used to secure VFM for public sector organisations. This would allow authorities to decide whether it is worth restricting PTN application or otherwise. PTN procedure is important because, in a particular acquisition, there are many situations that could arise during the tendering process that would necessitate or trigger the PTN application in order to achieve the desired results. Among these situations are the needs to clarify terms, lack of evidence for VFM bid, doubt in quality performance and the need for price reduction¹².

1.1. Assumptions of the research and the underpinning theories

The study assumes that the underlying objective of every procurement activity is to achieve VFM and that buyers identify tendering process as a means to facilitate such activity. It is also assumed that such tendering process would be governed by certain principles to avoid unfair competition. Furthermore, the quest for procuring institutions to make savings and also overcome budgetary constraints compel such institutions to negotiate at post tender stage for reduced prices and secure deals that would allow them to fulfil their VFM objectives. However, to ensure the success of such negotiations, it is assumed that factors such as cooperation, interdependence, communications and social motive approach would have to be present. These assumptions of the research are underpinned by various theories including the Transaction Cost Economics (TCE), Games Theories of Cooperation and Interdependence, Theory of Multi-agent Collaborative Maintenance Platform and the Conceptual Framework of Social Motives and their Influence on Integrative Negotiation.

• The Concept of Value for Money and Post Tender Negotiations

The VFM¹² is seen as the main objective for every procurement activity in both private and public sectors hence the assumption in this research¹³. In recent times, there has been intense debate about what actually constitute best value for money procurement. Such debate is being driven by the shift from hitherto focus on achievement of price reduction as the main factor for VFM procurement, to factors such as prompt delivery and quality¹⁴. Thus, it can be argued that negotiations at the post tender stage for instance, should consider discussing factors such as the supplier's responsiveness, flexibility, dependability, capability, lowest evaluated prices or competitive value, delivery on-time, reduced operating cost and quality^{13, 14}. The fieldwork explores whether participants identify these same variables as constituting VFM.

• Transaction cost economics theory and the tendering process

The TCE advocates an ethics research behavioural assumption on the basis that if profitable and feasible, people will behave opportunistically during business transaction and the tendering process could potentially allow this to happen¹⁵. This is because the buyer views tendering as advantageous process as it lowers acquisition cost by allowing the buyer to pit several suppliers against each other¹⁵. The OGC is aware of the possible ethical breaches in

tendering and advocates for strict ethical adherence during tendering and by extension PTN. However, this paper argues that a complete elimination of unethical behaviour during business transaction is arguably impossible. Thus, the economic cost of ensuring that the necessary ethical rules are followed is worthwhile especially, if the tendering and the PTN processes could aid the VFM objective in public sector procurement. Indeed, in order to minimise unethical behaviour, the tendering process follows certain principles which the PTN procedure has to follow⁵. Thus, the need to preserve the tendering process' integrity; the abhorrence to circumventing the tendering process; and thirdly, the duty to fair negotiations are some of the tendering principles identified in the academic literature ^{16,17}, The above discussions form the basis of the assumption that buyers identify tendering process as a means to achieve VFM objective in procurement. This assumption is further explored in the fieldwork.

Games theories of cooperation and interdependence and key success factors in negotiations

Many authors in the academic literature have theoretically advanced factors such as cooperation and interdependence as key contributing factors to success in negotiation ¹⁸. The authors based their proposition on games theory and posit that decision makers' objectives during negotiations are defined as rational. Thus, there is the assumption that negotiators approach negotiations with strategic reasoning by recognising that both parties depend on one another (interdependence) and therefore cooperate with each other to secure agreements in negotiations. The above proposition can be explained from the premise that both the buyer and supplier depend on each other to strengthen their resource base and also to sell their goods or services respectively to keep their businesses afloat. The views of the participants are sought during the fieldwork on the assumption that factors such as cooperation and interdependence contribute to negotiation success.

• Theory of multi-agent collaborative maintenance platform - communication

The research assumes that communication is a key success factor in negotiations. This assumption is underpinned by the theory of **multi- agent collaborative maintenance platform**¹⁹. The theory advocates that communication involving verbal behaviour contributes to the creation of rapport which significantly leads to successful outcomes in negotiation¹⁹. Thus, while some authors¹⁹ argue for the role of verbal communication to create rapport to achieve negotiation success, this paper argues that while the importance of face-to-face or direct conversation in post tender negotiation cannot be underestimated, the advent of online communication as seen in e-tendering has also created a platform for negotiations to take place without difficulty.

• Conceptual Framework of Social Motives and their Influence on Integrative Negotiation

The above theory advocates that when negotiators approach their negotiation with social motives (friendliness) agreements could be reached²⁰ thus making social motive approach in negotiation a key success factor hence, the basis of such assumption in this research. The authors advancing this theory applied "competition and cooperation and dual concern theory based on conceptual framework of social motives and their influence on integrative negotiation ²⁰. They established that when negotiating parties approach their interaction based on motives which are pro-social rather than egoistic, the negotiation becomes less contentious. Thus, it is assumed that there is the need for procurement professional to approach negotiations especially at the post tender stage with friendliness and be more sociable if they were to achieve successful outcomes.

1.2. Proposed exploratory framework for maximizing Post Tender Negotiations

The research's assumptions underpinned by the theories and concepts discussed above (section 1.2) have led to the development of a proposed exploratory framework for maximizing Post Tender Negotiations as seen in Figure 1 below. As can be seen from the model below, it has been theoretically established (TCE) from previous sections that buyers use tendering to facilitate their procurement activity and that the potential for opportunistic behaviour means that such tendering activity has to be governed by certain principles. These principles also apply to PTN⁵. Thus, when these negotiations succeed, VFM objectives such as supplier's capabilities and flexibilities could be achieved¹⁴. The above framework therefore becomes the proposition of the research and it is used as the basis to

conduct the fieldwork with the purpose of establishing the effects of post tender negotiations and to ascertain whether such effects include VFM

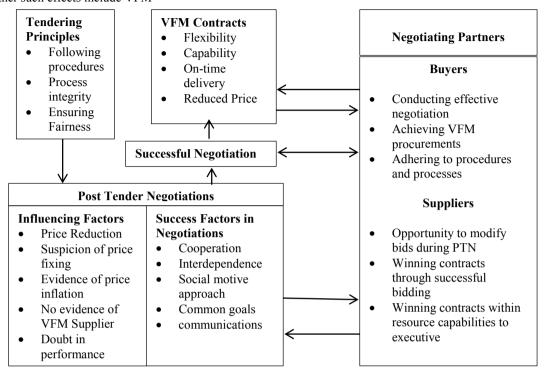


Fig. 1. Proposed exploratory framework for maximizing Post Tender Negotiations.

2. The Research Methodology

Qualitative research methodology has been adopted as the philosophical approach to address the research's objectives and this influenced the design of the research. While the initial intention was to fuse or synthesize some aspects of quantitative data with qualitative data in addressing the research's objective, the inability of the researchers to identify hard, standardised and objective data (quantitative data) due to sparingly application of PTN led to the choice of qualitative research approach. Moreover, the interactive nature of qualitative research allows for varieties of views to be solicited from participants and also helps to establish the contextual framework for the research design²¹. Thus, an in-depth understanding of how public sector organisations in UK apply PTN in their procurement practices and the effect of these practices needed to be established and therefore the constructionist epistemology was more suitable as opposed to positivist epistemology.

2.1 The research design

Methods for data collection consisted of in-depth semi-structured interviews and document review. The research sample was made up of eighteen interviewees with mean age of 42 years. All participants were initially contacted either by email or phone to seek their agreement well in advance before the interviewers travelled to the interviewees' locations for the actual interviews. The number is made up of three buyer managers and four buyers from London Borough of Newham's procurement department; three buyer managers from three Local Government Authorities in London; five heads of supplier companies with current contracts with London Borough of Newham;

and three buyer managers in private sector institutions in Newham area. The inclusion of participants from private institutions was to allow a comparative view about PTN from the perspective of private sector. Convenience or opportunity sampling was chosen for the research to ensure the reliability of the data collected²⁴. Such non-probability or accidental sample was the close to hand one for the study and was perfectly fit due to the topic's specificity. The composition of the selected sample is adjudged to interviewees with technical competence and experience in matters pertaining to PTN as it significantly covers diverse stakeholders in the procurement industry. This allowed varied opinions to be solicited thereby reducing biasness and increasing data reliability. Extensive review of documents about PTN application was also undertaken. The researchers were given access to various documents from the London Borough Newham's Strategic Procurement Department which detailed the processes and procedures involve in PTN application in the Borough. The documents reviewed uncovered the frequency of PTN application and also provided figures detailing the spend analysis of London Borough of Newham's procurements of goods, works and services.

Data Analysis

Interpretative Phenomenological Analysis (IPA) technique was used to analyse responses from the participants from which three superordinate themes emerged. The application of five-stage process of IPA allowed data to be observed closely by the researchers ²⁵. The approach also allowed meanings to be attributed to a phenomenon by participants²⁶. Data was interrogated in conformity with the aims of the research and in such a way that the participants' phenomenological integrity was ensured.

3. Presentation of Results

The result provided the emergence of four major themes as illustrated in Table 1 below:

Table 1. Final Themes from Analysis of Interviews with Illustrations in Quotes.

Principal and Subordinate Themes	Illustrations in Quotes	Additional Quotes
Theme 1: PTN affects both supplier and buyer Negotiated desired contracts (17) Modify bids to win contracts (4) Achievement of VFM (17)	"PTN is very effective to achieve best practice and VFM outcome"	"PTN offers the chance to modify bids to win contract"
Theme 2: PTN leads to achievement of VFM On-time delivery (13) Flexibility (16) Resource maximization (4) Capabilities (17) Green procurement (10)	"PTN helps to offer sub-contracting businesses to our local SMEs to ensure resource distribution within local community"	"PTN allows for contracts within resource capabilities"
Theme 4: Factors ensuring negotiation success Cooperation (18) Interdependence (18) Communications (16) Social motive (17)	"I have developed relationship with our buyers and anytime we are in negotiations we cooperate with each other to achieve success"	"When one adopts arrogant posture in negotiation, the outcome is often a failure"

Note: Numbers in parenthesis represent the number of participants who evidenced each theme. Selected quotes have been used for illustration purposes to contextualize the themes.

4. Discussions of findings

The results from the fieldwork suggest the effectiveness of the developed exploratory framework for maximizing PTN. The discussions of the findings are in two parts; the first part (4.1) discusses the three main themes identified from the fieldwork findings as seen from **Table 1**, while the second part (4.2) focuses on discussions on the relaxation of PTN restrictions as observed from the fieldwork findings.

4.1. Discussion of three main identified themes from fieldwork findings

Theme 1: PTN affects both supplier and buyer - the views of the participants were sought to discuss how the PTN procedure affects them and it was identified that negotiating at post tender stage is effective for both buyer and supplier. These findings from the fieldwork directly confirm that both the buyer and the supplier experience the effects of the PTN procedure in a positive way. Buyers can use PTN as a framework to correct budget deficits. A buyer interviewed quoted the following: "as a Buyer who has worked in both public and private sector I can assure you that it is very effective process to achieve the best prices and value for money outcomes". The findings from the fieldwork also suggest that suppliers are excited about being selected for PTN as they get the opportunity to modify their bids to win contracts. The following quotation from a supplier confirms the above point; "I do not oppose to the procedure in itself but waiting to hear whether I have been selected for further negotiations or not brings me anxious moment and nervousness". Thus, if both buyer and supplier recognise the effectiveness of PTN, its application would be more acceptable thereby given less impetus to its restrictions.

Theme 2: PTN leads to the achievement of VFM procurement - It was also confirmed from the fieldwork findings that the PTN procedure is used mainly for the purpose of achieving value for money. VFM variables identified in the exploratory framework for maximising PTN and also from the literature including flexibility, capabilities, reduced prices, and on-time delivery¹⁹ were confirmed. However, the fieldwork findings also suggest that public sector organisations, especially local authorities focus on additional VFM variables such as green procurements and local business participation. A Buyer suggested the following quotes: "We have in recent times encouraged our supplier partners during PTN to offer sub-contracting businesses to our local small and medium-sized enterprises (SMEs) as a way of fulfilling our corporate social responsibility". ... "As a Local Authority, we have the responsibility to make sure that our resources are distributed or utilised within the community to ensure community development and cohesion". The following quote by a Supplier confirms that Suppliers can also achieve VFM from PTN: "... PTN has the potential for me to achieve VFM as I can negotiate for supply of goods or services that are within my resource capabilities". This means that if suppliers view PTN as an avenue to negotiate for work that would not over-stretched their resource capabilities, then they would be less hostile to the PTN procedure and reduce the level of opposition if any.

Theme 3: Key success factors in negotiations - the fieldwork confirms that PTN is successful only when key success factors in negotiations such as cooperation, interdependence, communications and social motive approach to negotiations are present for agreements to be reached. The findings from the fieldwork suggests that buyers interviewed from public sector enjoy significant cooperation with their suppliers and that the few occasions that they have negotiated at post tender stage have provided agreements. The following quote from a supplier confirms this; "Over the years I have developed relationship with Newham officials and anytime we are in negotiations we cooperate with each other to achieve common goal". The above confirms the theoretical explanation of Nash theory of cooperative games and could be concluded as holding the key to achieve negotiation success and award of VFM contracts²⁷. An interviewee suggested the following regarding interdependence; "As a buyer, I enter into negotiation with the aim of getting a deal which offer the best outcome for my organisation and I can only achieve this if I receive the support of my negotiating partner. At the same time the suppliers also depend on us for their business and therefore we both need each other". It can thus be arguably concluded from the above that one can predict an outcome of a negotiation if there is a history of existing relationship between a buyer and a supplier. This could in turn help to predict an eventual outcome of VFM contract award. Communications- the findings from the literature review suggest that negotiating partners develop rapport through verbal communication which contributes to agreements in negotiations²⁸. Interestingly, the findings from the fieldwork suggest that during PTN, negotiating partners mostly communicate electronically using emails and still create rapport and reach agreements. The significance of this finding is that, it reflects on the advancements in communications in recent times through information technology. Thus, instead of organising costly lengthy meetings, buyers negotiate with their supplier partners through email communications which is less expensive and still manage to reach agreements to sign VFM contracts. The following suggestion by an interviewee buyer supports the above point; "...non-verbal communications including email has become an integral part of our negotiation process during PTN". Social Motive approach to negotiations- the fieldwork established that when negotiation at the post tender stage is conducted in an atmosphere of friendliness, an agreement could be reached. This implies that the opposite scenario

where negotiating partners conduct negotiation with certain level of pomposity is likely to lead to disagreements²⁰. The social motives concept's influence on integrative negotiations helps to establish that a pro-social approach for negotiation as opposed to egoistic approach makes negotiations less contentious²⁰. The fieldwork findings suggest that, the longer the relationships, the higher the degree of harmony among buyer and a supplier as the following quote suggest: "I personally believe that when one adopts an arrogant posture during negotiations the outcome has always been a failure... I can say that this is not the case with Newham Council, as we have all become one family and thus enjoy harmonious atmosphere on few occasions that we have entered into post tender negotiations".

4.2 Observations from the findings on PTN restrictions

The findings suggest that the restrictions on PTN ought to be relaxed as the procedure significantly benefits buyers and suppliers.

Using ethical reasons to restrict PTN application - Public sector buyers accept that circumventing processes during PTN is unethical and understand the repercussions that may come with it and support the view that belief, values, traits and organisational culture inform individual's ethical behaviour and not necessarily ethical rules set by authorities¹⁷. This means that public sector buyers accept that opportunistic behaviour in negotiations is unacceptable and rather follow strict rules and procedures. One can thus conclude that public sector buyers are aware of their responsibilities and do not necessarily behave unethically during PTN as the following quote suggests: "In local government in particular, purchases above certain threshold require mayoral approval and therefore you cannot afford to engage in any underhand deals or circumvent the process".

• Relaxing PTN application Restrictions- evidence from documents reviewed

While the research model of the study outlined the process involved in using the PTN to achieve VFM, the fieldwork findings established that this could only be achieved if restrictions on PTN are relaxed. Evidence from documents reviewed established that the PTN is sparingly applied especially in UK, which confirms the views gathered from the interviews. Example, in 2011/2012 financial year, a local authority in London spent a total amount of £285,652,216.00 for procurement of goods and services²⁹. In almost all the cases (except purchases below £10,000.00) tendering process was applied but the PTN approach was applied once. Thus, it was overwhelmingly agreed by public sector buyers interviewed that EU/OGC should relax the restriction and allow the PTN to be applied when necessary as it provides the opportunity to secure VFM.

5. Conclusions

The research reveals that the PTN has positive effects on both the buyer and the supplier and leads to the achievement of VFM procurements. It was also found that the PTN follows the same principles as tendering and therefore adhered strictly to fairness in competition. However, for VFM contracts to be awarded, success in negotiation at post tender stage is critical and the research identified cooperation, interdependence, communication and social motive approach to negotiations as key success factors. Significantly, the fieldwork identified that electronic communications such as emails; not just verbal communications can also create rapport and contribute to negotiation.

5.1 Recommendations for the Relaxation of PTN Restrictions

The study recommends that the restrictions on PTN currently imposed by EU/OGC should be relaxed. This is because, contrary to the view advanced by EU/OGC that the PTN procedure has the potential to distort competition, the study did not find any evidence to support this position. In fact, evidence in academic literature suggests that an individual's appreciation of ethics is based on their cultural values, traits, family and beliefs not necessarily rules set by authorities¹³. Furthermore, the fieldwork confirms that public sector procurement officials accept their responsibility and obligation of following the PTN principles in order to meet ethical standards and audit test. They are guided by the same principles as tendering and aware of the consequences in circumventing processes and

therefore behave ethically when performing their duties. This means that the restrictions may not be necessary, especially if it is based on ethical considerations. The clarification stage during PTN could be used to discuss period of delivery and specification¹. Therefore, local authorities can use the negotiation process to encourage their suppliers and provide incentives for bigger contractors to engage local small businesses by offering them subcontracts. This can create employment to local residents and keep resources within the local community. Thus, even if the PTN procedure could be lengthy, TCE argues that there is a cost to be incurred in the search of the best supplier and that this cost is necessary if there are economic gains to be achieved from it¹⁵.

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