



CENTRAL GOVERNMENT CONSTRUCTION PROCUREMENT

SURVEY OF SPECIALIST ENGINEERING CONTRACTORS' SATISFACTION

A report by the
Specialist Engineering Contractors Group to:

**The Chief Secretary to the Treasury
Office of Government Commerce
National Audit Office
Scottish Executive
Welsh Assembly Government
Central Procurement Directorate
(Northern Ireland)**

October 2005



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The Specialist Engineering Contractors' (SEC) Group is an umbrella representative body in the construction industry. Its membership consists of the industry's six premier trade associations. They are:

Association of Plumbing and Heating Contractors
British Constructional Steelwork Association
Electrical Contractors' Association
Heating and Ventilating Contractors' Association
Lift and Escalator Industry Association
SELECT (representing electrical installation contractors in Scotland)

These organisations represent a sector comprising over 60,000 companies and a workforce of more than 300,000. They represent a wide range of engineering expertise including telecommunications, power and lighting, heating and ventilation, air conditioning, refrigeration, acoustics, ductwork, plumbing, automation and control systems, security systems, data transmission, lifts and escalators, constructional steelwork and facilities management.

Inquiries relating to this report can be made to the Chief Executive of SEC Group, Professor Rudi Klein or, to John Nelson, Executive Secretary.

SEC Group
34 Palace Court
London W2 4JG
Tel: 020 7313 4919/4819
Email: contact@secgroup.org.uk
Website : www.secgroup.org.uk

Executive Summary

- 1 The report that follows is based upon a survey of specialist engineering firms in membership of the SEC Group's six trade associations. The survey – which was carried out in April/May 2005 - sought to obtain feedback on the extent to which best practice on government projects had permeated along the supply chain. The questionnaire (attached as an annex) was addressed to firms which had carried out work as sub-contractors on government projects over the previous five years. A similar survey was carried out in 2000.
- 2 The survey was timely because it coincided with:
 - Publication of the National Audit Office Report, *Improving Public Services through better construction*, published in March 2005 and
 - The conclusion of the Achieving Excellence program (the government's improvement agenda for construction procurement) at the end of March 2005.
- 3 The 2000 survey disclosed that the selection of specialist engineering contractors was based solely on lowest price. Involvement of engineering contractors in partnering arrangements was rare. There was significant concern over the lack of fairness and transparency in tendering although there was a surprising degree of satisfaction with the sub-contract terms on offer.
- 4 The current survey attracted 184 responses. The responses embraced (in round figures) between 1,500 and 2,000 contracts or projects. There were 61 responses to the 2000 survey covering a range of projects from just under 500 to over 700.
- 5 Five years ago 9% of firms reported that the majority of their tenders for government works were assessed on quality as well as price. There has been some improvement with 14% now stating that the majority of their tenders are assessed on quality as well as price. At the other end of the scale 66% of firms in 2000 stated

that all sub-contracts on government projects were assessed on lowest price alone. This has now reduced to 28%.

- 6 There was a significant improvement in satisfaction levels with the conduct of the tendering process. 49% stated that they considered the tendering process to have been conducted fairly on the majority of projects compared to 21% in 2000.
- 7 Alarminglly 44% of firms indicated that their health and safety record had not been taken into account in the award of contracts on any of the projects they had been involved in. Health and safety performance was more likely to be reflected in the award of contracts to larger firms (by turnover) rather than to smaller firms. This issue was not raised in the 2000 survey.
- 8 In its recent report the NAO strongly advocated the use of non-adversarial contracts. Evidence available to the SEC Group suggests that bespoke sub-contracts - solely aimed at effecting risk transfer - are generally used on government projects. Five years ago 48% expressed satisfaction with the contractual terms on the majority of projects. In the current survey this figure has reduced to 38%.

- 9 It is now generally acknowledged that continuing payment conflict in the industry is frustrating the work of government clients in improving supply chain relationships. 57% of respondents indicated that they had experienced payment delays and abuse on the majority of their projects. This rose to 62% for those respondents in the turnover band between £0.5m and £1m. This level of dissatisfaction on payment on government projects is no longer acceptable. 79% of firms reported that they had not experienced a retention-free project or, if they had, less than half of their projects were retention-free. Payment issues were not raised in the 2000 survey.
- 10 *Achieving Excellence* aimed to promote integrated delivery teams bound together by partnering and alliancing. Five years ago only 5% of firms stated that they had entered into partnering arrangements on the majority of contracts compared to 76% who said that they had no experience of partnering on government projects. The percentages are now, respectively, 2% and 61%; the latter figure displays some improvement.
- 11 One would have expected that the increase in partnering – albeit small – would have led to an increase in firms reporting fair and equal treatment. In 2000 57% of firms considered that they were treated fairly and as an equal member of the team on the majority of their projects. This figure has now reduced to 47%. This could suggest that the greater incidence of partnering has not necessarily eradicated outdated attitudes and practices.
- 12 In its report the NAO acknowledged that government clients still have to make substantial progress in involving specialist contractors early in the design process. This was borne out by the survey with only 7% of firms stating they had been appointed early on the majority of projects. An additional 13% stated that early appointment had taken place on about half of their projects. This issue was not raised in the 2000 survey.
- 13 The results of the survey indicate that the pace of progress over the last five years in achieving best practice on government works has been painfully slow. In order to hasten the pace of change SEC Group urges the Office of Government Commerce (OGC) to institute a program of action that is focussed on improving supply chain relationships. The priority should be to address the problems of payment.

- 14 A suggested program of action is fully set out at the end of the Report. The key actions include the development by the OGC of a best practice charter, adherence to which should be a condition of selection for all parties engaged on government works. All government construction clients should report annually to the OGC on the result of a survey of satisfaction amongst construction supply teams on issues such as tendering, contracts, payment, partnering and early involvement.

- 15 On payment, the key action is that all government clients should establish project bank accounts for all projects coming on stream to ensure security of payment and protection for construction supply teams from insolvencies and payment abuse. This was, in fact, a recommendation in the NAO Report. In SEC Group's view this is more likely to improve supply chain relationships than any other single factor.

1 Introduction

- 1.1 It is five years since the Specialist Engineering Contractors (SEC Group) Group canvassed firms within the specialist engineering sector on their views of procurement/contractual practices on government projects. The survey was aimed at firms (throughout the UK) that had carried out work as sub-contractors on government projects in the preceding two years. The results of the survey were included in a report to the Office of Government Commerce (OGC) in December 2000.
- 1.2 That report was intended to identify areas where action was needed and to provide a reference point against which the results of future monitoring could be compared. It was also intended to be a barometer of the extent to which *Achieving Excellence* – launched on 4 March 1999 - was beginning to have an impact.
- 1.3 *Achieving Excellence* was launched (initially) as a three year program with milestone targets to improve the procurement practices of government clients (including executive agencies and non-departmental public bodies) thereby improving value for money for taxpayers and the profitability of the construction industry. In March 2003 *Achieving Excellence* – now with two strategic targets - was extended for two years to 31 March 2005¹.

¹ In summary the strategic targets were aimed at securing substantial improvements in cost and time, and reducing the average period taken between the start of the procurement process and the award of contract.

1.4 The thrust of *Achieving Excellence* was the promotion of teamworking and partnering arrangements between procurers and suppliers in order to maximise integration of the processes involved in design, construction and maintenance. At the launch Alan Milburn, the (then) Chief Secretary to the Treasury explained the Government position:

“We recognise that the industry has had more than enough in recent years of warm words. What we are doing for the first time today is setting concrete targets against which Government would be judged: targets to improve our performance as a major client. If you like, the Government is deliberately putting itself under the spotlight and what is more we are determined to drive through change..... This is part and parcel of a broader approach that the Government is now taking, in particular in the way we spend public money and what we get back for it. Our new focus is not so much on the input but on the outputs we get.” (emphasis added)

1.5 The headline results of the 2000 survey were as follows:

- Lowest price was generally the only criterion for selection.
- There was significant concern over the lack of fairness and transparency in tendering.
- The involvement of firms in partnering arrangements was extremely rare.
- Almost a third of firms indicated that they had received fair and equal treatment on government projects although such positive response did not appear to be shared by those respondents to the survey which had greater experience of working on government projects.
- There was a surprising degree of satisfaction with the sub-contract terms on offer.

1.6 Five years on the Board of the SEC Group decided it was timely to carry out another survey of opinion within the specialist engineering sector of procurement/contractual practices on government projects. The survey took place over April/May 2005 and the questions reflected the majority of those asked five

years ago. There were new questions on payment, health and safety and early involvement in the design process. The questionnaire is attached as an annex.

1.7 The current survey attracted 184 responses. In round figures they embraced between 1500 and 2000 contracts or projects (but some of the responses could, of course, have related to the same projects)². However, these figures are likely to be exceeded due to those respondents which had undertaken in excess of 16 projects over the past five years. The 2000 survey attracted 61 responses covering a range of just under 500 to over 700 government projects.

1.8 The results of the current survey have added significance primarily for two reasons:

- The publication on 15 March 2005 of the National Audit Office (NAO) report, *Improving Public Services through better construction*, and
- The conclusion of the *Achieving Excellence* program at the end of March 2005.

1.9 The NAO report was an evaluation of the progress made by *Achieving Excellence* in improving procurement/contractual practices. In his foreword to the report Sir Michael Latham summed up the position as follows:

“There is a long way to go, and no room for complacency. Unfortunately, some poor practice does persist in both public and private sector construction projects. However, there is now a growing volume of evidence – including the encouraging findings of this National Audit Office report – that best practice delivers real value for all involved in the project.”

References will be made in this report to relevant extracts from the NAO report which, at the time of writing, remains to be considered by the House of Commons’ Public Accounts Committee.

² Sixteen firms returned the questionnaire with a nil return because they had not carried out government work over the last five years. One firm explained that it refused government contracts because they involved an excess of paperwork. Firms were not asked to state whether they were based in England, Wales, Scotland or Northern Ireland but the majority of respondents carried on business in England.

2 Profile of Respondents

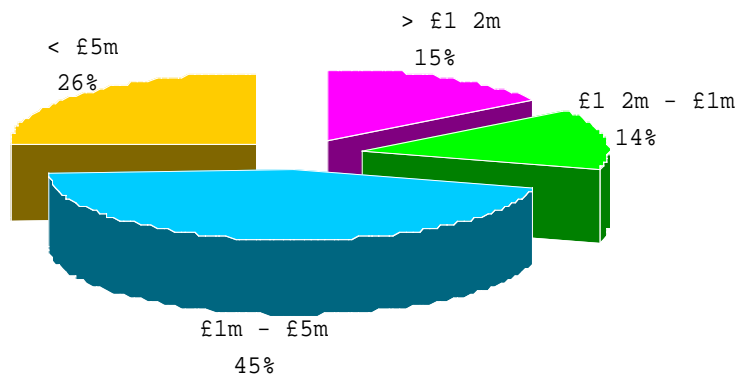
2.1 Responses were invited from firms which had participated in government projects over the past five years either as sub-contractors or sub-sub-contractors. Unlike the first survey in 2000 respondents were asked to state their estimated annual turnovers within the following bands:

- Up to £0.5m
- £0.5m - £1m
- £1m - £5m
- Over £5m

As a result we have been able to establish whether there are any significant variations in the responses from within each of the four turnover bands.

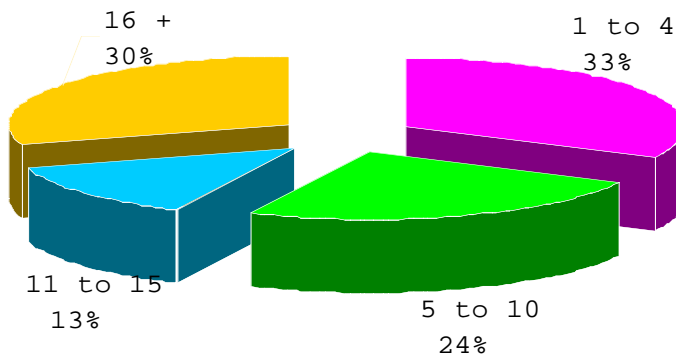
2.2 The largest number of respondents (45%) were those firms with an estimated annual turnover between £1m and £5m. The over £5m category represented 26% of respondents and this category would have comprised firms which were not SMEs. A full breakdown is shown on the chart on the next page.

Estimated Annual Turnover



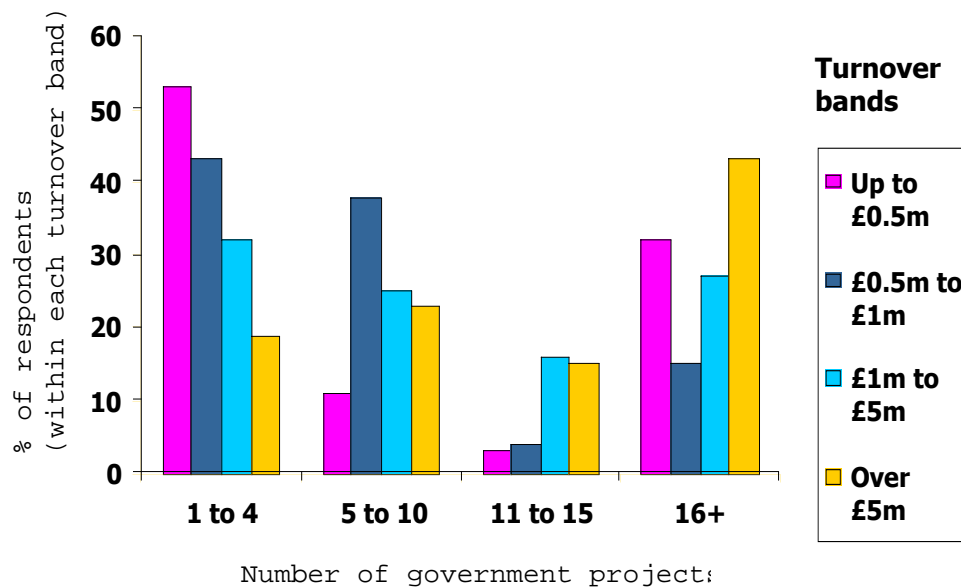
2.3 33% of respondents had undertaken work on between 1 and 4 government projects within the last five years. At the other end of the scale slightly less (30%) had worked on 16+ government projects within the last five years. The chart below provides the full results.

Number of government projects undertaken within the past five years



2.4 It is interesting that 32% of firms having an annual turnover of up to £0.5m had carried out 16+ projects over the past five years. This could suggest a fairly significant involvement of the smallest firms in government projects although a little caution needs to be applied to this statistic; firms within this turnover band represented only 15% of the total number of respondents. Nonetheless, 27% of respondents from within the turnover band £1m to £5m – which generated the greatest number of responses – had been involved in 16+ government projects over the past 5 years. Overall this would seem to indicate a significant SME involvement in central government construction works.

Number of government projects undertaken
 within the past five years



3 Extent to which tenders were assessed on quality as well as price

“Effective procurement and contracting strategies require

Clients to select suppliers who have a proven track record in, and commitment to, developing the skills of their workforce, collaborative working, health and safety and sustainable development.

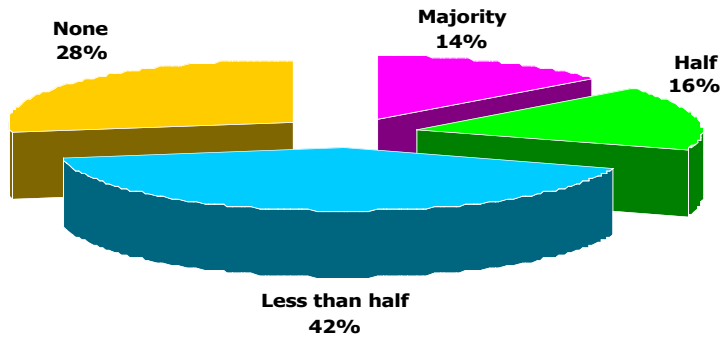
- *Communicating clearly from the outset the tendering evaluation criteria and relative weightings – so that potential suppliers know and understand clearly what is required.”*

Page 67, NAO Report

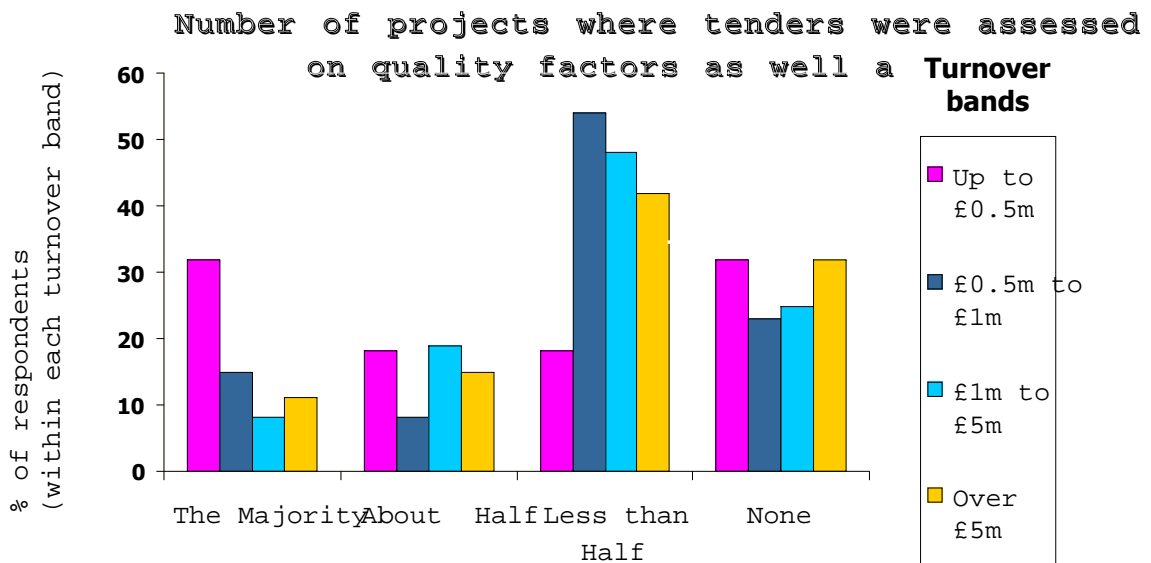
- 3.1 In our survey five years ago only 9% of respondents reported that the majority of their tenders for government works were assessed on quality factors as well as price. 66% of respondents at that time gave a negative response; all sub-contract bids on government projects were assessed on lowest price alone. Whilst the government client may have been committed to selection on a value for money basis – on quality as well as price – this approach was not reflected along the supply chain³.
- 3.2 Over the past five years there has been a significant improvement. 30% of respondents in this year’s survey reported that bids were assessed on quality as well as price on, at least, half of the projects they were involved in – including 14% stating that this occurred on the majority of projects. Unfortunately, the overwhelming majority of firms are still reporting that quality did not come into the selection process on any project or, if it did, it was on less than half of their projects: 28% of respondents indicated that price was the only factor on all projects.

³ Selecting the Team, published by the Construction Industry Council, has a mechanism for assessing bids on a quality/price basis.

Number of projects where tenders were assessed on quality factors as well as price



3.3 The bar chart below compares the responses within each of the four turnover bands. It is interesting to note that, for the smallest firms, the results were far better. Almost 50% of the respondents within the lowest turnover band reported that their bids had been assessed on quality factors as well as price on, at least, half of the projects they had been involved in.

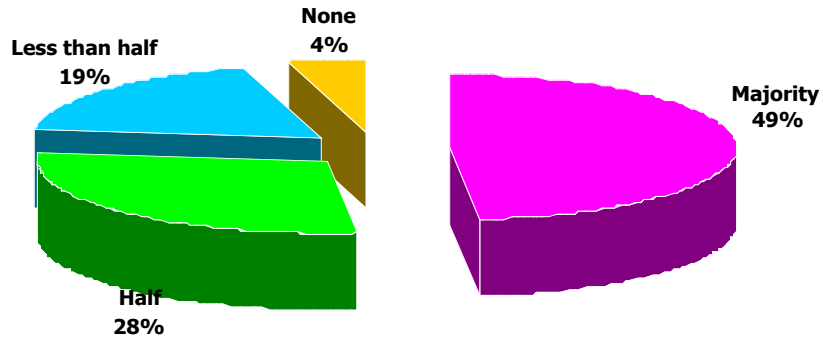


“We have never known a contract to be let on quality, only on price.”
 A C Preou Ltd (mechanical services contractor)

4 Was the tendering process conducted fairly?

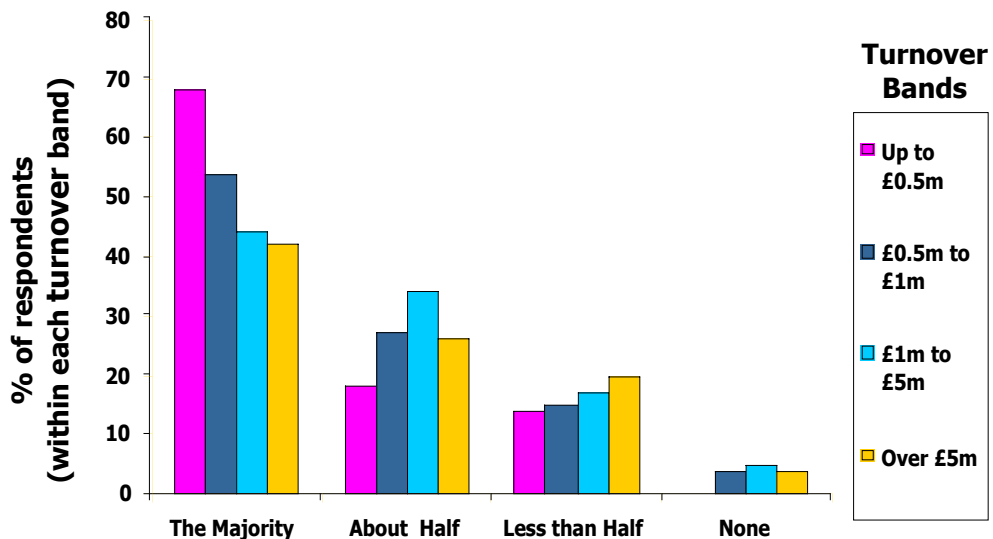
- 4.1 The question asked of respondents in the survey five years ago was whether there was compliance with the Code of Procedure for the Selection of Sub-Contractors published by the (now defunct) Construction Industry Board on 28 April 1997. At the time this Code had the support of all sides of the industry and the government. In *Constructing the Team* Sir Michael Latham had not only recommended that this Code should be produced but also that public sector clients should insist on the use of the Code by main contractors.
- 4.2 The Code dealt with, *inter alia*, tender assessment criteria, maximum numbers of tenderers, length of tender periods and circumstances where changes to the tender price would be permissible. 21% of firms reported that the procedures in the Code were applied on the majority of their projects. A further 13% stated that they were applied on half of their projects.
- 4.3 On this occasion we did not inquire into whether there was adherence to the Code since we are not aware of any government client insisting on it. We therefore inquired into whether firms felt that the tendering process had been conducted fairly. It was very encouraging that 49% of respondents considered that the tendering process had been conducted fairly on the majority of projects. A further 28% of respondents considered this to be the position on half of their projects.

Number of projects on which the tendering process was considered to have been conducted fairly



4.4 Respondents with a turnover of up to £0.5m were even more satisfied with 68% stating that the tendering process had been fair on the majority of projects. Unfortunately, this level of satisfaction declined as the size of firm – by turnover – increased. By comparison 42% of firms with a turnover in excess of £5m considered that the tendering process had been fair on the majority of projects.

Number of projects on which the tendering process was considered to have been conducted fairly



4.5 We did not inquire into the reasons for any unfairness but, in its recent report, the NAO referred to workshops at which suppliers had expressed concern about the lack of clarity in the criteria used to evaluate tenders.

“Suppliers are often unclear about the evaluation criteria and about the weightings used in the assessment process. Departments are missing opportunities to obtain clearly focused responses from the market.”

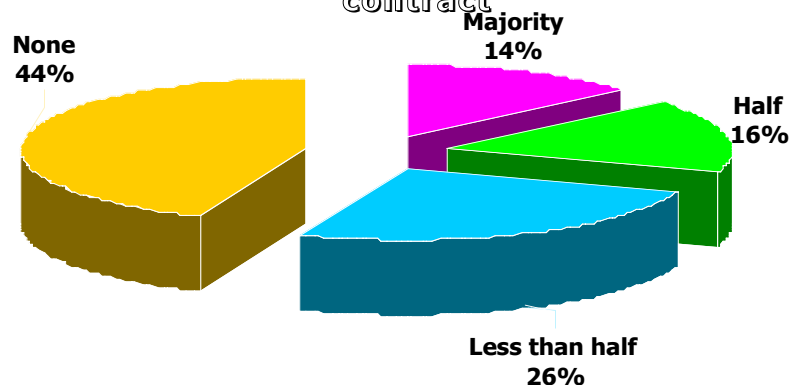
5 Was the firm's health and safety record a factor in the award of the contract?

“A key criterion used by the Ministry of Defence for selecting contractors is how they address health and safety issues and Defence Estates will incorporate safety as one element of its value for money model when it measures the improvements delivered by its prime contracts.”

Para 2.14, NAO Report

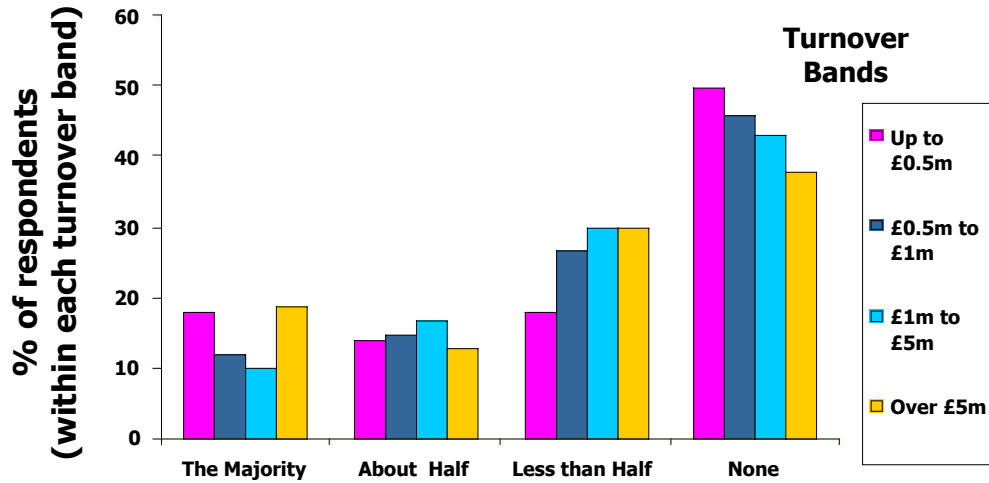
5.1 The issue is the extent to which the award of contracts along the supply chain reflects the health and safety record of the firms involved. This issue was not raised in the questionnaire sent to firms five years ago. Alarming 44% of firms in the current survey revealed that their health and safety record was **not** taken into account in the award of contracts on any of the projects they had been involved in. A further 26% reported that their health and safety record was a factor in the award of contracts on less than half of their projects.

Number of projects on which the firm's health and safety record was a factor in the award of the contract



5.2 There were no significant differences in the responses from within the different turnover bands. However, it is noteworthy that the smaller the firm, the less likely that health and safety would be a factor in the awarding of contracts.

Number of projects on which the firm's health and safety record was a factor in the award of the contract.



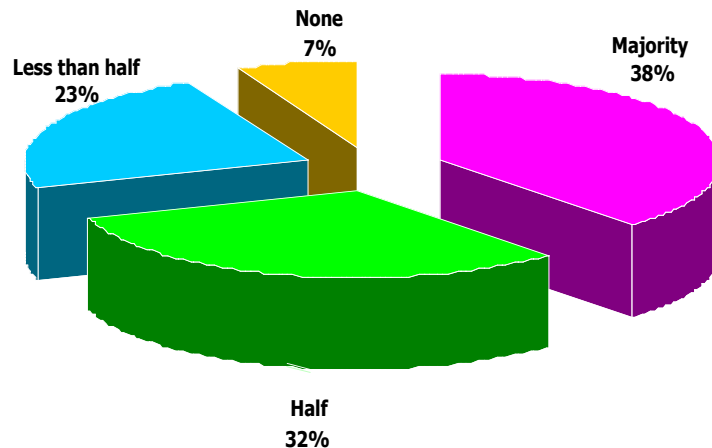
6 Satisfaction with contractual terms

“Modern forms of contract can support clients in developing closer, more collaborative, longer-term working relationships with suppliers. The Engineering and Construction Contract is one example of a contract written in plain English that embeds the principles of good project management in its procedures, and promotes role clarity. It encourages early issue resolution, and contains options as to the choice of procurement route. It is non-adversarial in its tone and spirit, and as such, many clients have adopted it for use in long-term collaborative working arrangements..... More recently Collaborating for the Built Environment (Be) has developed a collaborative form of contract. This has widespread support from the industry and is now starting to be used on projects in the UK..... Some contracts are still written in the traditional, more adversarial approach and are not suitable for modern collaborative ways of working. The Office of Government Commerce is currently working to reduce the number of standard forms of contract being used in the public sector.”

Para. 3.23, NAO Report

- 6.1 Compared with the survey we carried out five years ago the results from this year’s survey were disappointing. Five years ago 48% of firms expressed satisfaction with the contractual terms on the majority of projects. In the current survey this figure is reduced to 38%. A total of 44% of firms five years ago stated that they were satisfied with the contractual terms either on half or less than half of the projects they were involved in. This figure has now increased to 55% which, of course, reflects the decrease in the category of those firms expressing satisfaction with their contracts on the majority of projects.

Number of projects on which the firm was content with the contractual terms



6.2 Evidence available to the SEC Group suggests that bespoke or amended standard forms of sub-contract continue to be used on the majority of government projects. Such contractual arrangements are, of course, primarily concerned to promote risk transfer and, therefore, run counter to the government’s aim of achieving a fair allocation of risk within contracts for government works.

6.3 The OGC Guide, *Procurement and Contract Strategies*, advises that:

“Forms of contract should aim to improve the quality and cost-effective delivery of clients’ projects through [allocating] each risk to the party who is best able to manage it.”

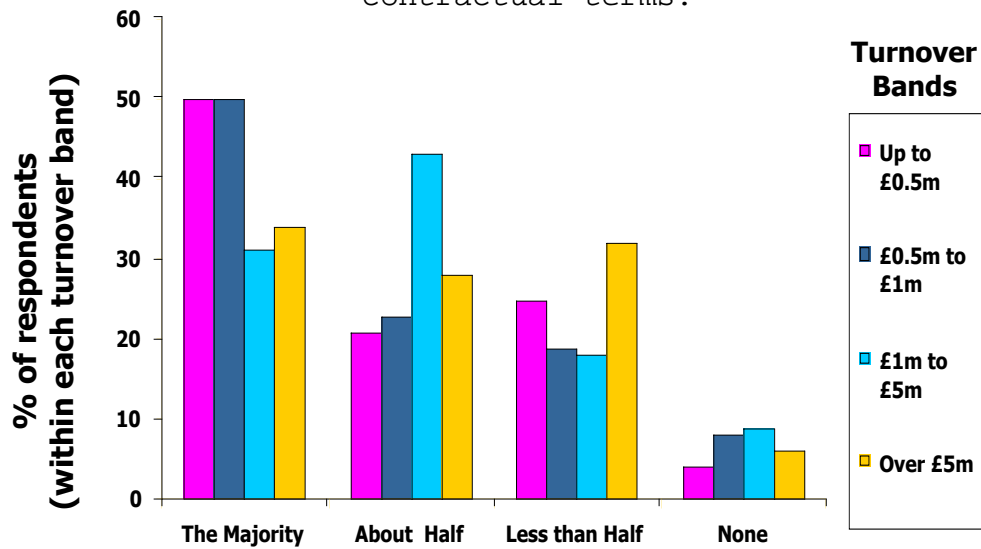
The Guide adds:

“The use of standard forms of contract helps to reduce both tendering and contract administration costs. Bespoke or amended standard forms require clients and tenderers to seek additional and frequently costly legal advice and this increases the risk of disputes arising from unfamiliar terms.”

6.4 In comparing the different turnover bands it is significant that 50% of firms in each of the two lowest bands expressed satisfaction with the contractual terms on the majority of projects compared to the overall percentage of 38%. Although the total

number of respondents in the two lowest turnover bands only accounted for 28% of the total number of respondents to the survey, it is encouraging that there is greater satisfaction with the contractual terms amongst the smallest of firms. Also, firms within the turnover band £1m to £5m – comprising the largest category of respondents – expressed satisfaction with the contractual terms on **half** of their projects to a significantly greater degree (43%) than firms in the other turnover bands. See the chart below:

Number of projects on which the firm was content with contractual terms.



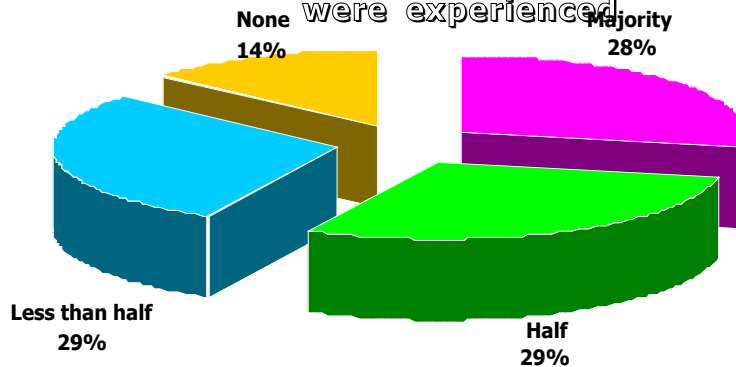
7 Experience of payment delays and abuse

*“Departments need to provide specialist small and medium sized suppliers with greater certainty that they will be paid on time to reinforce the trust that should exist between all parties for collaborative working to operate effectively. **If this trust does not exist in the supply chain then specialist suppliers, who can significantly influence the value for money obtained on a project, will have little incentive to innovate.** Considerable losses can also be incurred over payment disputes which will ultimately feed their way back into the costs for the client. **The use of a single project account is one way to provide greater certainty of payment to specialist contractors and suppliers further down the supply chain from the main contractor.**” (emphasis added)*

Para. 3.33, NAO Report

- 7.1 The issue of payment satisfaction was not canvassed in our survey five years ago. In recent years we are aware that some of the large government clients have endeavoured to ensure that payment terms are fair and that the cash is kept flowing along the supply chain. However, in a report published in May 2002, the Better Regulation Task Force recommended to the Treasury that public sector procurers needed to play a more active role in ensuring fair payment practices in the supply chain.
- 7.2 Insofar as construction is concerned this issue is being actively addressed by the Treasury which, in May 2003, set up the Fair Payment Task Group. The Task Group has been preoccupied with establishing the existence of fair payment exemplars but difficulties in finding such exemplars are probably indicative of the fact that poor practice, unfortunately, is still widespread.

Number of projects on which payment delays and abuse were experienced.



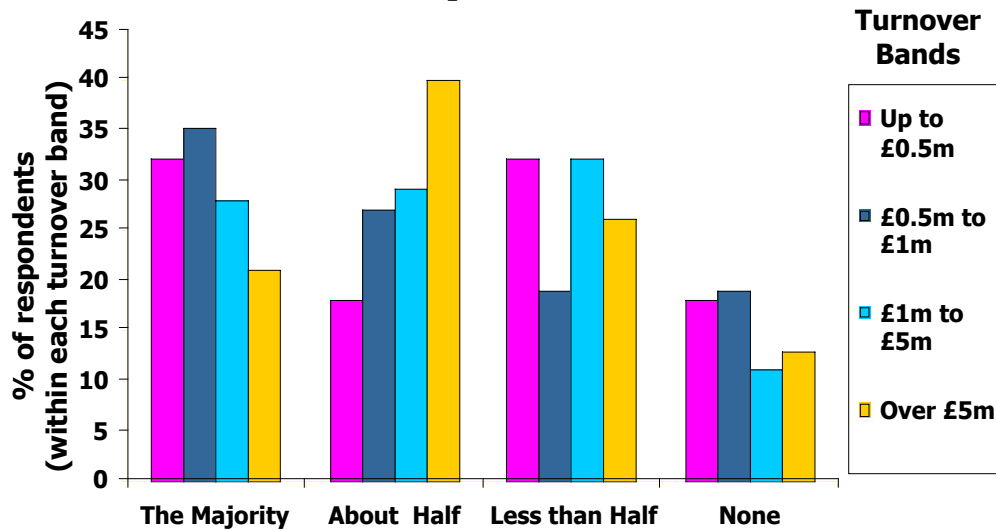
- 7.3 This was reinforced by the survey. 57% of respondents overall indicated that they had experienced payment delays and abuse on either the majority or on, at least, half of their projects. This percentage rose to 62% in the case of those respondents in the turnover band between £0.5m and £1m. Only 14% of respondents overall indicated that, on the majority of projects, they had not experienced any payment delays or abuse.

“Finally, it does occur to me that all of the problems that Macklow Industrial Ltd suffer from related to major public sector contracts including hospitals and schools, but covering the whole range of public sector projects. Surely, even without legislation, the Government could take the lead by demanding a change of terms so as to protect the small operators at the end of the line who do work on these public sector contracts but end up not getting properly paid, sometimes for a very long period of time.

(Extracted from a letter dated 9 September 2005 from Norman Lamb MP to the Rt Hon Alan Johnson MP, Secretary of State for Trade and Industry)

7.4 Another noticeable difference in comparing the responses of firms from within the different turnover bands was that 40% of firms in the highest band had experienced payment delays and abuse on about half of all projects compared to 18% of respondents in the lowest band. The statistics seem to indicate that payment delays and abuse are a greater problem for firms in the £5m + band than for those with a turnover of under £0.5m. This could be explained by the fact that the smallest firms tend to be engaged on short-term contracts or on maintenance contracts where, generally, payment problems may not be as acute.

Number of projects on which payment delays and abus were experienced.



8 Number of projects on which retentions were not held.

“Unfair payment practices such as unduly prolonged or inappropriate cash retention undermine the principle of integrated team working and the ability and motivation of specialist suppliers to invest in innovation and capacity.”

Page14, NAO Report

- 8.1 The practice of retentions has already been condemned by the House of Commons’ Trade and Industry Committee as outdated, unfair and frequently harmful to SMEs. The Committee recommended that the government should phase out retentions “as soon as possible”. For its part the government has accepted this recommendation “in principle”. But, it believes that current progress towards partnering and integrated team delivery in public sector procurement will – in time – ensure that retentions will be a thing of the past. From the evidence gathered in our survey it would appear that this could be misplaced optimism. There is now substantial anecdotal evidence that cash retentions are still required by first-tier contractors from their sub-contractors even where they are not required by the public sector client.
- 8.2 However, OGC has made a commitment to the Trade and Industry Committee that progress in phasing out retentions will be aligned with progress in achieving zero defects. The *Achieving Excellence* target was that 70% (by volume) of construction projects reaching gate 5 (of the gateway review process) was to be delivered with zero defects over the period 1 April 2003 – 31 March 2005. At the time of writing OGC is not, as yet, ready to publish its definitive report on whether this target has been achieved.

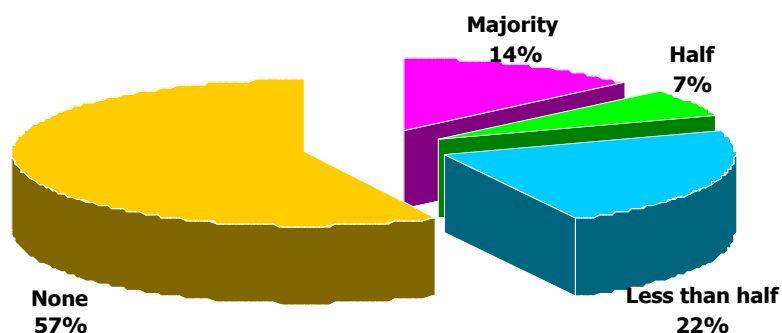
8.3 Whilst SEC Group has always made clear that it does not accept any link between retentions and the incidence of defects, it is noteworthy that the NAO has questioned the accuracy of defects-reporting by government departments.

The NAO concluded (at para. 2.44):

*“On defects some departments have misinterpreted the [OGC’s] definition and assessed defects too broadly leading to over reporting.”*⁴

8.4 Firms were asked to indicate the number of projects where retentions were **not** required.⁵ Although not made explicit in the questionnaire most respondents would have assumed that this meant cash retention. It is possible, however, that in some cases alternatives to cash, such as retention bonds or insurance-backed warranties, were accepted instead. Furthermore, it is possible that cash retentions were required in the bid documentation but were negotiated out by contract award stage.

Number of projects on which retentions were not required.



8.5 Some progress may have been made. 14% of respondent firms reported that retentions were not required on the majority of projects. A further 7% indicated that retentions were not required on about half of the projects they had been involved in.

⁴ The OGC defines defects as deficiencies or faults in the completed project affecting a way that adversely affects normal standards of operations. Minor cosmetic faults, and adjustments to ventilation and air conditioning systems after occupation are not defects.

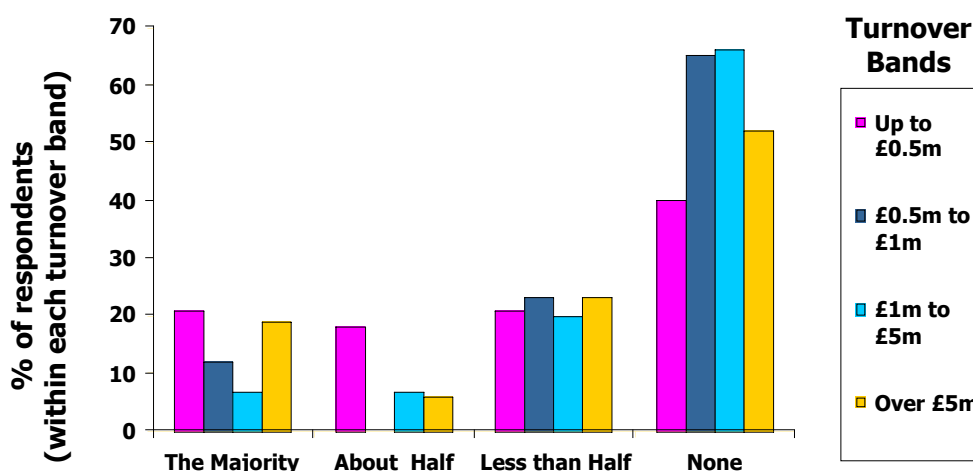
⁵ This question was not asked in the 2000 survey.

8.6 Considerable caution must be exercised here. The equivalent percentages for firms in the turnover band £1m to £5m, comprising the largest number of respondents, were 7% and 7%. The equivalent percentages for firms within the £0.5m turnover band were 21% and 18%! Again this could suggest that the smallest firms were involved in short-term contracts or maintenance contracts where retentions are not normally required.

8.7 On the other hand 57% of all firms had not experienced a retention-free project; the equivalent percentage for firms in turnover band £1m to £5m was rather higher at 66%. 22% of all respondents stated that less than half of their projects were retention-free.

8.8 In summary it would seem that most progress towards retention-free projects was reported by firms with a turnover in excess of £5m. But, even here, 52% of firms reported that none of their projects were retention-free. A further 23% stated that less than half of their projects were retention-free.

Number of projects on which retentions were required.



9 Extent of partnering in the supply chain

“It is not enough for the partnering to be solely between the client and the first-tier contractor, though that is a significant step forward. The vast majority of the work on site will be undertaken by specialist contractors. They also need to be involved on a partnering basis, particularly as many of them have significant detailed design responsibilities.”

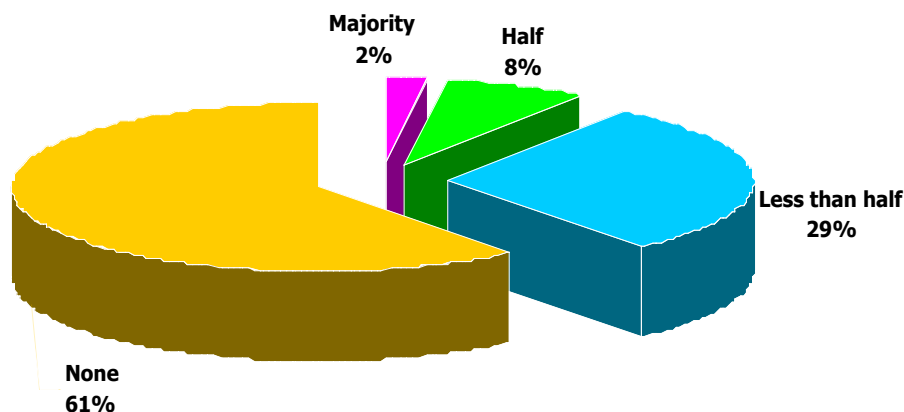
Extracted from Sir Michael Latham’s Foreword to the NAO Report

9.1 *Achieving Excellence* aimed to promote partnering and teamworking arrangements on government projects. Five years ago the Treasury’s Procurement Guidance (No 4), *Teamworking, Partnering and Incentives*, stated:

*“Irrespective of the type of partnering relationship that the client enters into with a primary supplier (such as the main contractor or main consultant), significant benefits (in achieving overall value for money) can be obtained where a primary supplier has entered into strategic partnering arrangements with secondary suppliers (such as sub-contractors or sub-consultants). **Supply chain relationships of this type are essential to maintain the maximum benefits from partnering.*** (emphasis added)

9.2 Five years ago the results obtained in our survey were very disappointing. The overwhelming majority of firms stated that it was rare for them to be involved in partnering arrangements on government projects. 76% of respondents indicated then that they had not received an invitation to partner on any project.

Number of projects on which the firm was invited to enter into a partnering arrangement.

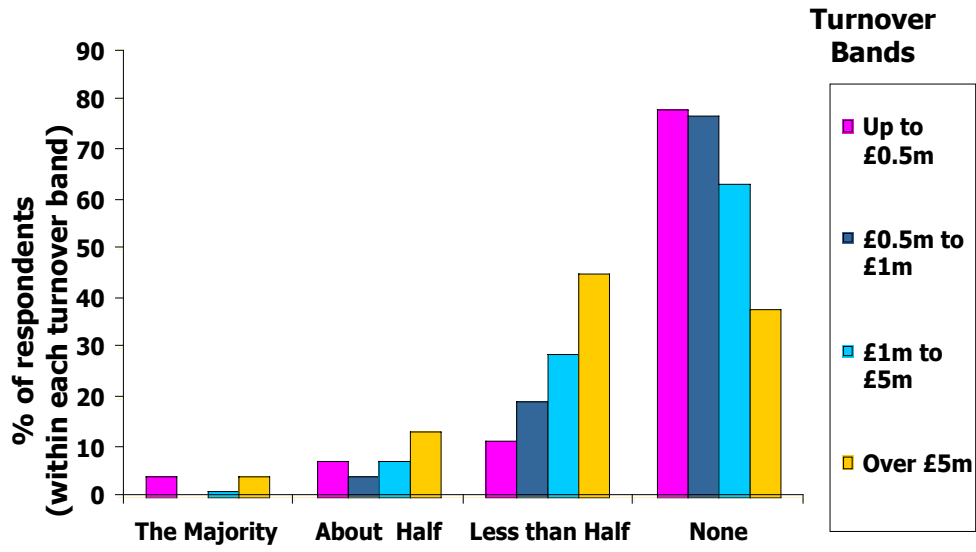


9.3 There has been some improvement. In the current survey 61% of firms stated that they were not invited to enter into partnering arrangements on any project; 15% fewer than in 2000. 29% of firms stated that invitations to enter into partnering arrangements were received on less than half of the projects they were involved in; 11% more than in 2000.

9.4 At the other end of the scale 2% of firms said that they had been invited to partner on the majority of projects with 8% stating that they had been involved in partnering on half of their projects. The equivalent percentages for 2000 were 5% and 0%.

9.5 In comparing responses from firms within each of the turnover bands, there was greater experience of partnering amongst firms in the largest band. Only 38% of firms within this band reported that they had not experienced partnering on any project compared to 78% of firms in the lowest turnover band. The equivalent percentages for the next two turnover bands were 77% and 63% respectively. It is of concern that the smallest engineering firms are not being included in partnering arrangements.

Number of projects on which the firm was invited to enter a partnering arrangement.



10 Early involvement in the design process

*“Where suppliers are involved at an early stage the quality of designs is better, leading to efficient and higher quality construction that delivers lower whole life costs and the required service delivery outcomes. **Departments should involve construction suppliers early on in the design process, where appropriate paying for their time on a fee basis.**” (emphasis added)*

Page 13, NAO Report

- 10.1 The contribution made by engineering contractors in the early design process can often be critical. Much of their added value comes from their involvement throughout the construction process in design, construction or installation, maintenance and facilities management. Significant cost savings can be achieved through their value engineering and, more generally, by continuous improvement resulting from the iterative dialogue between engineering contractors and other members of the design team throughout the project. It is essential to the success of projects that all the key participants including engineering contractors have “bought into” the design of the building or structure.
- 10.2 Furthermore, design dialogue between all the key players enables risk issues to be managed early especially health and safety risks. This process can result in design solutions that better represent value for money for the client as well as avoiding or minimising risk.

10.3 From the contractor's perspective there are a number of advantages. He is able to substantially reduce his overheads in the time and cost often associated with having to make designs "work". Time and cost is also incurred in the extended lines of communication between contractors and consultants that are often the result of hierarchical contractual structures and demarcation. Also engineering contractors will be able to increase investment in their design resources (especially training) by being paid a design fee (as suggested by NAO); payment for design is often "lost" in the monies payable for installation or construction.

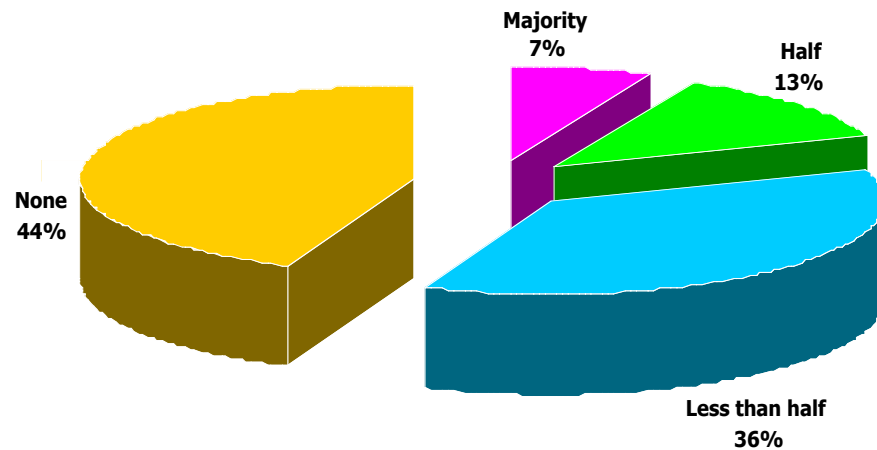
"The [Environment] Agency considers it obtained a better engineering solution [through early involvement of specialist engineering contractors] that will last up to 20 years longer than the initial design, which also has significant environmental benefits at a saving of £1,120,000 (12%) on the construction cost of the original solution. The contractors and consultants considered that without the early joint working approach the solution and savings would otherwise not have been identified."

Page 22, NAO Report (Case Example 17)

10.4 In its report the NAO acknowledged that procuring departments and agencies still have to make substantial progress in involving specialist contractors earlier in the delivery process. This was borne out by our survey.⁶ Only 7% of firms reported that they had been appointed early on the majority of projects and an additional 13% of firms reported that early appointment had taken place on about half of their projects. 44% of firms reported that they had not been appointed at an early stage to engage in the design process on any project. A further 36% indicated that they had been appointed early on less than half of their projects.

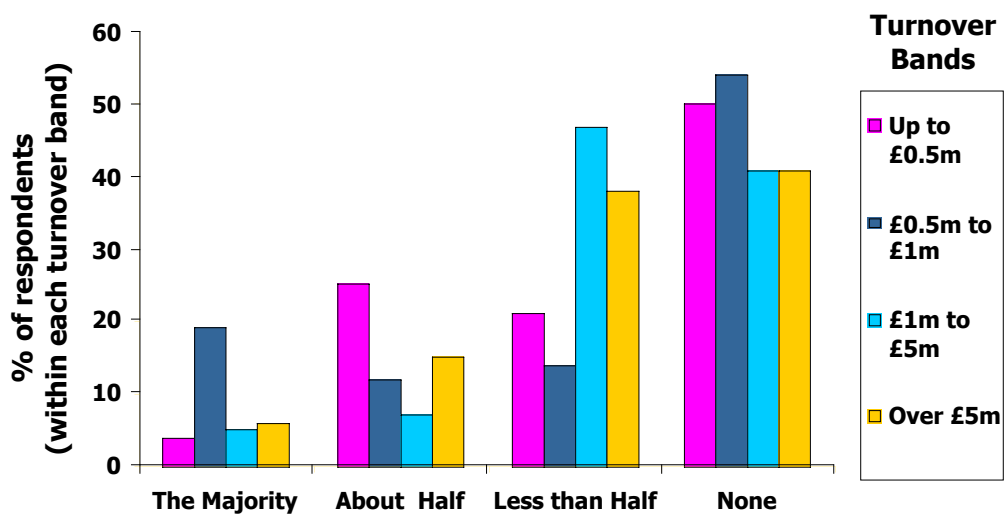
⁶ The question relating to early involvement was not asked in the 2000 survey.

Number of projects on which the firm was appointed at an early stage to engage in the design process.



10.5 The response from firms within turnover band £1m to £5m (comprising the majority of respondents) was the most disappointing. 88% stated that they had not experienced early involvement on any project or, if they had, it was on less than half of their projects. One would have expected that the largest firms would have had greater experience of being appointed early. The results suggest otherwise. 21% of firms in the top turnover band reported an early involvement on either the majority or on about half of their projects but this was 8% less than those firms in the lowest turnover band.

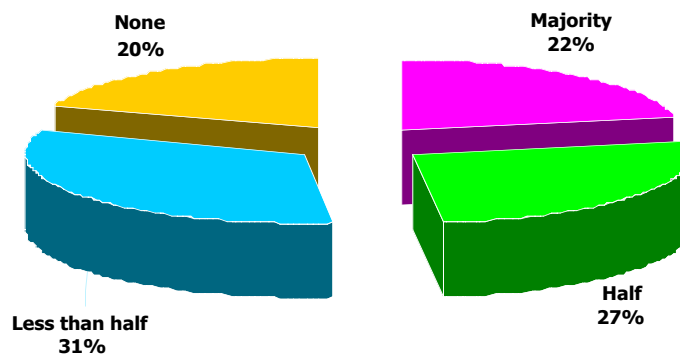
Number of projects on which the firm was appointed stage to engage in the design process.



11 Was there fair and equal treatment?

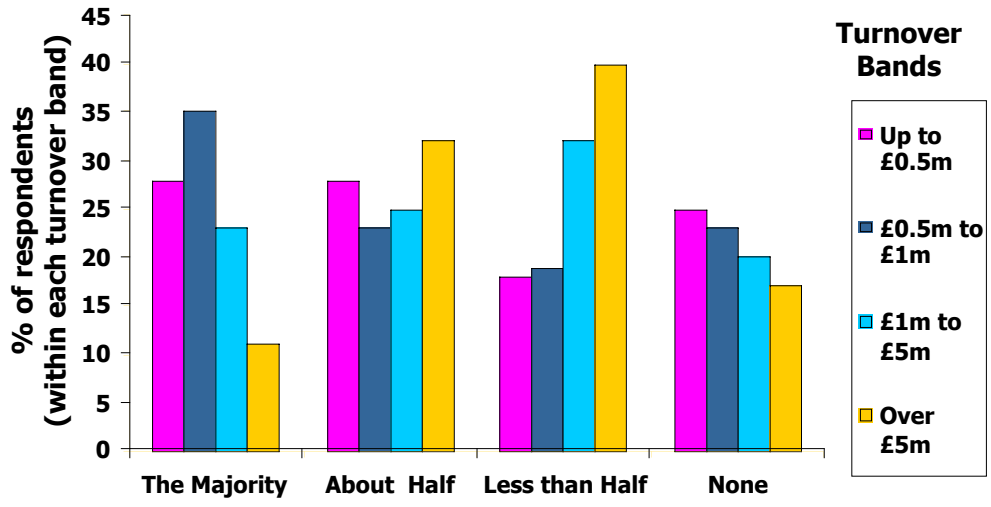
- 11.1 The final question was concerned with whether firms felt they had been treated fairly and as equal members of the project team. Responses were evenly divided between those reporting that they had received fair treatment on either the majority or on about half of projects worked on and those which had experienced fair treatment on either less than half or on none of their projects. In the case of the former the result was 49% whilst it was 51% for the latter.
- 11.2 These results are slightly worse than those from the 2000 survey. In that survey the figures were 57% and 43% respectively. Although the 2005 survey shows an improvement in the number of firms involved in partnering such improvement is, surprisingly, not reflected in the responses on fair and equal treatment. This could suggest that the partnering arrangements - such as they were – did not always equate to fair and equal treatment.

Number of projects on which the firm was treated fairly and as an equal member of the project team.



- 11.3 It was surprising that 57% of the larger firms in the top turnover band felt that they had not received fair and equal treatment on either less than half or on none of the projects they had worked on. For the smallest firms in the lowest turnover band the equivalent percentage had dropped to 43%.

Number of projects on which the firm was treated fair
equal member of the project team.



12 Summary and Recommendations

12.1 It is clear that over the past five years the pace of progress has been painfully slow. Perhaps the most heartening results related to the bidding process. There was increased satisfaction with the tendering process with less emphasis on lowest price. There were more firms involved in partnering although 61% of firms were still without experience of partnering on government projects. In spite of the progress made - such as it was – there was an overall reduction in the number of firms reporting that they were treated fairly and as an equal member of the project team.

12.2 The results would appear to indicate that along the supply chain there still needs to be a substantial improvement in relationships; trust is generally acknowledged to be the key to improving such relationships. But achieving the necessary level of trust is often hampered by payment problems. As Sir Latham observed in his interim report, *Trust and Money*, in 1993:

*“Two words **the gatekeepers to any real progress....** These words are ‘trust’ and ‘money’. They are totally interlocked. Too little trust - and not enough money. A mighty machine which requires oil in its engine to drive it, has grit instead.”* (emphasis added)

12.3 Only 14% of firms could report that payment delays and abuse were not experienced on any project. The practice of retentions – condemned by the House of Commons Trade and Industry Committee – persists on the overwhelming majority of projects. In the last three years or so payment problems have been exacerbated by some high profile insolvencies in the industry. Many SMEs have lost their retentions and outstanding progress payments.

12.4 Whilst the pace of progress has been disappointing we would not want to ignore the work of some of the larger government departments and agencies in encouraging best practice along the supply chain. We would particularly mention the Highways Agency, the ProCure21 team (NHS Estates), the Defence Estates Organisation and the Environment Agency.

- 12.5 The ProCure21 team, for example, has established a review panel with representatives from the National Federation of Builders and the Specialist Engineering Contractors Group to deal with complaints of poor practice from both the client and supply sides. This was highlighted in the recent NAO Report. Furthermore, the Highways Agency has recently announced that, amongst other things, it will be giving active consideration to project bank accounts to protect suppliers' cash.⁷
- 12.6 **In order to achieve change across government construction procurement, it is absolutely necessary that there is instituted a program of action to achieve best practice within supply chains thereby helping to promote trust and, thus, improving relationships. This should be addressed as a matter of urgency by OGC.**
- 12.7 If necessary, the Treasury should consider fiscal incentives/ disincentives to procuring departments and agencies which have not bought into the government's improvement agenda. This recommendation was, in fact, contained in *Accelerating Change* launched by Sir John Egan in September 2002. It has already been adopted for some time by the Housing Corporation in allocating funding to housing associations for construction procurement.
- 12.8 We suggest that the following program of activities – many reflecting the National Audit Office's recommendations – is undertaken by all government departments, agencies and non-governmental public bodies:
- In collaboration with the industry OGC to develop a best practice charter, adherence to which would be a condition of selection of all firms engaged on government works (a starting point for drafting such charter could be *Selecting the Team* published by the Construction Industry Council – see footnote 3 on page 15).
 - Project bank accounts to be established for all projects coming on stream.

⁷ Announced as part of *Delivering Best Value Solutions and Services to Customers – Procurement Strategy Review 2005* (1 July 2005).

- All procurers to establish a review panel to deal with complaints of poor practice (alternatively, this could be centralised).
- All procurers to ensure that partnering arrangements embrace the whole delivery team.
- All procurers to outlaw the use of conditions of contract that are solely aimed at transferring risks downstream; the suite of contracts adopted by the client should be used by the whole supply chain provided that they represent a fair and proportionate allocation of risk and promote collaborative working⁸.
- The practice of retentions to be eradicated by 2007 on all government projects and their use to be outlawed down the supply chain.
- All procurers to ensure that engineering contractors are appointed early as part of the design team.
- Where design services are required from specialist engineering contractors, all procurers should provide a design agreement (akin to consultants' terms of appointment).⁹
- All procurers to report annually to OGC on the results of a survey of satisfaction amongst construction supply teams on their projects in relation to matters such as tendering, contracts, payment, partnering and early involvement in the design team.¹⁰

12.9 SEC Group will work closely with the Treasury, OGC and government clients to help in putting these actions in place. More generally SEC Group will continue to work closely with government to bring about long-lasting change in construction delivery to achieve improved quality, delivery times and value for money.

⁸ The NAO has recommended the use of the Engineering and Construction Contract and the Best Collaborative Contract.

⁹ The contractor designer would be expected to deliver the rest of the construction (construction or installation and/or maintenance/fm as necessary) to ensure that seamless.

¹⁰ This report should also identify progress made in relation to the action points listed

12.10 We acknowledge that outdated practices that have become embedded in the industry over generations are extremely difficult to dislodge. But we are almost seven years down the road from the launch of *Achieving Excellence*. Government procurers are well placed to drive change. They are – by far – the most valuable customers of the construction industry. UK annual public sector construction business is now worth well over £32bn (compared to £24bn when *Achieving Excellence* was launched).

12.11 It is exactly seven years since HM Treasury Procurement Group and the (then) Government Construction Clients Panel commissioned a report from the Agile Construction Initiative (based at the University of Bath) to identify those factors influencing client and supply-side performance. The report was based on a survey of industry practice and opinion conducted over a five week period in May/June 1998. Paragraph 5.13 stated:

“From the survey there appears to be little practical concern shown by public sector clients for the treatment of those contractors and suppliers without direct contracts. The onerous contract terms and slow processing of payments that increase the vulnerability of suppliers and sub-contractors highlight this lack of concern. Yet, the maintenance and supply of cash flow is widely recognised as being important for the preservation of good working relationships between all project participants. The public sector appears generally to promote prompt and pragmatic payment. But a widespread improvement in the treatment of suppliers and sub-contractors is still needed. The Construction Act is expected to force improvement, but this will not provide a substitute for a wider interest in the engagement terms and needs of sub-contract organisations. The use of partnering, framework agreements and similar approaches, such as those adopted by the most enlightened private sector clients (eg (BAA, various private utilities), are likely to improve supplier commitment, and promote an overall change in culture.”

12.12 Five years ago we fully endorsed this statement. We concluded from our survey at the time that government clients were, by and large, still ignoring the treatment of specialist contractors when engaged as sub-contractors. Government procurers needed to be much more proactive in driving change throughout the supply chain.

12.13 Five years on we believe that there has been a change in the mindset of government procurers. Generally they now appreciate that the centre of gravity – as far as delivery is concerned – lies within the supply chain.

12.14 We now need firm and concerted action to eradicate adversarial and age-old practices, particularly with regard to payment. The aim is established and integrated supply chains brought together by a genuine teamworking culture. This is guaranteed to provide the necessary motivation for firms – especially SMEs – to invest in training and technology that, in turn, will produce improved value for money for the taxpayer and improved profitability for the industry.

“If you do first what is necessary, then what is possible, suddenly you will find you are achieving the impossible.”

St Francis of Assisi

SEC GROUP GOVERNMENT PROCUREMENT SURVEY

The Specialist Engineering Contractors (SEC) Group – of which the HVCA is a member – is carrying out a survey to establish whether, over the past five years, government procurement practices have resulted in improved treatment for the parties to the supply chain.

If you have participated in government projects within the appropriate timeframe – whether as a sub-contractor or a sub-sub-contractor – please respond to the questions below.

This research refers only to central government contracts (eg prisons, hospitals, highways, military installations, social security offices). It does *not* refer to local government works.

Please place a tick in the appropriate box

		Up to £0.5m	£0.5m to £1m	£1m to £5m	Over £5m
Estimated annual turnover		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		1 to 4	5 to 10	10 to 15	16+
Number of government projects undertaken within the past five years		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		The Majority	About half	Less than half	None
1	Number of projects where your tenders were assessed on quality factors as well as price	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	Number of projects on which you considered the tendering process to have been conducted fairly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Number of projects on which your health and safety record was a factor in the award of the contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Number of projects on which you were content with the contractual terms offered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Number of projects on which you experienced payment delays and abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Number of projects on which retentions were not held against you	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Number of projects on which you were invited to enter into a partnering arrangement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	Number of projects on which you were appointed at an early enough stage to engage in the design process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	Number of projects on which you were treated fairly and as an equal member of the project team	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>