Facts or Fiction?

Dispelling the Myths about the Bundling of Construction Projects

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Prepared for the Vancouver Island Construction Association
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“The potentially devastating economic and social costs of project bundling on the small and medium-sized industry participants together with the evaporation of the multiplier effect on the rest of the economy has been simply ignored by these promoters of bundling.”
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Executive Summary

Project bundling – combining a number of smaller projects into one larger project under a single contract – as a method of delivering projects has recently been getting a lot of attention across Canada. The number one question asked at every construction industry function is whether government plans to bundle. The buzz around bundling has stirred up strong emotions, and the debate has been clouded by speculation and misinformation.

It is a highly controversial subject.

Provincial governments, agencies, school boards, and other public sector bodies hear from advocates of bundling about the enormous cost savings to be enjoyed by bundling projects. Politicians and public administrators are understandably attracted by such colourful promises of impressive savings.

However, through the work we have undertaken to prepare this report, we have found clear evidence of three fundamental problems with the rosy forecasts advanced by these advocates of project bundling.
No Factual Basis for Promised Savings

First, despite the bold predictions made about staggering savings, there are simply no facts to support those assertions. When the figures presented are examined more carefully, the independent support for them is totally lacking.\(^2\) In fact, our research shows that, with all of the cost implications taken into account, the vast majority of bundled projects are more expensive than unbundled projects.

Competition Reduced

Second, the assertion that bundling of projects into one large contract increases competition is flawed. Contrary to what proponents of bundling assert,\(^3\) our research points to exactly the opposite conclusion.

No one can dispute that increased competition among bidders leads to reduced overall costs to the public owner. However, our research demonstrates that the effect of project bundling on construction procurement is to unintentionally shut out small and medium-sized domestic contractors (“SMCs”) from competing, thereby reducing the pool of competitors to the very select few. It logically follows that the resulting reduction in competition leads to higher bid prices overall. This method of procuring construction generates a perverse result, and undermines the very foundation of the public procurement process.

“Hollowing Out” of Economy

Third, and equally important, is the socio-economic impact and resulting consequences of bundling on the construction industry across the entire country. Governments at all levels recognize the significant benefits to the economy of promoting construction activity in local communities across the country. The stimulus spending on capital construction projects during the recent economic downturn is the best evidence of how critical the contribution of the construction industry is to the country’s well-being. The overwhelming majority of that industry is made up of SMCs.

However, the very people who make such an important contribution to their local economies—contractors, designers, trades, and suppliers—are all severely affected by project bundling. Advocates of project bundling have chosen to ignore the serious impacts on the industry and recklessly dismiss valid concerns about the negative consequences of taking this approach on the economy. Unfortunately reports praising the bundling approach fail to recognize the concrete evidence of the “hollowing out” of industries affected by bundled contracts.\(^4\) The potentially devastating economic and social costs of project bundling on the small and medium-sized industry participants together with the evaporation of the multiplier effect on the rest of the economy has been simply ignored by these promoters of bundling.

When considering the real impact and overall consequences of project bundling everyone needs to be much more vigilant about assessing the true ramifications of this approach. In our research, we have looked closely at the empirical evidence and the economic policies in Canada and across the world on the controversial issue of project bundling. What we have found reveals a much different reality than the stories told by advocates.

Based on our findings, we strongly recommend that bundling should only be considered when the facts clearly support that approach. This means that, in any specific case where project bundling is proposed, the public owner should prepare and present to industry stakeholders a sound business case, including a detailed costing analysis, before proceeding with any bundled project. Further, an independent comprehensive review and forensic audit of any bundled project should be undertaken and published after completion of the project, to establish whether predicted outcomes were in fact achieved in reality.\(^5\)

In other words, the burden should lie on public owners to prove rather than simply assume the benefits of project bundling.

By approaching the question of project bundling using the fundamental principle that the method should be the exception rather than the rule, and then only using bundling when it has been proven to have a real net overall benefit (taking into account all socio-economic considerations), will we overcome the myths and misinformation about the true costs associated with bundling.
The Challenge Facing Governments

Like most public sector entities, British Columbia faces the challenge of how best to deliver and pay for capital projects, while maximizing value for the taxpayer’s dollar, in an environment of growing infrastructure deficits and declining revenues. To meet this challenge, different procurement approaches have been considered and in some cases adopted, with mixed success.

The specific approach of “project bundling” is one of the available capital project delivery tools. This method is touted by current supporters as the panacea for overcoming the challenge of bringing a large number of projects to market at one time while enjoying enormous cost savings.

What is the truth? Are the claims about bundling justified or is it just “smoke and mirrors”?

Origins of Contract Bundling

The idea of bundling a number of small contracts into a larger single procurement comes from the purchasing environment, in relation to the purchase of commodities (e.g. photocopiers, furniture, equipment, etc.). Buying in bulk increases purchasing power and leads to savings.

The same thinking has more recently been applied to contracts for the design and construction of projects. If you can “bulk purchase” hospital equipment or office supplies, why not projects?

As described in more detail later in this report, this concept is misguided. There is a significant difference between buying commodities and buying construction. Both the nature of the subject matters and the process associated with procuring them is unique in each case. As a result, an approach that works for one does not necessarily work for the other.

The Deloitte Report

The most recent high-profile example of commodity-purchase thinking applied to the construction industry, is a report prepared by Deloitte for the B.C. Ministry of Education and School Districts described as “Service Delivery Transformation”.

The purpose of the study was to identify opportunities for reducing costs and enhancing service delivery in the province’s school sector. One of the report’s recommendations was to bundle projects into larger tranches “to reduce costs and create a more competitive procurement process”. This approach was suggested to include and cover new schools, replacement schools and seismic upgrade programs.

With respect to the estimated reduction in costs, no empirical data or historical evidence was provided to support the claim.

On the issue of increasing competition, Deloitte stated that the project scale has to be large enough to attract “larger, national/international construction firms” (> $100 million per tranche). In other words, there is an implicit assumption that such projects must be geared towards and attract only the very large contractors. It follows that this approach could exclude smaller contractors from performing this work. In fact, one of the “costs” of this approach explicitly recognized in the Deloitte report is “reduced local participation by contractors”. This means that competition would be lessened, not increased, by this approach.

Deloitte also does not address the larger costs associated with the economic impact on the local economies of the regions where this work would be undertaken.

Finally, Deloitte did understand the importance of carefully looking at each proposed situation and making a specific business case for the use of project bundling. Any optimistic predictions of broad cost savings are meaningless without this kind of rigorous examination of the specific nuances of each project.
The notion that “bigger is better” as reflected in the Deloitte report applies equally to public-private partnerships. Many provinces and their agencies have begun resorting to variations of public-private partnerships (or “P3s”) as a means of structuring and funding major capital investments in infrastructure, including roads, hospitals, bridges, courthouses and roadways.

These projects are typically large and complex. Often the facilities are designed, built, and then operated and maintained for thirty years under a concession agreement with the successful consortium. The facility is paid for by the public “owner” through a series of periodic payments over the term of the concession. At the end of the term, the infrastructure is transferred to the owner.

The justification for using this model is “value for money” (“VFM”). At the outset of such a project, an evaluation is conducted to demonstrate that the P3 approach makes sense because of the overall savings, or positive VFM, in comparison to the traditional approach. Given that the public sector can always finance the cost of projects more cheaply than the private sector, the positive differential comes from the assessment of the value of the risks transferred to the private sector consortium. In other words, provided that the valuation given to the various risks being transferred to the private sector under the model is high, the use of the model will be justified even if the capital cost of the project would be significantly lower using traditional procurement and contracting methods.

Put simply, the initial justification for going the P3 route on a project is made by saying it is cheaper overall because the risks are all passed on to the contractor.

For purposes of this report, the P3 model is only relevant due to the fact that, in the last few years, there have been instances in Canada in which a number of smaller projects which would have traditionally been procured and constructed in the traditional design-bid-build approach have been “bundled” together into one large project and structured as a P3. By combining a number of small projects into one large project, the public sector owner can create the critical mass necessary to attract large, sophisticated financiers, constructors, designers and operators to compete for the opportunity to be awarded such a contract.

There is not a requirement that every bundled project be a P3 nor every P3 must somehow be a bundled project. However, the two often go hand-in-hand. In particular the analysis supporting the bundling of projects is typically done in the manner used to support a P3 project. In fact, we could find no instances of any detailed studies done on bundling of projects in Canada that were not also associated with the P3 delivery model.

Much justified criticism of the P3 model and in particular the VFM analyses used to support these projects has been generated. There is no reason to doubt that similar criticisms are warranted against the figures used to support project bundling.
The Fundamental Issues with Bundling

The recognition in the Deloitte report that bundling may lead to reduced participation of local contractors is one of the issues at the heart of the criticisms levelled at project bundling by construction and design industry participants.

In particular, industry leaders, construction associations, and leading commentators typically focus on the impact of bundling on SMCs. Some of the issues raised include:

• bundled contracts may put projects out of the reach of the capabilities of SMCs
• bundled contracts may be so large that only the largest contractors can compete
• bundling of contracts may reduce or eliminate bidder interest and the level of competition for the procurement
• any cost benefits of bundling may be reduced or eliminated due to limited competition. In fact, costs may increase with bundling

One of the most common issues identified with bundled projects is the need for a large bonding capacity. This requirement may simply put projects out of the reach of SMCs. The result may be that SMCs will simply be unable to compete for work on projects they previously may have won.

Another issue identified by commentators is that the reduction of competition increases the potential of collusion. With far fewer bidders eligible to bid on a given opportunity due to bundling, the risk that those remaining bidders may engage in anti-competitive behaviour is heightened.

In light of these comments, we stand at a crossroads.

On the one hand, advocates of project bundling, as reflected by the Deloitte report, point to the potential for efficiencies and cost savings to justify the approach. Opponents of project bundling, on the other hand, argue that negative consequences to SMCs of the kind listed above mean that if project bundling takes hold—taking away the “bread and butter work” of smaller designers and contractors—then the industry could be severely affected. In the worst case, this could lead to loss of jobs, business bankruptcies and other negative consequences.

These divergent views raise important questions:

• What are the benefits of bundling?
• What evidence exists that bundling saves the public sector and the taxpayer money?
• What are the real costs of bundling? Does bundling actually cost more?
• What are the consequences of bundling on SMCs?
• What measures can be put in place to protect SMCs from the impact of project bundling?

The purpose of this paper is to pull together what studies have been undertaken and analyses conducted to answer these questions. The findings lead to some simple and yet compelling conclusions and recommendations.
Are the Benefits of Bundling a Myth?

The benefits of bundling typically identified are those associated with the “purchasing approach” of taking a number of smaller projects and issuing one procurement for them all as a single “package”.

Studies have suggested that the principal source of cost savings achieved by bundling contracts together is in the handling of the procurement and the management of the contract after the award by the buyer. For example, one study involved conducting interviews with contract buyers of services contracts. The buyers identified a number of specific areas where they believed that cost savings were obtained: by obtaining leverage or market power over providers, increasing purchasing power for the provider (due to the larger size of contract) resulting in lower costs for the buyer, and enjoying savings through lowering overall overhead costs through eliminating duplication of overheads across providers.

On the performance side, buyers indicated that they benefitted from improved performance-tracking and more consistent service levels across the board.

The problem we have with such anecdotal commentary is that the buyers are operating outside of the construction project context. While it certainly follows that the cost of administration of a large number of projects being undertaken simultaneously for the public sector owner would be reduced under a single bundle, other identified benefits, such as increased buying power, and its associated savings, do not translate easily into the construction setting.

For example, unlike the government service contracts examined in the study, bricks and mortar construction require building materials which may be better supplied by local suppliers, particularly if the bundled projects are geographically dispersed. Aggregate or asphalt, as specific examples, are far better obtained locally than shipped from a distant single source, due to the high transportation costs and other technical considerations.

The benefits of bundled service contracts also do not apply to labour supplied to construction projects. Workers cannot work on multiple projects in various locations simultaneously and are best supplied by local labour pools. As a result, any perceived efficiencies in the provision of labour to bundled projects is illusory.

“Any perceived efficiencies in the provision of labour to bundled projects is illusory.”
Specific Risks of Bundling

Risks for the Owner

What are the negative effects of bundling on the buyer of construction?

In the same study regarding project bundling discussed above, the authors reinforced the fundamental requirement that bundled projects must offer the economies of scale in performance that offset the corresponding costs associated with organizational size. Simply put, bundled projects can become too big for an organization to handle efficiently and effectively.

The monitoring and measuring of the performance of the contractor is an onerous task for a buyer in normal circumstances but bundling only exacerbates the challenge. Most public owners do not have the resources to properly undertake the extra responsibilities of tending to a large bundled project.

There are other risks for a buyer. One risk is the “lock-in” effect, in which the buyer has put itself essentially at the mercy of the provider. Put another way, project bundling entails “putting all your eggs in one basket”. If there is a failure in performance by the contractor, the results can be very costly and may significantly delay the large number of projects being undertaken. This risk is why many organizations, contrary to the notion of bundling, diversify the risk by retaining the services or buying from a variety of providers.

In addition to the risk created by the size of the bundle and the ability of the organization to handle the workload and avoid being overextended, another is the risk associated with work spread over a broad geographical area. That risk can be mitigated by ensuring regional and local firms provide the services, even if under a large contract.

That avoidance strategy may lead to unintended consequences for the owner. By requiring the prime contractor to engage local contractors as part of the performance of the contract, an extra layer of mark-ups may be introduced into the cost structure. This likely increases rather than decreases the costs of the bundled project.
Improper Bundling of Components

Another issue arises with bundling projects comprising differing technical components. To avoid the risks inherent in buying divergent goods and services under one contract bundle, prudent buyers break up contract scopes into separate components rather than obligating providers to carry out all aspects of the project under one bundle.

This strategy is particularly noteworthy, given the results of an interesting research study carried out on behalf of the World Bank. The authors of the paper looked at the impact of bundling on water supply and sewage projects in international settings. In particular, the authors studied the effects of the owners bundling treatment plants with the transmission and distribution network. The project data studied were extensive and the statistical analysis extremely detailed.

The overarching concern identified by the authors is the lack of competition observed with these projects. The authors state that “competition is the single most important factor to contain public procurement costs and perhaps discourage collusive bidding behaviour and corrupt practices.” This latter observation is presumably based on the idea that the fewer the bidders, the greater the possibility of bidders colluding in the procurement process, or engaging in bribes of officials.

The authors found that:

- Fewer bidders participate in competitive bidding for technically larger specifications.
- The expected number of participants will decline as the sizes of the involved treatment plant and network works increase simultaneously.
- The overall impact of bundling the two components may be toward higher procurement bids.
- There is no evidence of positive scope economies in the underlying bidder cost structure.

The authors conclude that the bundled approach to these projects is risky. In fact, the costs of administering a number of “small lots” are outweighed by the benefits of “unbundling”. According to the authors’ analysis, the level of competition more than doubles when the project is unbundled. This means a lower cost overall, compared to the uncompetitive scenario, where far fewer bidders compete for the bundled project.

These findings have significant implications for the choice of whether or not to bundle particular projects. It supports the notion that larger projects lessen competition and this in turn may increase, rather than decrease, overall costs, even taking into account savings on administration costs.
Bundling Lessens Competition

Central to the concern over bundling identified in the World Bank report is the idea that project bundling lessens competition. This is directly at odds with the assertion made in the Deloitte report.

Is the reduction in competition a legitimate concern?

“Anti-bundling” Measures in the United States

According to the law of the United States, the answer is clearly “yes”.

The concern over access to government opportunities and the ability of SMCs to compete for those opportunities has led to the passage of legislation which is designed to constrain the ability of the federal government and its agencies to bundle projects. Bundling can only occur if it is “necessary and justified”. Briefly, under amendments to the Small Business Act made in 1997, the Federal Government is required to conduct market research to justify acquisition strategies that could lead to bundled contracts, provide advance notice of bundled procurements to the Small Business Administration (“SBA”) and the incumbent small business contractors, and implement certain procurement strategies when procurements involve substantial bundling. In the years that followed passage of the amendments, these requirements were further expanded in scope and the requirements were further tightened.

Interestingly, the definition of bundling in question describes circumstances in which what had been previously smaller contracts are consolidated into one large contract. In the case of construction projects, involving new construction, the argument has been successfully made that the definition does not apply. For this reason, further amendments have been proposed in the current Congress to address the issue and expressly include new construction. As of the date of this paper, the passage of these proposed amendments is pending.

What is important to take away from the American approach is:

- bundling inherently lessens competition and reduces access for SMCs to opportunities, and,
- therefore, procurements which have this adverse impact must be necessary and justified, using market data in advance.

In a report of the Office of Federal Procurement Policy, through gathering testimony, the OFPP looked at mitigation strategies for lessening the negative effects of project bundling. Within those strategies being used was the giving of evaluation points or greater credit to bidders who identified small business teaming partners or other small business contractors in their proposals. However, the OFPP questioned whether such strategies struck a sufficient balance between the need to bundle and the need to ensure small businesses maximum practicable opportunities in federal contracting. Even those SMCs who received subcontracts were hurt by the bundled procurement. Specifically, those SMCs were “beholden” to the large prime contractor and sometimes had to perform the work at a lower rate than what they had on their original prime contract with the government or their work was actually reduced. There is no reason to think that the concerns over bundling which has led to these legislative controls in the United States do not apply to Canada. The Americans believe bundling is a serious problem. Why would Canada be so drastically different?

Reduction of Barriers for SMCs in European Union

The recognition that project bundling discourages bidders and lessens access to opportunities is not confined to the United States. The European Union has also engaged in studies to determine what impediments exist for SMCs to access public contracts. Among the recommendations resulting from the study is the encouragement of adopting measures to help overcome the limited technical and financial capabilities of SMCs, including “the breaking down of tenders into lots (by task or by geographical service area), avoiding disproportionate technical or financial requirements and the specifications, and allowing the joint fulfilment of these requirements by consortium partners or subcontractors”.

In other words, as a matter of public policy, member states are encouraged to reduce barriers to entry for SMCs rather than erect them.

Again, what would lead anyone to believe that Canada’s policies should be any different?
Canada Recognizes the Concerns

The good news is that at least some in Canada have recognized that the notion of project bundling and its negative effects on competition acknowledged by other countries is a legitimate concern and applies equally in Canada.

In a research report for the Canadian Federation of Independent Business, the author echoed the concerns outlined in this report regarding bundled contracts becoming so large that they effectively limit bidding to all but the largest suppliers.

The author cites an example of a Federal Government procurement in which the prospect of a very large long-term bundled contract was objected to by industry, leading the government to backtrack. The author observes:

“An encouraging sign is that government officials have reconsidered many of their plans for these kinds of contracts but only after storms of protest from those most directly affected. Despite this, there continues to be new attempts to bundle products or services. It seems that little business planning was done to support this decision and that cost savings were assumed to take place. There is also little evidence as to whether that is truly the case.”

The author goes on to refer to the SBA’s authority in the United States to review bundled contracts and to determine whether the contract should be broken up into smaller “chunks” to make it more accessible to smaller firms.

Although the report does not go as far as to support the American approach of requiring certain portions of large contracts be “set aside” for SMCs, the report does strongly support importing the capability of reviewing and breaking up large contracts.

The Government of Canada appears to have started to listen to industry representatives about how SMCs are affected by government procurement and bundling in particular.

A House of Commons Committee issued a report in June of 2009, which reviewed the structure of the Federal Government in relation to small and medium enterprises (including SMCs) and how the current organization differs from the American SBA.

The report went on to describe the testimony heard in June, 2008 regarding the practice bundling of smaller contracts into larger contracts. The common theme of the evidence of witnesses was that bundled contracts created barriers and led to the loss of jobs and businesses. This increases the possibility of higher costs to government.

The Commons Committee recognized that the government must establish a process for considering bundling contracts; otherwise there would be a “hollowing out” of the number of SMCs and irreparable harm to existing Canadian supply chains for both services and products.

As a result, the Commons Committee recommended that:

“The Federal Government must ensure that due consideration is given to small and medium enterprises when considering the bundling of contracts and standing offers.”

The Committed added:

• the recommended process would include an opportunity for SMC consultation
• the requirement of the department or agency who wishes to put up a bundled contract to tender to submit a business case justifying the need for bundling
• establish contract size limits where an SMC subcontracting plan for the life of the contract must be submitted as part of the bid

These recommendations are very reminiscent of the operative principles of the SBA regime in the United States.
In a comprehensive review of the use of P3s and project bundling by the Alberta Construction Association and the Merit Contractors Association in 2009, 120 participants from across the industry met to discuss and evaluate these processes, with a view to making a series of recommendations to the Alberta government. Among the findings in the resulting report was the following:

“...industry also believes that inordinate grouping or “bundling” of projects ... could also result in the [Government of Alberta] failing to realize potential cost efficiencies that may be available from traditional or mixed procurement and financing models. Inordinate bundling of similar structures to create an exceptionally large-scale project can result in fewer contractors with expertise in local market conditions and relationships with local sub-contractors, suppliers being capable or willing to compete in the process.”

This is a common theme. What can be lost in the large bundled project is the local knowledge and familiarity with the local context.

Even buildings of similar design are almost never identical. In addition, site issues, weather, labour issues, and the like, all vary from locality to locality. As a result, it is naïve to believe that efficiencies naturally flow from bundling. On the contrary, as pointed out in the report, efficiencies may be lost by bundling.

Another related observation made in the Alberta report is the lack of reliable information about when economies of scale—one of the primary justifications for bundling—are actually achieved:

“...it is also apparent that the threshold [for project size] should be of sufficient size to benefit from engineered economies of scale. However, benefit/cost information explaining the value and circumstances under which engineered economies of scale are more realizable under P3 as opposed to traditional or mixed delivery procurement approaches is not readily available to industry. For example, the relative efficiencies of a five school project compared to a project comprised of ten schools are unknown. The size at which project scaling results in diminishing returns is also unknown.” (emphasis added)

As a result, the report recommended that industry design, engineering and construction professionals be consulted to examine and clarify the number of units (e.g. schools, bridges, roadway kilometres) that a project might comprise to achieve optimum economies of scale.

In other words, at this point, without that industry consultation, no one really can say how projects should be bundled. Advocates who recommend bundling in order to enjoy efficiencies are doing so blind-folded.
Ontario Addresses Issues with Bundling

Ontario has had recent experience with two major bundled procurements, the highway service centres and the OPP modernization project.

Following these projects, the Construction Design Alliance of Ontario, comprising the following associations:

- Association of Registered Interior Designers of Ontario
- Consulting Engineers of Ontario
- Mechanical Contractors Association of Ontario
- Ontario Association of Architects
- Ontario Construction Users’ Council
- Ontario General Contractors Association
- Ontario Home Builders Association
- Ontario Road Builders Association
- Ontario Sewer and Watermain Construction Association
- Ontario Society of Professional Engineers
- Residential and Civil Construction Alliance of Ontario
- Residential Construction Council of Ontario

engaged in discussions with Infrastructure Ontario ("IO") regarding the procurement of bundled projects. This collaborative team effort led to the recent development of the “Infrastructure Ontario Bundling Framework.”

Under the Framework, IO has committed to the following:

“When considering bundling, IO will employ measures to protect local and other segments of the design and construction sector, including small and medium enterprises. For example, IO may:

• obtain local market soundings to determine capacity with the assistance of the industry through these key industry stakeholders

• require proponents, in the RFP, to set out a strategy for use of local resources and make that strategy a factor in the selection of the successful proponent; include Key Performance Indicators or other metrics in the contract with the successful proponent to ensure that the successful proponent adheres to use of local resources strategy that is proposed; and

• monitor the performance of the successful proponent using the KPIs or other metrics and, if necessary, take the necessary steps to enforce adherence to the strategy for use of local resources.

IO has offered to discuss opportunities with the Working Group when bundling of projects is being considered. This will allow the industry to comment on the initiative and to provide industry input to IO before a final decision on bundling is made. Valued industry input could include, for example, information direct from the industry regarding local resources, capacity and pricing.

Where the decision is taken to bundle projects, IO has agreed to coordinate communication of that decision with the industry through the key industry stakeholders.

IO has agreed to circulate this Update and the Memorandum that lists potential criteria to be reviewed when considering bundling projects to other relevant government ministries and agencies.

While this protocol does not go as far as the recommendations of the CFIB and the Commons Committee which would have required a business case to be made to justify the bundling of contracts, the Framework does provide notice to the industry that bundling is under consideration and allows for input.
Moving Forward in the Right Direction

Our extensive research on the subject of the bundling of construction contracts discloses a common thread. The actual evidence of the impact of project bundling does not support the claims made about its benefits, including substantial cost savings. Furthermore, the analysis set out in this paper leads to the conclusion that the costs of bundled projects may be considerably higher.

As bundling increases project size and complexity, SMCs are unable to fairly access the opportunities. This scenario can lessen competition and ultimately lead to higher costs. Mitigation strategies, such as requiring local contractors to participate in the work, help alleviate the negative consequences of project bundling, but may be limited in effect, or may themselves raise contracting and costing concerns. Nevertheless, encouraging public owners to implement local knowledge requirements at the procurement stage will help sustain domestic capacity in the construction industry.

Based on our research, we recommend that the following principles govern public sector project bundling in Canada:

- Given the potential negative effect on SMCs, and the corresponding lessening of competition, bundling should be the exception rather than the rule.

- The public owner proposing bundling should be required to present the business case for it, including a thorough market study with credible supporting data, prior to proceeding.

- When bundling is proposed, the public owner should notify industry participants and engage in meaningful consultations about the approach and its suitability.

- The public owner should obtain and then publish an independent comprehensive review and forensic audit after completion of the project, to establish whether predicted outcomes were achieved.

With the implementation of these measures, project bundling may still proceed but only in the most appropriate circumstances. The negative effects on industry can be minimized and, wherever possible, avoided altogether.

This balanced approach to project bundling would meet the concerns of all stakeholders and promote the growth and prosperity of SMCs and local communities.


“Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation” from the Federal Register, Vol. 77, No. 95, Wednesday, May 16, 2012, pages 29130 to 29165


“Improper Contract Bundling Hampers Growth and Viability of Small Construction Firms” by Lawrence LeClair in Modern Contractor Solutions, April 2009 (Birmingham, AL: Highlands Publications, 2009) pages 38 and 39


Notes

1  See note 8 below regarding the Deloitte Report. The savings for bundled school projects were estimated to range between $25 million and $120 million.

2  Deloitte, in its Report, conceded “the detailed business case for each opportunity should be developed prior to using the estimates outlined … The analysis was based on the data provided by the in-scope school districts and the Ministry. This data has been assumed to be accurate and wasn’t subject to detailed verification except where outliers appeared in the data.” [emphasis added] In other words, detailed analyses may well prove that actual savings in specific cases may very well not measure up to the initial optimistic estimates.

3  In its Report, Deloitte expressly proposed putting “…bundled projects into larger tranches to reduce costs and create a more competitive procurement process” [emphasis added]. We have found that this conclusion is not supportable. See discussion in Section 9.0.

4  The Deloitte Report at least conceded that there would be “reduced local participation by contractors”, but carries out no analysis of what such reduced participation means to local economies or the provincial economy as a whole. See Commons Committee Report, discussed in the text relating to note 27 below, in which testimony confirmed the negative impact of governmental contract bundling on affected industries.

5  To date, this kind of work has never been publicly undertaken.


7  Deloitte Report, at p.64.

8  See note 2, above.

9  Refer to the Value for Money Assessment for the Ontario Provincial Police Modernization Project prepared by Deloitte (October 18, 2010). Note that the traditional procurement cost for this project was estimated to be $255.5 million whereas the alternative financing and procurement (or “AFP” – the Ontario equivalent of “P3”) method was estimated to be $380.7 million. However, the valuation of the risk transfer created a positive VFM of $51 million in favour of the AFP model, according to Deloitte. We are not aware of any detailed study comparing the actual final cost of the OPP project using the bundled method versus what the cost of the same projects would have been performed on an unbundled basis. Ontario also went through a similar exercise for the highway service centres bundled project. See also Project Report: Achieving Value for Money, Abbotsford Regional Hospital and Cancer Centre Project, especially Appendix B for a similar analysis and conclusion.

10  See, for example, “Doing the Math: Why P3’s for Alberta Schools Don’t Add Up” by Hugh Mackenzie, and “Tricky Math”, by Rhys Phillips.

11  Improper Contract Bundling Hampers Growth and Viability of Small Construction Firms, Lawrence Leclair, April 2009 in Modern Contractor Solutions.


14  See the Estache report, note 18, below. In the present environment, anti-competitive behavior in the construction marketplace is under scrutiny, as evidenced by the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, known as the Charbonneau Commission.

15  Also consider, for example, the assertion: “While the AFP model is best suited to large projects, groups of smaller projects of a similar nature can be bundled and delivered by Infrastructure Ontario using the AFP model to achieve cost savings” [emphasis added] made in Building Together: Guide for Municipal Asset Management Plans, Ontario Ministry of Infrastructure, 2012, at p. 20.

16  See Baldwin (2001).

17  Ibid, at p.37.

18  See Estache and Limi (2009).

19  A detailed description of the “anti-bundling” regime in the United States is beyond the scope of this paper. Refer to the Key References listed in this report for information on the law and regulations.


21  Numerous examples are contained in the literature in which bidders have successfully complained to the Government Accountability Office (“GAO”) that certain bundled contracts be “unbundled” for having violated the legislation.


23  Ibid, at p.291.

24  See GHK study (2010).

25  See Parent report (2007.)

26  Ibid, at p.15.


28  Ibid, at p.18.


30  Publicly announced in November 2012.

31  At the recent Ontario General Contractors Association Symposium in April 2013, senior representatives of Infrastructure Ontario indicated that these bundled projects represented only 5% of the total capital program. IO currently has no plans at this time for any further bundled projects. Any future plans for bundled projects would only proceed after full consultation with the industry.
Authors

Stephen W. Bauld is the President and Chief Executive Officer of Purchasing Consultants International. Stephen has more than 40 years of international experience in purchasing in both the public and private sectors. He served as the vice president of the Ontario General Contractors Association for four years, and until recently was on the board of directors of the Ontario Institute of the Purchasing Management Association of Canada.

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Glenn is a Fellow of the Canadian College of Construction Lawyers and has been recognized as a leading construction law practitioner in both the Canadian Legal LEXPERT Directory and Best Lawyers in Canada. In terms of procurement, he has been named in the International Who's Who of Public Procurement Lawyers, and the Chambers Global directory for Public Procurement for Canada. He is active in the construction industry, having been Chairman of the Board of the Toronto Construction Association, and currently serving on the Board of the Canadian Construction Association. He taught Construction Law at Ryerson University’s Department of Architectural Science for many years, and continues as an instructor at the Admission Course of the Ontario Association of Architects. Glenn speaks and writes regularly on construction and procurement matters for legal and industry conferences, seminars and publications.
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