

CONSTRUCTION ENGINEERING MASTERS DISSERTATION ABSTRACT

Legal challenges and public procurement in construction in Northern Ireland

Public procurement in the construction sector has been an historic problem in Northern Ireland (NI), to the extent that a public inquiry was held on the matter in 2009. In 2019, a NI Audit Office report into major construction projects highlighted legal challenges of procurement decisions as a matter which impacted delivery, suggesting that perhaps there hasn't been improvements in relation to legal challenges since the public inquiry. Legal challenges are often expensive to defend and inevitably delay projects that benefit the people of NI; it is therefore in the public interest that these challenges are prevented where possible. This study aimed to ascertain the frequency of procurement challenges in the construction sector in NI – not just the frequency of cases that proceed to court judgements, which obviously significantly delay projects, but any challenge to procurement that delays projects – and if NI is any better or worse than other jurisdictions. The causes of challenges were investigated, as were areas for improvement. A literature review was undertaken to establish the extent of previous research undertaken across the UK, and specifically in NI, on frequency of legal challenges, why they occur and to understand if, and how, any improvements had been implemented. This review identified gaps in data and knowledge. A multi-phase, mixed-methods approach was taken to gathering primary data; firstly, all NI central government procuring organisations, known as Centres of Procurement Excellence (CoPEs), were approached to provide (and did so) details of legal challenges in the last seven years. Secondly, contracting organisations who tender work procured by CoPEs were surveyed, with 35 contractors responding, to understand why they challenge procurement decisions and to ascertain their experiences on how procurement is managed in NI. Finally, procurement leads within the CoPEs were interviewed to ascertain their experiences. The data gathered was a mixture of quantitative and qualitative in nature.

Analysis of the primary data revealed that 40 out of approximately 1500 public procurement exercises in the last seven years had some form of legal challenge. The survey results indicated that legal challenges are not as widespread as the contracting side of the industry believes them to be and suggests that the legacy from the public inquiry era (around 2009-2011) clouds perceptions of procurement in NI. The analysis of the causes of legal challenges demonstrated that three areas predominate, namely processes not being followed, issues with quality assessment and abnormally low tenders. Thematic analysis on qualitative elements of surveys with contractors and interviews with CoPEs was undertaken to investigate reasons behind a view that contractors are more litigious in NI and to establish areas for improvement. Such areas include additional skilled resources in CoPEs, changes to quality assessments, including the quality:price balance and enhanced communications at all stages of procurement, including more robust information on procurement pipelines. This study does not support recommendations made following previous investigations into NI procurement with respect to reorganisation of the structures that are in place to manage public procurement in NI.

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