

# **PUBLIC PROCUREMENT OF LOCAL AUTHORITIES IN THE NETHERLANDS: A CASE OF BREAKING TRADITION FOR A MORE STRATEGIC APPROACH?!<sup>1</sup>**

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The use of integrated contracts / innovative procurement has been a subject of debate and research in the Netherlands for the last decade and has subsequently resulted in a large research programme investigating the reform of the construction industry. At the end of the 1990's an "Innovative Procurement" (IP) programme was implemented to increase the use of integrated contract forms. This programme was adopted by the state agencies Rijkswaterstaat, ProRail and the Rijksgebouwendienst. For these organisations integrated contracts are the starting point for their procurement strategy and implementation. However, local authorities appear cautious to change their traditional tendering policy towards a more strategic outsourcing policy. Several studies have been conducted, targeting/investigating changes to procurement policy over time within municipalities. The results of studies so far relating to the use of different contract forms and barriers for implementation by local authorities will be presented. The results show little change in policy and implementation during the last decade. Currently only a few local authorities are moving away from traditional procurement methods to using a more strategic outsourcing approach. The majority appear to be using more integrated contract forms in an experimental/incidental way but not strategically. Also, despite experiencing various problems with traditional contract forms, the aspiration to change policy and implementation is absent. The responsible managers therefore choose a cautious and habitual approach. Yet, there is some positive movement. Due to – national - pressure on local authorities, they seem to be open to a more strategic outsourcing and tendering policy. The evaluation and discussion subsequently focuses on how a more strategic approach can be implemented given the influence of the different decision makers.

Keywords: contracts, local authorities, outsourcing, policy, procurement

## **INTRODUCTION**

Governments in a number of countries have taken up the development and implementation of procurement policies for changing the way their national construction industries function. The strategies are quite different. The UK implemented changes, following the Latham Report (1994) – who recommended more standardised construction contracts, better guidance on best practice and legislative changes to simplify dispute resolution - and the Egan Report (1998) – who identified five drivers which needed to be in place to secure improvement in construction: leadership; focus on the

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customer, integrated processes and teams, quality driven agenda and commitment to people. These were the first steppingstones in the "revaluing construction" movement as is now also promoted by the CIB (Barrett 2007)

The Netherlands, like France and Germany, sees a central role for government as regulator in the market place (van Waarden 1996). However, there is little policy drafted especially aimed at transforming the construction industry. Also, the construction industry is not addressed directly. The emphasis lies more on attempts to get the public sector to behave in a more "as private business" fashion. Publicly sponsored projects are often used to initiate/demonstrate new technologies that are disseminated to other practitioners (Seaden and Manseau 2001). This new approach to public sector procurement should tempt the industry into changing. Both the rethinking construction movement and the new public procurement approaches want to improve project delivery and business performance such as profitability and aspects of industry performance such as innovativeness, work safety, quality and value for money.

In the Netherlands this new way became known as "Innovative Procurement" (IP). The programme was sent to parliament in December 1999. It received broad support because several developments and aims fit together. The new, innovative forms of procurement must lead to closer co-ordination of design and construction within the whole industry. This will, in turn, contribute to substantial savings in terms of time as well as costs; the development of better innovative capabilities of contractors; and long-term improvement of efficiency and effectiveness in the construction industry (MEZ 1997, Sijpersma et al. 2005). The IP programme resulted in the combining of policy to shift activities from public to private sector and to make the public sector work in a more market oriented manner.

Although the construction related state agencies were reluctant in the beginning the Dutch construction industry embraced the IP programme as a route to change. The industry saw it as an opportunity to show and develop their capabilities. This new programme has resulted in an upsurge of integrated contracts since the year 2000 (especially those in Design-Construct). After the parliamentary inquiry into collusion in the construction industry as reported by Dorée (2004), national organisations RegieRaad<sup>3</sup> (2005) and PSiBouw<sup>4</sup> (2004) were formed to institutionalise and support the change of procurement policy and overall reform in the construction industry. Initiatives were started, e.g. by PIANOo<sup>5</sup> (2004) and Stadswerk<sup>6</sup>(1990), to encourage a transfer of knowledge between public clients responsible for tender procedures and purchasing.

To support the reform initiatives in the Dutch construction industry, important national public clients for civil works - Rijkswaterstaat and ProRail - changed their procurement policy from traditional "Design-Bid-Build" into "Design-Build". The latter is by definition, a form of an integrated contract which we continually refer to in this study. However, successful implementation of the revised contract forms depends heavily on their acceptance by local authorities, especially municipalities, since they

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<sup>3</sup> RegieRaad – Organisation appointed to stimulate change in the construction industry

<sup>4</sup> PSiBouw – organization made up of clients, the construction industry, advisors and researchers to share knowledge and experience around innovation

<sup>5</sup> PIANOo – Public client network for transfer of professional & innovative procurement knowledge

<sup>6</sup> Stadswerk– organisation established for the transfer of knowledge around municipal issues

are responsible for funding more than 85 % of the civil works undertaken in the country. Although local public clients have declared their intentions to support the IP initiative, they have not as yet changed their procurement policy and have until now only experimented with integrated contracts on a limited scale.

## **RESEARCH OBJECTIVES**

The research consist of three parts investigating the status of procurement policy and the use of innovative contract forms by local authorities (municipalities, provinces and water boards) in 6 provinces: Groningen, Friesland and Drenthe in the North (study conducted in 2006), Zuid Limburg (2007) and Noord-Brabant and Zeeland in South Holland (2007). The study provides insight into - the problems with - the current procurement (tender and outsourcing) policy, the extent of implementation of integrated forms of contract and signposts barriers possibly preventing the implementation of the innovative contract forms.

## **METHODOLOGY**

The research for the North consisted of four phases. Firstly, we conducted an extensive literature review to design of an initial set of survey questions. Secondly, structured interviews were held with a mixed grouping of officials from the provinces, municipalities and water boards to refine and develop the final questionnaire to be used as the survey instrument. Thirdly, the resultant web-based questionnaire was sent to targeted organisations and lastly, following an extensive data analysis exercise using the SPSS and Excel software packages, a series of further meetings were held with a sounding-board group in order to discuss the findings and prepare the final report.

The web-based questionnaire contained 29 closed questions, 3 open-ended questions and 58 statements. The closed questions related mainly to the current procurement policy of the local authority. The open-ended questions related issues relevant for [a] implementation of the procurement policy and [b] the dialogue between officials and managers. The 58 statements homed in on perceived suitability of the policy elements for the organisations circumstances. These statements were rated by respondents using a Likert-type response scale where, 0 = completely disagree and 10 = fully agree.

The questionnaire was sent to 76 organisations targeted in the study viz. 3 provinces, 68 municipalities and 5 water boards. One municipal official (in the main a political appointee) and one municipal manager (responsible for undertaking the work) were targeted in each of the organisations. Approximately 30% of the municipal officials and 65% of the managers responded. An official is defined as someone that is appointed from a political perspective in order to ensure that policy initiatives are implemented. A manager by definition is someone who is responsible for the execution of the works.

For Zuid-Limburg, viz 1 province, 40 municipalities and 2 water boards, the same methodology was used except the interviews and response by officials: the research concentrated on the managers. The research in Noord-Brabant and Zeeland, viz. 2 provinces, 82 municipalities and 5 water boards, consisted of open questionnaires based on the most important themes from the studies in the North and in Zuid-Limburg.

## RESULTS

### Current policy framework

This theme focuses on the issues of importance due to policy framework and regulation. Almost all canvassed organizations uses funding threshold mechanisms in the selected, the invited and the public tender forms. The interest and involvement of officials in the actual execution of the policy is low. For officials the protection of local employment is an important issue. Only projects with high capital outlay, complex decision-making processes or those with significant social impact, increases the interest of high-profile officials. It is interesting to note that most organisations often deviated from their policy. The main reasons given by the managers are a shortage of time between conception and construction and the specialised nature of the work. Managers in the North find tendering policy, accountability and legitimacy issues the most important themes to discuss in a dialogue between officials and themselves. Strategic themes like co-operation, outsourcing and responsibility, were less considered (see Figure 1). In Noord-Brabant several municipalities and the province are now moving towards a more strategic/market driven approach. Cooperation between the – smaller - municipalities in Noord-Brabant is highly developed. Due to that cooperation the scale and size of projects grows, thereby providing fewer opportunities for SME's to tender. SME's worry and complain about this trend. .

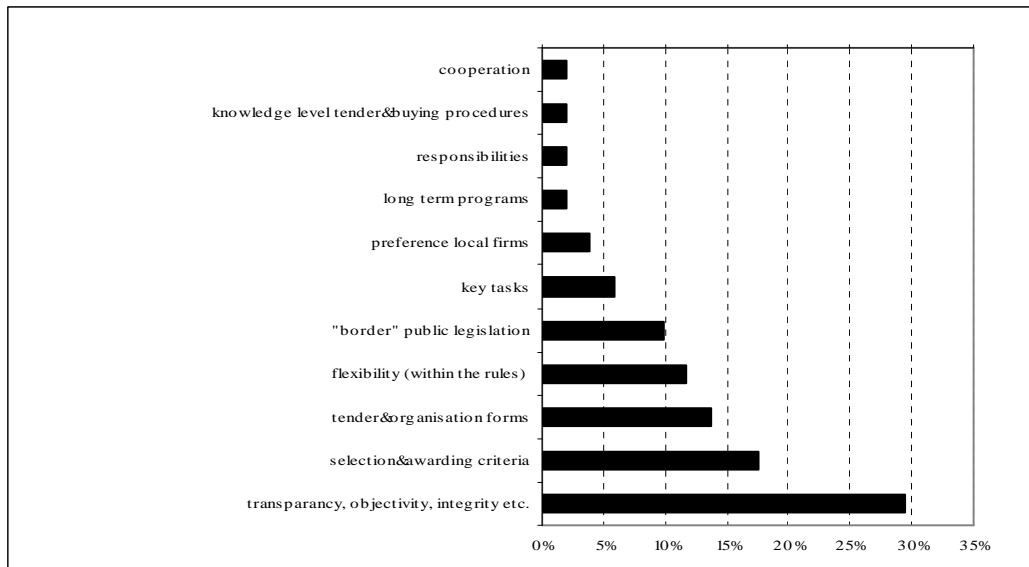


Figure 1 - Themes for a dialogue(Stadswerk, 2006)

Issues for further considerations are: finding a balance between legal & accountability concerns versus strategic (outsourcing) flexibility, and finding an optimum between economies of scale in public procurement versus reduced market access for SME's.

### Outsourcing

It appears that larger organisations outsource less activities in the design and procurement process than the smaller organisations. Figure 2 illustrates the situation in the North. The situation in the southern region is comparable. The activities outsourced the least are [1] the drafting of the functional requirements and specs, and [2] project and process management.

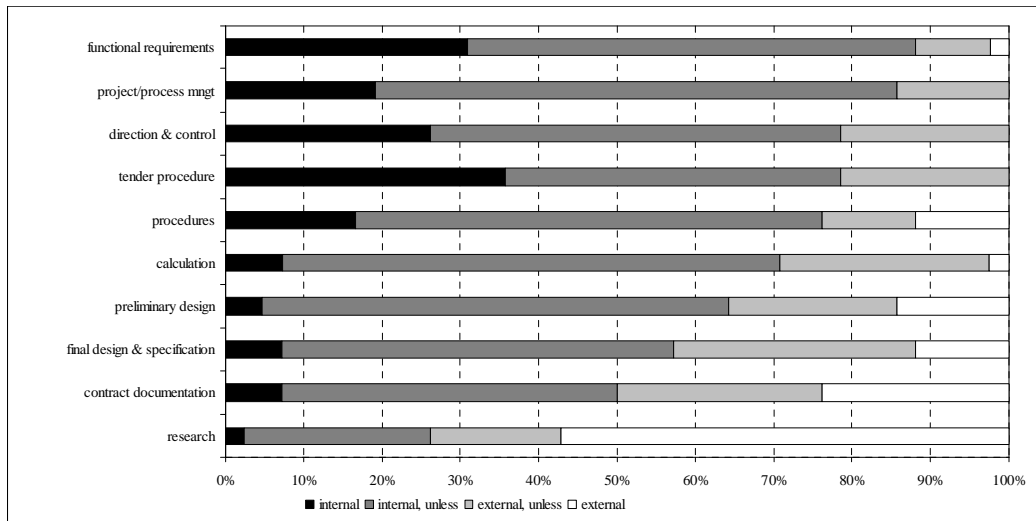
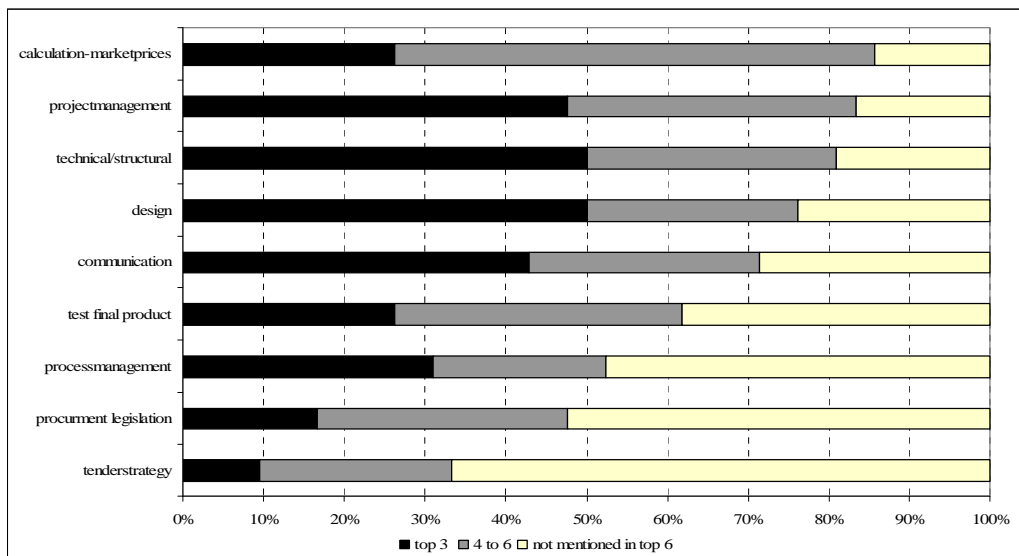


Figure 2: Overview of internal and outsourced activities (Stadswerk, 2006)

Only 5 percent of the managers in Noord Brabant and Zuid-Limburg considered a more strategic approach for outsourcing. Before starting the tendering process these organisations use market consultations to determine the best suitable contract strategy related to the level of skills and resources of the potential bidders: are these firms ready and competent to carry the tasks and risks involved? In order to act as professional clients in the future, according to managers in the North their top 3 key disciplines and skills would include “calculation and market prices”, “project management” and “technical and structural” skills and knowledge. Figure 3 below shows the ranking of disciplines by importance. These results are almost the same in the South. The majority of managers (approximately 75%) see tendering as a separate discipline which asks for specific skills and competencies.



*Figure 3: Disciplines ranked by importance (Stadswerk, 2006)*

Issues put forward for further considerations and debate are - [1] a more strategic perspective on outsourcing in relation to the main responsibilities for public clients, [2] development of skills and resources in the industry, and [3] the issues of scale and workload of the public clients in relation to outsourcing and/or joint procurement efforts and units.

### **Tender and procurement policy: practical experiences**

After the parliamentary inquiry as reported by Dorée in (2004), the attention for “legal and accountability” themes such as integrity, transparency and objectivity in the execution of the procurement policy rose. In the North approximately 35% of the managers find too much attention being paid to these themes. According to them, these legal themes force a shift towards open public tender forms. However, a majority of the managers in North and South prefer invited tendering. Open public tenders cause extra costs due to the opportunistic behaviour of the contractors -as legal nitpicking and claims - and due to the extra site supervising and control effort. According to a manager the "invited tendering procedure" is favourable from a project and cost perspective, but is often avoided because of supposed legal and accountability issues. The public client can easier "defend" its accountability position when following an open public tendering route.

The current legislation is not obstructing the use of innovative contract forms, according to officials and managers in the North, but several managers in North-Brabant appear to have a different meaning. They find regulation and procedures to be biased to traditional design-bid-build contract forms and as such hampering the use of "innovative" contract forms.

A mixed system of invited and public tender is generally used by local authorities. However, smaller municipalities attach greater importance to the (political) aspect of local employment. They therefore prefer to use “invited” or “selected” forms of tender. An increase in legal costs since applying a system of public tender is observed in the North. Smaller municipalities, using mainly invited and selected tender procedures, do feel pressured into using public tender procedures more often - by media, local politics and national policy initiatives that stress "integrity".

One of the recurring concerns in general is the increase in the administrative load to support the contractual agreement, especially for public tender. The time and effort spent on administrative loads results in high overhead costs relative to the overall project costs. According to the managers in the North and the South this accent on accountability and legitimacy is a consequence of the attention for integrity, both politically and in the media.

Issues for further considerations and debate are - [1] the implementation of (EU) procurement legislation which is biased towards open public tender and traditional design-bid-build, [2] does open public tendering increase expenses on legal fees?, [3] the difference in accountability and legal aspects of public, invited or selected tendering.

### **Integrated or traditional contract form: practical experiences**

Most organisations still demonstrate a preference for traditional contract forms - i.e. tendering and contracts based on specifications and drawings. The preparatory activities are either carried out in-house or outsourced to consulting engineering firms. The respondents confirm increasing use of [a] framework agreements for contracting consulting engineering firms and [b] performance specifications for maintenance. Outsourcing to consulting engineering firms requires in-house, labour-intensive control mechanisms. In general, the managers find that they have to take responsibility for quality control. According to managers, this is due to a lack of attention to detail by the consultants - which is often a consequence of a too high workload at consulting engineer firms.

The feeling is that consulting engineering firms and contractors take significantly less responsibility for quality.

Integrated contract forms are applied experimentally in the North and in the South. In Noord-Brabant some larger organisations want to use and in some cases, are using integrated contract forms more often. Due to the use of traditional contract forms, price is by far the most used factor in the award of contracts. Only in a limited number of projects are quality related criteria used next to price. These quality criteria mainly refer to process factors like communication skills, execution plan and guarantees for area accessibility and securing traffic flows. Criteria relating to the quality of a product - functional and technical parameters - are hardly used.

The reasons given for not using integrated contracts more often differ. Managers cite "advantages not obvious", a "lack of experiences" and "procurement costs" as the main reasons in the North for not using such contracts more often. In Zuid-Limburg the three main reasons given by managers not to use non-price criteria are "a lack of time/money", "problems in motivating the choices" and "the procurement policy for price". Approximately 80% of the respondents mentioned these themes. Overall the lack of experiences/skills and willingness to try something different seems to be two strong factors that impede the implementation of integrated contracts and innovative procurement methods.

In the North both officials and managers are not convinced of the advantages of using more integrated contract forms. Officials are more inclined to push towards integrated contracts. Officials rather than managers believe that in the future, standard projects will be offered in an integrated form. Both believe that "small" standard projects would be more suitable to gain experience with integrated forms. The latter point is also mentioned by managers in the South.

Issues for further consideration are - [1] reducing staff by outsourcing tasks to (engineering) consultants creates new issues of quality control, risks and staffing, [2] price or lowest bid is still the prime selection parameter, other quality related parameters need to be developed, and [3] breaking the circular dynamic: lack of experience leads to reluctance to experiment, which in turn, leads to lack of experience etc.

## DISCUSSION

These studies into the procurement strategy and practice of the local authorities showed that the majority of these public clients still cling on to the traditional approaches: design-bid-build and lowest price selection. This is also demonstrated by the sparse use of quality related criteria in procurement. The effects are known and observed. Engineering firms and contractors spiral in a public tender price competition which sometimes results in a focus away from quality. This forces public clients into labour-intensive control mechanisms in order to achieve an "acceptable" product.

Historically local councillors take little interest in "procurement policy". Compared to issues as health, environment, employment, they perceive the area of procurement as a field with "little to gain and much to lose". The natural approach is from the defensive - focussing on control and preventing potential problems on accountability, legitimacy and reputation.

An important deduction to be made is that at local level officials and managers appear to be concentrating on matters related to the accountability issues and the tender procedure per project. They pay little to no attention to long term perspectives and appropriate outsourcing strategies.

The tradition is now challenged by several trends and pressures. Ideas emanating from smaller municipalities spark discussions about core responsibilities and outsourcing. Ideas about market driven economies point to the creative powers of entrepreneurship, and public sector procurement strategies to stimulate and make use of these powers. Rethinking construction (-like) initiatives promote new integrated procurement routes. Construction industry - contractors and their associations in particular - lobby for opportunities to operate and prove themselves as solution providers. The Dutch state agencies are the first to put these trends into practice - leading to integrated contracts, long-term outsourcing of maintenance and operations, to service level agreements and to asset management.

Although officials as well as managers of local authorities are aware of the "pressures" towards more innovative procurement routes, the old practices are persisting. A movement to new integrated contracts and quality based selection is visible in certain regions but still in its infancy. The use of integrated contracts is incidental and most certainly not standard practice. The adoption of new procurement forms as a standard form in their "toolbox" seems to be far away. The reasons given by public clients for their hesitation are an apparent lack of knowledge and the advantages not being clear. It is obvious that public clients are still "traditional" thinkers and less flexible with regard to the use of new contract forms.

A remarkable finding of this study is that the larger municipalities show more reluctance to change. Where the smaller municipalities were forced to outsourcing due to budget pressures, the larger municipalities were able to hang on their own in-house staff - skilled and trained in the traditional ways - for longer. The larger municipalities also invested more in policies and staff concerning issues of integrity, transparency and accountability. This also seems to have a preserving effect on procurement tradition, avoiding experimentation and the associated uncertainties.

One example of redirecting the "accountability" constraint for the individual municipalities is to build a cooperative structure that takes on a coordinated procurement strategy and program. Although this new development is looked upon with some caution, it in fact does seem to be less apprehensive to break away from tradition practice.



The findings of the studies suggest that whilst the transition is made to more innovative procurement approaches and integrated contracts some specific issues need to be discussed and dealt with. For example, the impact of all the impasses created by the defensive choices made must be discussed. This is to avoid any doubt about accountability, legitimacy and integrity related to the procurement strategy. This discussing will spur a parallel development of quality parameters and means to assess quality within the frame of accountability etc. Whether the EU legislation is biased toward traditional contracting, or whether it is just perceived that way, should also be debated at this juncture. The second theme is the tension between economies of scale in projects and procurement related to the market access for SME's. The larger contractors - specifically those working for state agencies - were quick to acknowledge the changes in the market and to act. Many of the SME's - especially those working for local authorities - will be confronted with the transition and to develop their skills and competences accordingly. Since the larger contractors are ahead in this, the SME's are at risk of being pushed out of a market traditionally theirs. In the Netherlands this already resulted in the birth of a new contractors association for SME's in construction, taking a position against the larger contractors and policies that favour larger contractors.

The findings of the studies provide insight into the current situation at local level and the way in which they are coping with new developments. New EU legislation and a subsequent reinforcement of directives favour a more market-based policy and an emphasis on reinforcing competition at the rural level to stimulate competition. This has implications for current Dutch policy which favours invited and selected tender mechanisms. There may therefore be an urgent need for a review of policy. Of all the driving forces, the need for leadership at the local level to address important issues of outsourcing strategy, the division of responsibilities and cooperation between organisations to push positive change in procurement strategies seems to be the most important one. Next to leadership the development of additional skills and competencies is needed to successfully handle new contract forms. Public clients should act more proactively towards new developments and changes to regulations.

## **CONCLUSIONS**

Over the last decade significant changes in Dutch public sector procurement are visible. The changes are carried by the international trends on rethinking construction, the drive towards small government and the new insights that stress the function public procurement has in evoking creativity and innovation. The construction industry embraces this shift in public procurement for it sees this as the opportunity to become a mature pro-active self-sustaining industry. In the Netherlands innovative procurement and integrated contracts are adopted at different paces. The national agencies are the frontrunners. The research shows that up till now local authorities have been reluctant to move away from tradition. Councillors and managers are aware of the pressures to change procurement strategy and practice, but good intentions seem to be caught in debates over accountability, legitimacy and integrity. The findings of the studies presented are used by the authorities in - workshops, seminars and conferences - as an instrument to promote change and foster/encourage discussions between stakeholders to tackle issues that hamper change.

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