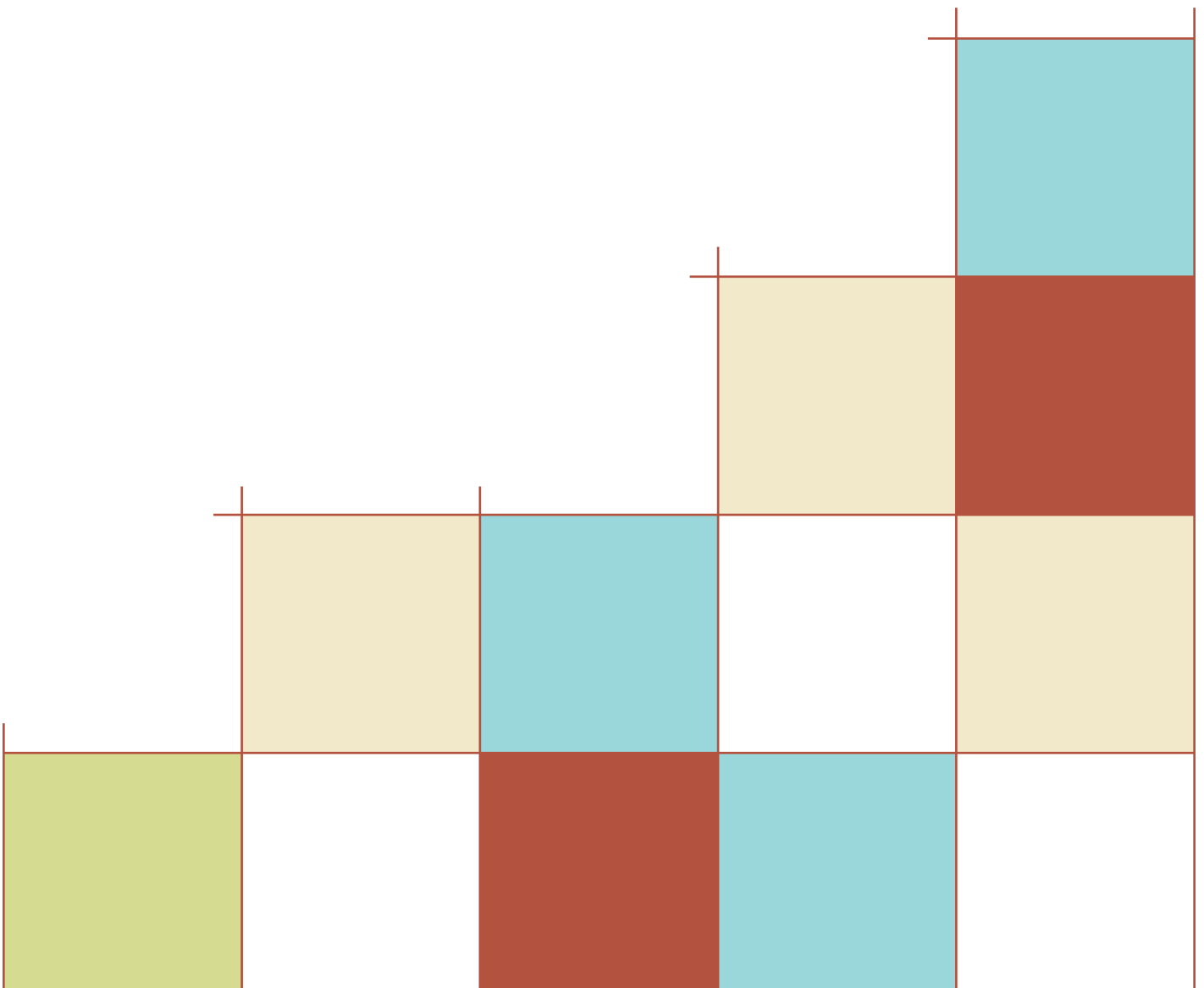


The Tender Trap

Why employees' bid to run the
Dartford Crossing failed



Anthony Jensen

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About the author

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The author was appointed project manager by Tower Hamlets Co-operative Development Agency in April 2002 to handle the appeals process and provide advice to the Thames Gateway Co-operative steering committee. This report is based on his observations and discussions with the key participants.

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Publisher

JOL is the association of employee owned and trust owned businesses. Founded in 1979 as Job Ownership Limited its member companies include the John Lewis Partnership, other long-established jointly owned companies such as Scott Bader and Swann-Morton, and a range of other employee owned businesses of all sizes from a wide variety of sectors. Wholly independent and not-for-profit, JOL is funded by its member companies.

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Foreword

The story of employees' bid to take over the running of the Dartford Crossing is salutary. It also provokes admiration, frustration and anger: admiration for the employees and their advisers to have had the vision to see that they did have the skills – later recognised by the new managers – to run a massive operation; frustration that the environment they were working in was so hostile and ignorant of the benefits that an employee owned approach can bring; and anger that decisions went against them without sufficient justification.

Many mistakes were made on all sides. Anthony Jensen's report sets those out dispassionately and clearly. He gives all concerned the opportunity to learn the lessons from those mistakes and the pointers to help ensure that other groups of employees wanting to run their business have a better chance of success.

So what do we think are the key lessons? Employees wishing to take over the management of any business - whatever the size - need to have commitment, belief and vision, and all employees need to be involved in the process as it develops. That commitment also needs to be translated into financial input backed up by specialist support. Where unions are involved, their genuine support can be invaluable.

There is a massive lack of knowledge and understanding among the finance and business community about the success of employee owned businesses and the added value of employees' ownership and participation in terms of productivity and sustainability. We have started to work with the DTI to address this, but there is still much to be done.

The institutional and regulatory environment for public procurement does not give equality of opportunity to businesses that are different, whether these are employee or trust owned businesses, co-operatives or other social enterprises.

As 'The Tender Trap' demonstrates, for employee bids, public procurement is not a level playing field. The result – ironically for a Government which supports genuine choice in public services – is that diversity is diminished and customers are denied the added value of a service delivered by an employee-run enterprise.

We warmly commend this report to you.



Andrew Gunn
Chair, JOL



Dame Pauline Green
Chief Executive, Co-operatives UK

Introduction

'The Tender Trap' explores the attempt by the Thames Gateway Co-operative (TGC) – the workforce of Dartford River Crossing Limited – to tender for the management of the Dartford Crossing operation on the River Thames, and why the Highways Agency rejected their bid.

It reviews what actually happened, explains why the tender application failed and tries to identify the key lessons so that in the future incumbent workforces are in a better position to bid successfully for public contracts to run the business they work for.

There are hundreds of successful employee owned businesses and worker co-operatives in the UK today. The employee buy-out is becoming an increasingly popular way of transferring business ownership to the workforce and its management. Employee owned enterprises are now credible and frequent bidders to win and run public contracts. This report is the story of how and why one such workforce bid failed.

Aim of the report

In publishing this report, the author, along with JOL and Co-operative Action, aim to pinpoint why the TGC's bid to manage the Dartford Crossing was rejected by the Highways Agency so that future employee bids for large public contracts avoid making the same mistakes and that the institutional and practical factors which often undermine such bids are no longer insurmountable barriers.

The author of the report was closely involved in the events described. The publisher, JOL, is the association of employee owned businesses and is concerned to remove institutional and other barriers to the spread of employee ownership. The report has been funded by Co-operative Action, the foundation for the promotion and development of co-operative solutions to community and business challenges.

Sequence of events

These are the key stages of what happened during the 18 months in which the TGC tried and failed to win the bid to run the Dartford Crossing business:

- The workers of the Dartford River Crossing Limited, under the newly created banner of the Thames Gateway Co-operative, commence a process to tender to operate the crossing from April 2003. Initially only a small group of workers are committed to the project, although nearly 90% eventually give their backing.
- Workers want to run the facility primarily to change the culture of the crossing, which is one of poor industrial relations and onerous working patterns, and is run along allegedly “militaristic” lines by management.
- A group of workers are critical of management business decisions and practices and develop a vision for a more cost effective customer focused business model.

Introduction

- TGC adopts a worker co-operative model and proposes to run the crossing with a board of directors consisting of appointed directors from within the industry, the co-operative movement and trade unions, with a general manager and middle management, and empowered work teams.
- TGC misses the deadline to submit its pre-tender application, blaming lack of information from the Highways Agency, the body overseeing the bidding process.
- TGC is readmitted into the tender process, delivering its completed application at the beginning of January 2002.
- Highways Agency rejects the TGC bid on the grounds of its poor quality compared with its competitors.
- Specifically, the Highways Agency is concerned that the incumbent management is neither involved nor supporting the workers' bid. The Agency is also not convinced that the majority of the workforce supports the bid and questions the financial capability of those involved.
- Despite intensive lobbying from politicians, the transport Minister refuses to reconsider the TGC bid and allow it to progress to the next stage of the tender process.
- TGC and its advisors say the Highways Agency has breached European procurement regulations. A formal complaint is made to the European Commission.
- Supporters of TGC bid claim the public procurement process and how it was applied by the Highways Agency discriminates against a worker bid.
- TGC leadership say the Highways Agency divulged the confidential information it supplied in its pre-tender questionnaire to the existing management team.
- Le Crossing, the consortium consisting of Bagtie, Cofiroute and Ringway takes over in March 2003. The Chief Executive addresses a meeting of shop stewards and states: "We don't know how to run the crossing. You do and we would like you to tell us."

Tender background

In March 2001, the Government announced that the management and operation of the Dartford Crossing would go out to competitive tender. The crossing, spanning the Thames between Dartford in Kent and Thurrock in Essex, consists of two 2-lane tunnels carrying traffic to the north and a four-lane bridge carrying traffic to the south (see panel).

Between 1988 and 2003, Dartford River Crossing Ltd (DRC), a consortium of civil engineers Trafalgar House and financial services companies Kleinwort Benson, Prudential Assurance and Bank of America operated the facility. DRC signed a concession agreement with the Government in April 1987 to take over the operation of the two tunnels and the debts accrued by Kent and Essex County Councils, which had jointly run the crossing since the first tunnel opened in 1963, as well as fund the construction of the bridge. The legislation and concession agreement allowed DRC to charge tolls to recoup the costs of building the bridge and operating and maintaining both the bridge and tunnels.

At the end of the concession the crossing was transferred back to the Secretary of State for Transport. The bridge was paid off ten years ahead of schedule. The formal transfer occurred on 1 April 2002 and, until 31 March 2003, when the successful bidders – Le Crossing, a consortium consisting of consultants Babtie, the French toll company Cofiroute and civil engineers Ringway – took over, DRC operated the crossing as managing agents of the Secretary of State.

Ringway is a national contracting group of companies undertaking both maintenance and construction contracts on highways and associated structures. It has a workforce of over 2,000 and a turnover in excess of £300 million. It is a member of the international Vinci group, the largest civil engineering group in the world with a workforce of 185,000 and an annual turnover of more than £10 billion.

Le Crossing's contract runs for between three and five years and all proceeds from the toll crossing, over and above operation and maintenance costs, will be spent by the Government on transport projects.

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Dartford–Thurrock Crossing

The Dartford–Thurrock Crossing is one of Europe's most heavily used toll roads and complex traffic management control systems. Spanning the River Thames between Dartford in Kent and Thurrock in Essex, the crossing forms a vital link in the M25 orbital road around London. It comprises two 2-lane tunnels carrying traffic to the north (Thurrock) and a four-lane bridge carrying traffic to the south (Dartford).

The original tunnel was opened in November 1963 and was, until 1988, jointly operated by the Essex and Kent County Councils. More than double the initial estimate of two million vehicles a year used the tunnel in the first year of its operation. A second tunnel took eight years to build, cost £45 million and opened to traffic in May 1980.

With the completion of the M25 in 1986, daily average volume of traffic regularly exceeded the maximum 65,000 vehicles the twin tunnels were designed to carry. Additional tunnels proposed by the two local authorities were rejected in 1988 in favour of a tender from the Trafalgar House consortium to build a bridge. The 2,872 metre Queen Elizabeth II bridge took three years to build and was opened in October 1991. It was the first time in the 20th century that the UK Government had fully involved the private sector in financing, as well as designing, building and managing, a public infrastructure project.

Traffic Flow

| Year | Total Vehicles | Daily Average | Highest Daily |
|-------------|-----------------------|----------------------|----------------------|
| 1964–65 | 5,829,879 | 15,972 | 30,266 |
| 1989–90 | 30,386,390 | 83,250 | 101,999 |
| 2000–01 | 50,919,256 | 139,505 | 71,421 |

The employee bid

Among the unsuccessful bidders for the Dartford Crossing contract was the Thames Gateway Co-operative (TGC), consisting of existing employees. The tender notice, published on 3 November 2001, asked for tenders to simply manage, maintain and operate the crossing from April 2003. The employees believed that as this was the task that the workforce already performed they were best placed to win the tender. They argued that the Dartford Crossing had reached the end of one business cycle as the bridge had been built and debts paid off and that the next business cycle was running a more efficient crossing using their operational skills and knowledge. They submitted a pre-tender application that reflected their vision for a more cost efficient and effective crossing.

There was some dispute as to how the employee application was submitted. The Highways Agency states: "The DRC workforce failed to respond in time to the contract notice published in the Official Journal of the European Union." The Highways Agency subsequently allowed them an additional three weeks to submit a pre-qualification application.

Tender background

The workers however stated that contact had been made with the Highways Agency and that the Agency said they had noted the interest of the workforce in tendering. They were told that in accordance with EU regulations the tendering process had to be advertised via the internet. However despite their best endeavors the workers were only able to obtain information after the deadline. On this basis they were allowed to enter the process with three weeks to put a pre-qualification application together.

Local MP Angela Smith believed that initially the Highways Agency did not take the workers bid seriously as communications from the Agency referred to the bid being run by a “toll collector and traffic officer”. Furthermore the workers were also puzzled that after noting their interest the Highways Agency made no attempt to communicate with them.

The application was rejected by the Agency. “The submission fell short and it had shortcomings. A score sheet was used to rate the various sections of the submission. It was not close to the other submissions”, according to an Agency member of the appeals panel steering committee. An appeal failed to alter the Agency’s position. In October 2002, TGC handed the Minister for Transport a petition in support of its bid that contained the signatures of 88% of the workforce. The following month the Minister rejected the petition.

Rejection reasons

The research indicated that there were a number of reasons why the TGC bid was unsuccessful:

- **Too little support?**
It was led by two shop steward trade unionists (Colin Coe and Peter Yeldham, both Unison members and shop stewards) and, from April 2002 to help with the appeal process, a six-strong steering committee; but there is little evidence that the rest of the 285-strong workforce was genuinely committed to the proposal at the beginning.
- **Poor resources**
The workers’ bid also initially lacked sufficient resources, including financial backing. TGC initially had no clear strategy to take the bid forward and the early advice it received was poor and lacked substance. Later events pointed to how this could be rectified.
- **Preparation and options**
TGC opted for a “labour hires capital” or worker co-operative business model without examining the alternatives, such as the management/employee [MEBO] buy-out model – essentially a co-venture and co-bid between existing management and workforce – that had successfully been used on many occasions to secure contracts to supply local authority leisure services (see Appendix 2). The Highways Agency saw a major deficiency was the failure to get the support of the existing management. However, the workers saw management, past and present, as part of the problem and this is what helped drive their bid. There were also clear communication and logistical problems. It does not appear that a clear agenda was drawn up by the

Tender background

TGC leadership and its advisors of what needed doing, by when and who by. So much so that TGC failed to meet the 7 December 2001 deadline for the submission of pre-tender applications.

- **Institutional barriers**

Aside from failings on the part of TGC and the lack of both practical and financial support to help employees tender for a public contract, there were also institutional barriers. The public procurement process applied by the Highways Agency was not favourable to an employee bid. The following statement from the Highways Agency demonstrates the difficulties an employee bid faces:

"In drawing up a list of tenderers, the agency has to take into consideration the technical ability and financial and economic standing of the participants. The Agency needs to establish that firms have all the correct competencies for the project and its relevant past performance history is acceptable.

The Agency needs to be assured that the tendering company has the necessary working capital or access to it, and has confidence the bidder has an established track record. The TGC tender fell considerably behind the others in terms of quality and with no record it was too risky to let it in."

Submitting the tender

In October 2001 a contract notice was published in the Official Journal of the European Union inviting interested parties to apply to operate the Dartford Crossing from April 2003 for three and a half years with an option for a further two years. At this point, under European Procurement Law the interested parties had 37 days – until 7 December – to respond. TGC first learned that operation of the crossing was going out to tender and expressed an interest in mounting a bid in May 2001. So TGC had six months to prepare for the tender application process, yet it missed the deadline and, despite being re-admitted into the process, its bid was ultimately rejected.

Workers putting a bid together need to be clear about why they are interested in going into business and changing their status from employees to business owners. Effective and inspirational leadership also needs to emerge to drive the process forward and generate enthusiasm and buy-in among the wider workforce through presentations and professionally prepared printed material. Those leading the process also need to establish clear goals, responsibilities and action plans and impose strict timelines. Personal agendas need to be laid bare. A steering committee needs to be established. Identifying and accessing sources of advice and finance is crucial as is generating support among the wider community, including politicians and trade unions. The TGC bid failed in many of these areas.

A better place to work

DRC management informed the workforce in May 2001 that the running of the crossing would be put out to tender, with an announcement in the Autumn. Following the announcement, shop steward Colin Coe put a notice on the company notice board suggesting staff should consider making a bid and a colleague, Peter Yeldham, expressed an interest.

A major factor in their decision to explore the possibility of tendering for the contract was the existing state of employment relations and management style, and shift arrangements. Although there were several formal consultation mechanisms, trade unions and employees were generally marginalised and did not exert any real influence on management.

“The Dartford Crossing was a strange place, it was very militaristic. People called each other by their surname as well as Sir. There was horrendous sickness at the crossing”, was how the full-time Amicus official covering the facility described the situation.

One employee gave this description of the management culture at DRC, which had existed before the consortium took over and continued during its ownership of the facility. “Management ruled with an iron hand, bullying and intimidating, a feudal like system run primarily by the operations manager and the general manager, who was like a dictator. His style was copied to a lesser degree by other management, including line management, particularly among uniformed staff but was also adopted against maintenance staff.”

Submitting the tender

Tunnel shifts were particularly onerous, both physically and mentally. Operational staff covered the 24-hour cycle by working one of three 8-hour shifts – early, late and nights – over seven days with two or three days off between shifts. The shift pattern had been in place for 40 years and was not addressed until the new company took over in 2003. The work on the toll booths was particularly debilitating and soul destroying, described by one operator as being on a conveyor belt: “You can’t blow your nose, you can’t have a pee”.

DRC Chairman and former Conservative Cabinet Minister, Lord Cecil Parkinson, in a meeting with the TGC leadership, disclosed that he was shocked to learn from a discussion with one of the crossing’s workers that it was such a miserable place to work. He remarked that the place did not need to be run in such a militaristic fashion. “It could be run a better way. I would like to see it a happier place. The HR manager is a few years too late,” he noted.

Company policy was to delay recruitment until absolutely necessary, preferring to cover shortages by overtime. Some staff, therefore, often worked excessive overtime, involving long hours with inadequate rest periods.

During meetings with the union shop stewards in preparing the tender a number of themes came up:

- A culture of overworking had developed.
- Workers were not allowed adequate rest periods.
- A third of salary was made up of shift allowances. Overtime was calculated on the basis of hourly pay. Overtime for weekdays and Saturdays was therefore worth little more than the normal hourly rate.
- Employee morale was low – most employees did the job and nothing extra.
- There was a culture of management bullying and intimidation.
- Customers frequently physically and verbally abused employees. Customers frustrated by unnecessary delays regularly threw coins at the staff.

It was against this background that the workers at DRC developed their vision for a better place to work by taking over the operation. In its pre-tender qualification questionnaire, TGC stated that ownership of the crossing by the co-operative would improve motivation, reduce staff turnover, improve industrial relations, encourage staff development and increase willingness to train. Pay and profit sharing arrangements would be set at sufficient levels to encourage long-term commitment from employees.

Submitting the tender

Getting the workforce on board

Leadership involves persuading, inspiring and motivating and it is important for the employee leadership to have these qualities. Both Colin Coe and Peter Yeldham were keen to lead the bid until it was won and then step down to be replaced by an elected leadership and board of directors. A steering group consisting of six other members of staff was established in April 2002 to help with the appeals process. Coe and Yeldham chose the six largely because of their interest in the bid and specialist knowledge of the operation, although their individual ability to withstand any potential management recrimination for being involved was also a consideration.

A key early task for the leadership was building support among the rest of the workforce. Yet both the trade unions and the Highways Agency were critical of the lack of widespread employee support for the bid. The local Unison branch viewed the bid as being run by only a few workers at the crossing, while the Agency stated that TGC did not represent all of the workers.

Whilst it eventually transpired that the two unions representing staff at the crossing were not supportive this was not the case initially. The idea of the workforce managing the crossing had been talked about for some years. The management had discussed making a bid but declined and when asked by a Unison Regional Officer they admitted that they had failed to consult the workforce.

Although 250 (88%) of the 285-strong workforce eventually signed a petition in support of the workers being allowed to tender, this took more than a year and only happened after the Highways Agency rejected the tender. “We were helped perversely by the Highways Agency rejecting the tender and telling us we were not capable of running the crossing. We told the employees. That got their backs up and it culminated in handing a petition to the Department of Transport with 250 signatures out of a possible 285”, explains Peter Yeldham.

The entrenched attitudes of low self-belief, scepticism and defeatism rather than opposition were the problems that had to be overcome: “The bid is doomed to failure” and “You would not be allowed to succeed” were regular comments. Colin Coe summed up the general feeling: “Running your own business was a world beyond imagination”.

Submitting the tender

A failure of leadership or strategy?

The leadership failed to sell the idea of an employee owned operation to the workforce. There were no presentations to employees at which the proposal and vision for the business could be outlined. Indeed, the format of the 'steering group' was too loose, meetings were infrequent and not minuted properly, nor circulated to all concerned. Furthermore, meetings and decisions took place with third parties without prior notice and authorization

A public meeting for employees was organised for 12 December 2001 with Dame Pauline Green, Chief Executive of Co-operatives UK, invited to address the workers and build support for the tender. Yet this was five days after the deadline to submit a tender application and seven months after the nascent leadership had expressed an interest in putting in an employee tender.

In the event, the TGC decided to cancel the Pauline Green meeting as the Agency had at that point refused to accept a tender application past the due date. Cancelling the meeting only provided ammunition for sceptics among the workforce. "The sceptics at work had a field day. They said we couldn't do it and we had just given them the ammunition they needed to prove them right. And unfortunately they had a large audience", says Peter Yeldham. There was no ongoing attempt to sell the idea to the workers, with the TGC deciding to wait until it was allowed into the tender process before trying to generate support.

The shift patterns in operation at the crossing were not at all conducive to holding presentations as 80% of the staff, including management, were operational and meetings had to be held before or after shifts and off the premises.

In hindsight not enough was done to get rank and file staff on board. There were no regular minutes of the meetings of the steering group and no regular newsletters. Experience has shown that in any business it takes considerable time, financial investment and effort to win the support of workers to buy into an employee share scheme or buy-out. The TGC would prove to be no exception. It was short of resources. A website was eventually established to inform members of staff but by then it was too late.

One factor that possibly prevented widespread employee support for the bid was the lack of any real threat to jobs. Employee ownership can look a more attractive proposition to workers if the company they work for is threatened by closure.

Under the terms of the legislation (Dartford-Thurrock Crossing Act 1988) that transferred the existing tunnels and operation to DRC in 1988, the jobs of all staff, including management, were protected when the operation was put up for tender. "We also had an overwhelming attitude from the employees: 'We aren't going to lose our jobs anyway. We are not closing down - just moving to a new company.' On the face of it they were right as any company that won the tender had to comply with the terms of the legislation and TUPE (Transfer of Undertakings (Protection of Employment) Regulations)."

Submitting the tender

Seeking advice

Professional guidance is essential, if only to ensure workers can properly navigate the public procurement process, which requires both knowledge of the law and regulations as well as the culture, attitudes and beliefs that permeate Government departments. Guidance and advice is also required on the structure of a bid and on appropriate business models and financial modelling.

Recognising that they needed advice, the TGC contacted their union, which put them in touch with Co-operatives UK headquarters in Manchester and finally Social Enterprise London (SEL). SEL arranged a meeting in July 2001 with advisors from the Greenwich Co-operative Development Association and from Greenwich Leisure (GL Consulting). At this meeting two very different business models were presented – the worker co-operative business model and the Management/Employee buy-out model (see above) – even though that may not have been apparent to the workers at the time.

- GL Consultancy had successfully developed a management driven co-operative model that has been used on 100 occasions to externalise local Government leisure services.
- CAN, representing the Greenwich CDA, was experienced in a shopfloor, so-called ‘worker hires capital’ driven co-operative model.

Worker co-operative business model

Economic – an efficient co-operative will deliver benefits to the customer at a more competitive price. This is based on the superior productivity of such an operation. By not having to serve the mantra of increasing shareholder value, a co-operative can concentrate on delivering value to the stakeholders – the employees, customers and suppliers.

Social – employees in worker co-operatives tend to enjoy a healthier working environment – such as improved job satisfaction, reduced stress, greater empowerment and freedom, which are all crucial for psychological well being. They will have a greater degree of control over their working lives and research has shown a positive working experience spills over into the local community.

Governance – employee-owned enterprises tend to have a more effective and responsible form of corporate governance, developing both citizenship and experience of representative and participatory democracy.

Thomas W. Malone, Patrick J. McGovern, Professor at the MIT School of Management, stated that worker co-operatives, as demonstrated by the Mondragon Corporation Cooperativa in Spain, were amongst pioneers of a new model of work demonstrating flexibility, freedom, creativity and motivation which will revolutionise corporate thinking. **“Pioneers that cultivate a new model of work” *Financial Times* 12 August 2004**

Submitting the tender

Although the meeting was an opportunity to brief advisors on their vision for the business and seek advice on concrete measures to take the bid forward, it appears to some that the workers were not clear exactly what they wanted the meeting to achieve. According to Mark Sesnan of GL Consulting: "What was clear at this stage was that the two workers there basically only had an idea: it had not been thought through at this stage. There was no strategy. There were no resources. Management were not on side. Good business practice would point to the need to have a partner, a track record, financial standing, management in place and references. There needed to be a two pronged approach consisting of a political approach to ensure that the Highways Agency would consider a bid from the workers and secondly a business plan needed to be put together."

The TGC stated however: "We certainly knew what we wanted but we needed help and advice to achieve our objectives. I don't recall the suggestion of any business partners being involved until long after our pre qualification had been rejected."

These were the issues that needed to be resolved but it was not clear where the resources would come from to make this happen. CAN agreed to waive its fees and respond as best it could. "The workers came to us and asked for help. CAN works with the model of labour-hires-capital not capital-hires-labour and the shopfloor workers' request was in line with our ethos."

In choosing to go with CAN the workers were following a worker co-operative model, which assumed that the workers would be the prime drivers and management issues would be resolved by recruitment if there were managers they could not work with or were not interested in joining the workers' bid.

Although it was useful in securing support from CAN, the meeting failed to draw up a clear agenda of tasks to be done, by whom and when. It was mentioned that support could be obtained in Parliament, but none of the recommendations were carried through. This proved frustrating for the workers involved and damaged the embryonic bid.

In April 2002, Tower Hamlets Co-operative Development Agency agreed to provide their senior consultant (the author of this report) as project manager for the TGC bid. His remit was specifically to review the quality of the pre-tender proposal and organise an appeal to get the TGC tender back on track, as well as provide general advice, ideas and leadership.

Advice was then sought from the "Big Five" accountants, but this was well after the tender application was submitted and the workers were preparing to challenge the decision to reject their application. Both Grant Thornton and Deloitte and Touche offered assistance on a contingency basis. Deloitte and Touche was chosen to advise on the appeals process.

Submitting the tender

A role for partners

Too late in the day – only when the Highways Agency’s decision was being challenged – TGC acknowledged that a partner should have been brought into the bid at an early stage. It recognised that management expertise was needed to carry out the administration, budgeting, processes and financial control. TGC also conceded management was required to produce good financial models and assist them in developing a strategic vision to supplement their own pragmatic vision of where to take the business. To win the tender they needed to bring in expertise on running an organisation in contrast to the expertise gained by working in one.

However the issue of partnering was only alluded to in initial discussions. Later however Baroness Thornton, chair of the Social Enterprise Coalition, who was lobbying on behalf of the bid, suggested that TGC should approach Arup, an engineering consultancy, as a potential partner. The proposition was put to Arup, which responded by offering general advice on tendering for a public enterprise and how it would go about selecting a partner. Arup stressed the need to bring in partners who could provide ideas, creativity, expertise and technology that would solve the client’s problem.

The management

One of the main concerns of the Highways Agency, and a key factor in its rejection of the employee pre-qualification, was the perceived lack of management capability. The employee team needs to have this and it is often supplied in such situations by the incumbent management.

The workers at the Dartford Crossing faced a real problem in that they had severe reservations about the existing management, and a key reason for pursuing the tender was to improve the poor working conditions and company efficiency. This was the conundrum the employee tender would have had a greater chance of success had the existing management been involved. Most successful “worker buy-outs” of public services in the UK over the past two decades have involved the incumbent management.

No formal discussion took place between the TGC and the management team about its bid. According to one steering committee member: “The managers thought it was a big joke that we were applying. One stated: ‘You could never run a place like this’.” On the other hand, according to the TGC, when Le Crossing took over, the new management were seriously concerned about the level of hostility shown towards the management and the managing director in particular of the DRC.

However, after the pre-tender application was submitted at the beginning of January 2002, Peter Yeldham did have the opportunity to ask the managing director Peter Goddin informally if he would support the employees’ bid. He remarked that he would have no objection to working with the co-operative. Indeed, in a later interview, Peter Goddin said: “I am sure we [the management] would have endorsed the bid if we knew about it. It is a shame that they did not come and outline their vision to us. I am sure there would have

Submitting the tender

been sufficient enthusiasm. If the employees worked closely with us it would have given the bid more credence. There would have been issues such as the past financial records, indemnity in design and professional insurance.”

TGC did approach Lord Parkinson, chair of DRC, to discuss their plans, but only after it had submitted the pre-tender application. Lord Parkinson gave his full support to an employee bid and a commitment to bring the issue up at management meeting and request a meeting between management and TGC. However, this never happened as the tender application had closed.

Mounting a campaign

As well as securing the commitment of the workforce, employee bids to run public enterprises also need to attract wider support. The workers at the Dartford Crossing put the pre-tender submission together and submitted it without getting key players on board. There appeared to be an assumption that this could be done once this first hurdle of pre-qualifying was passed. “These points were addressed at the first meeting at Greenwich Leisure [with GL Consulting and CAN, see below] but the initiative was left with our advisor as he had volunteered to undertake that role. In retrospect we could have done much more ourselves to set the wheels in motion but at the time we really needed a guiding hand, whether it was our advisor or someone else”, says Colin Coe.

Know your customer

Commenting on the TGC bid to run the crossing, Mike Kerr of Deloitte and Touche, which examined the Highways Agency’s decision to reject the employee tender said: “In these circumstances, an employee bid needs to do a lot more to actively persuade the judges. There is a necessity to understand the customer’s needs - to know the commissioning agent, the relevant Government department, which in this case is the Highways Agency.”

It was important to sell the workers’ vision to the Government and illustrate how TGC would help the Agency achieve its objectives. It was important to identify and overcome the reservations the Agency had about a worker-led bid as it provides advice to the Minister who makes the final decision.

Although contact was made with the Highways Agency through the workers’ advisors, no serious attempt was made to influence the Agency. The TGC was disappointed that the Agency made no effort to get in touch and discuss what they had in mind: “Instead of welcoming our interest, or even seeking our intentions, we were informed that the tender notice would be duly advertised on the EU website and that our interest had been noted”.

Submitting the tender

Enlisting help from politicians and unions

Political support is vital to an employee bid for a public enterprise. MPs can lobby Ministers on behalf of the workforce. Again, the TGC failed to move quickly enough, not enlisting the support of politicians until its application had been rejected by the Highways Agency.

TGC did contact Dame Pauline Green, former Member of the European Parliament and now chief executive of Co-operatives UK. However, as described above, the meeting at which she was due to speak was due to be held several days after the deadline to submit the tender application, and was anyway subsequently cancelled.

The amount of potential political will that the TGC could have generated had it sought support earlier was demonstrated when its application to tender was rejected. Local Labour MPs and Labour peers got involved in lobbying, as well as the Secretary of State for Trade and Industry, Patricia Hewitt, for the Highways Agency to change its mind. Yet it was too late as opinions had become entrenched at this stage. The TGC was also able to generate considerable local press and radio coverage of its bid, but this only happened after its application was finally rejected in April 2002.

Trade unions can be effective allies in workers' efforts to run the organisations they work for, but they rarely are. The two unions at the crossing, Amicus and Unison, declined to support the bid. "The Unison regional office did not have any involvement with the TGC and the Amicus full time official was totally negative," according to Colin Coe.

Money, money, money

The cost of putting a bid together of the magnitude of the Dartford Crossing tender is considerable. The Highways Agency says that firms typically spend around £1 million on a tendering process with the expectation that they will be successful 25% of the time. Fees for advice, which are generally between £300,000 and £400,000, are often deferred or based on a successful outcome.

Buy-outs in the public sector are less certain and there is less interest in contingency fees. There is a tendency for the sponsoring Government department to load the fees with subsidies. The firm also needs to take some risk. The privatisation in the bus industry, when existing workforces purchased many bus firms, is an example – with around £50,000 to £100,000 made available by Government. The bill for advising on a tender would be in the vicinity of £300,000 to £400,000 plus success fees.

The fees associated with the successful employee buy-out of the Tower Colliery in South Wales was partly funded by a grant of £80,000 from the DTI – which would have to be paid back if the bid was successful but not if it failed (see Appendix 2). The Wales Co-operative Agency was paid £45,000 pounds for advising on the buy-out and developing the business plan, while PricewaterhouseCoopers submitted a bill for £300,000 for financial advice, which was in part paid by the DTI.

Submitting the tender

The TGC did not have funds and had no idea of where the funds would come from for advisory services. However, the Thames Gateway Co-operative Group, consisting of the Co-operative Development Agencies of Greenwich, Tower Hamlets and Essex agreed to fund nine days of CAN's time. CAN was also prepared to volunteer its own time to keep the bid moving. TGC made an application to Co-operative Action for £13,000 to fund project management of the bid, but this took 10 months to be approved.

One factor that differentiates the TGC bid from the Tower Colliery one or most of the successful management/employee buy-outs in the bus industry, and may explain why the Highways Agency was sceptical about the level of employee support, was the absence of any financial commitment from the workforce. At Tower Colliery, some 239 miners raised almost £2 million by investing £8,000 each to fund the buy-out. Similarly, staff at Brighton Buses invested a minimum £1,000 each to fund their bid. Peter Yeldham says that the DRC workers would have been put off if they were asked to fund development costs.

The TGC did not approach the workforce for any financial contribution and there were different views within the steering committee as to whether that would have been perceived as a negative by workers.

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Having failed to meet the deadline to submit a pre-tender questionnaire, the TGC was readmitted to the tendering process by the Highways Agency on 14 December and given three weeks to submit its application. The tender application was written over the Christmas period and submitted on 3 January 2002. The TGC was informed by the Highways Agency on 8 April that its bid to run the Dartford Crossing had been rejected.

Why the TGC bid failed

According to the Highways Agency the TGC pre-tender submission was not of sufficient quality for it to be accepted into the tender process. The TGC leadership partly acknowledged that its pre-tender questionnaire response could have been better.

A group met at the advisor's house to brainstorm the questions in the pre-tender questionnaire. The group was under-resourced but their intimate knowledge of how the crossing was managed and operated was an advantage. The lack of time resulted in a report that could have been more polished. "Everything was rushed. The answers we gave were not as good as they could have been - not as crisp and succinct as I would have liked. We were given just three weeks over the Christmas holiday period to prepare our submission", comments Colin Coe.

Nonetheless, both Deloitte & Touche and Grant Thornton, who both assessed the workers' pre-tender questionnaire, said it was of sufficient quality to warrant TGC being admitted to the next phase of the procurement process.

The Agency concluded, however, that the TGC was not competent enough to submit a tender. The main reservations the Highways Agency stated were:

- **Management structure** – it was not clear to the Highways Agency that the workers had the backing of senior management. The absence of senior DRC management from involvement in the workers' bid was seen by the Agency as a weakness in the TGC's pre-qualification application. TGC could not demonstrate that they could put together a structure to manage the operation. There was a need to prove the breadth of experience that TGC could directly employ management and manage the supply chain. The Agency was unclear how a co-operative would be set up and work. It was totally unfamiliar with the co-operative business model. "The business culture [of TGC] was deemed not to be Highways Agency – it was nowhere close. There were no buzz words", was one Agency comment on the TGC submission.

Transport Minister John Spellar supported the Agency view that the TGC lacked the necessary management capability. "I have reviewed the decision by the Highways Agency not to invite you to submit a tender. The Highways Agency clearly recognises the skill, expertise and commitment of the existing staff and these will be required by the new operation. However this is different from the ability of the company to perform the duties of the operator."

DRC managing director Peter Goddin concurred: "To succeed the bid needed to succeed on two issues: quality, which means an attractive consortia, and price. In the

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end the TGC bid broke down because the group that had the idea (TGC) had not come up with a way of managing the company.”

- **Financial** – it was not clear where the financial backing for the TGC bid was coming from. The Highways Agency was concerned that a tendering company could become insolvent. It was also unclear where the co-operative would make its returns. The Agency explained that the financial side gave them some concern and they had reservations about the financial backing.

TGC eventually did provide the Highways Agency with details of proposed financial backing from the Baxi Partnership - an employee ownership venture capital fund - which was prepared to underwrite an overdraft facility of between £2-3 million to fund working capital. In return the Baxi Partnership would have control of the board.

- **Planning** – The TGC bid also failed because of a lack of preparedness. The Highways Agency says that the key to a tender is forward planning. It is also important to establish contact early to allow both sides to understand each other’s aims and objectives. TGC failed to do so effectively. In addition, the Agency expressed its concern that the TGC did not represent all of the workers.

Reaction to the Agency's decision

The Highways Agency provided reasons why the workers’ tender was rejected in a face-to-face meeting with the TGC leadership and its advisors, but they were unimpressed by what the Agency had to say.

“What we heard was nothing short of amateurish. They listed their excuses and when asked to substantiate them they couldn’t. If they had done so to the satisfaction of all we would have walked away and said see you in a few years time. When questioned on procurement law they could not respond. They did not know the answers. We went mob handed to this meeting and the Agency was unprepared. In a previous letter from the Agency it had said we were technically qualified and then retracted it. They also asked if it was a management buy-out. Obviously they have no idea what a co-operative is”, is how Peter Yeldham describes the meeting.

Others were also disparaging of the Highways Agency. Deloitte and Touche criticised how the Agency had conducted the procurement process. Following the meeting with the Highways Agency, Mike Kerr of Deloitte and Touche wrote to Peter Yeldham on 28 June 2002 outlining his criticism of the Agency’s tendering process: “In my view, the Agency comprehensively failed to provide support for its decision within the terms permitted by the Services Directive. Consequently I suggest that you continue to press them to allow TGC to submit a tender at the next stage. In the event that they are not prepared to do this you should consider with your solicitors the merits of a legal challenge to the procurement.”

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Specific criticisms

Mike Kerr, a partner with Deloitte & Touche, believes the Dartford Crossing tender was a flawed procurement. His specific comments, which were made in a letter to Peter Yeldham following the face-to-face meeting between TGC and its advisors and the Highways Agency, were:

- 1 “The advertisement in the Official Journal of the European Communities [where all public tenders are placed] specified that four to six bids would be taken to the tender stage. The Highways Agency stated in the meeting to discuss its rejection of the TGC bid that a comprehensive analysis had been undertaken in order to arrive at five successful bids – ie there was no suggestion that the TGC bid had failed to meet a pre-specified threshold but simply that it was not one of the best five bids received. This seems inconsistent with the rules of the procurement set out in the OJEC advertisement.”
- 2 “The Highways Agency stated that it had only considered firms registered as suppliers with the Agency. However, it appeared not to fully understand the legal implications of this for applications from parties intending to bid through a newly formed company or a Special Purpose Vehicle (SPV). The Agency appears to have applied strict tests to the TGC proposals because the vehicle concerned had not yet traded but were unable to confirm that the same tests had been applied to other newly formed vehicles promoted by larger concerns. The Agency confirmed that the ‘successful five’ included a ‘joint venture’. When questioned about the nature of the joint venture it appeared likely that it would take exactly the same legal form as that of the TGC.”
- 3 “EU Procurement Regulations require that applications for pre-qualification should be assessed only by reference to ‘financial and economic standing’ and ‘technical ability’. The Highways Agency was asked for details of shortcomings of the TGC submission in these areas. With regard to technical capacity they stated that their concerns were in two areas:
 - business culture; and
 - evidence of support from the whole staff.

The concerns regarding business culture surrounded quality management and health and safety. In fact the TGC submission set out details of the existing quality and safety systems together with intended improvements to these. The approach of the Agency seems entirely inconsistent with its email to you dated 16 April, which stated that the ‘Agency is content with the technical ability of your firm’.”

- 4 “The Highways Agency claimed that it had serious reservations about the financial standing of the TGC. However, the Pre-Qualification Questionnaire did not include any requests for information in this area. TGC later provided details of its proposed backers, the Baxi Partnership Limited, in response to clarification questions. The Agency stated that it had not contacted Baxi. It is intended that TGC should use equity and debt to finance the new company in the same way as the vast majority of vehicles used by contractors in public procurements under PFI and other initiatives. The nature of this is well understood by Government departments but in the case of TGC appears to have been rejected without proper consideration of this.”

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Mike Kerr added that: "In summary, it would have been difficult to conclude from the meeting that the TGC had been fairly evaluated within the Procurement Regulations."

Local MP Angela Smith (Basildon and East Thurrock) also questioned the TGC's omission from the five-strong tender shortlist. "One reason [for its exclusion] was that the co-operative was unable to give any information about its track record as TGC – a clause that obviously mitigates against any new co-operatives (or indeed companies) that bid for work. So they submitted contracts recently completed by the outgoing Dartford River Crossing body as examples and received the Highways Agency's technical approval. I have now been told that this approval was 'made in error' as TGC had no input, or responsibility for these contracts."

A level playing field?

TGC and its supporters argue that workers' attempts to bid for public contracts are at a serious disadvantage. The procurement process, demands on TGC for information over and above what was required by the pre-tender questionnaire and a lack of political will all suggest the workers faced problems that the other bidders did not encounter.

"The Highways Agency told us we were a new company and therefore couldn't run the crossing. But the company that won the tender was a new company. None of the applicants were a toll running company like ours. The only thing we didn't have was the cut and thrust", says a steering group member.

Procurement process

The Highways Agency stated:

"The procurement process is governed by the restricted procedures of the Public Works Contract Regulations. This allows the Agency to assemble a tender list of a minimum of five firms who have responded to the contract notice of the Official Journal of the European Union. The criteria used to determine the best applications is restricted to considerations of technical ability, past performance and financial and economic standing."

The series of requirements demanded by the Highways Agency made it almost impossible for the workers to submit a successful tender. It would appear that initially the Highways Agency attempted to follow tender rules to accommodate the employee bid into their application procedure but found the process unworkable as this type of tender was not something it had dealt with before. Consequently, under the scoring system applied by the Agency it was not possible for the TGC to accumulate the necessary points in the pre-tender application.

Subsequent communications from the Agency on the reasons why the TGC bid was rejected were confusing, leading to the workers' formal challenge to the decision.

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Financial capability

The TGC bid fell foul of the tender process for other reasons too, especially its lack of a record of previous financial capability.

The European Commission has established standards of tendering in European procurement law. The principles of the treaty are backed by a series of EC Procurement Directives. There are two stages to submitting a tender under European regulations. The first, a pre-qualifying stage, focuses on the financial and technical ability of bids. In the second phase, the winning tender emerges based on price and quality – the most economically advantaged tender and not necessarily the lowest price.

The lack of technical ability in the TGC bid is difficult to dismiss, but the financial factors are more complex and are based on both financial capability - the skills for financial management and the robustness of the business model - and the financial capacity, which relates to the ability of TGC to raise capital. There were no questions relating to financial issues in the pre-tender questionnaire, indicating that the Highways Agency may have breached European procurement law because it failed to follow obligatory guidelines.

A communication from the Agency to the TGC raised these issues and asked for further clarification: "We spoke earlier about your application. I mentioned that while the Agency is content with the technical ability of your firm, our finance section have raised a number of points that need to be cleared. I would be grateful if you could provide me with the following information:

- 1 Is this a management buy-out?
- 2 How is the new company to be financed?
- 3 Do you have projected profit and loss statements and balance sheets?"

Tender criteria

The criteria applied by the Highways Agency for its pre-qualification selection is another issue. There are two methods of setting the level to separate pre-qualification applications. The Agency was allowed to choose up to seven pre-qualification tenders, but decided to choose between four and six. It could have either chosen the best six or set a threshold based on a scoring system relating to financial and technical capability. It appears that the Agency selected a scoring system which prejudiced the TGC as there were certain issues, such as previous financial performance, on which it could not be scored.

The three phases of privatisation over the past two decades help to illuminate how competence is viewed and how the TGC bid may have been assessed. The competence of employee bids was tested in the 1980s when the tax laws on ESOPs (employee share ownership plans) were changed, which greatly helped employee teams bid for privatised public organisations.

Employee buy-outs were able to demonstrate technical and financial competence, and were most successful when the incumbent management was involved. It was not a

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worker-led bid, but a management-employee buy-out (MEBO) in which the management team had, say, a 45% stake and the employees 55% in the form of an ESOP. It was in this context that the management team demonstrated financial competence.

The following provide contrasting examples of how a Government agency or department assesses the competency of an in-house bid for a public business:

- The privatisation of the National Bus Company's 25 subsidiaries was often in the form of a MEBO. The management-employee bids were able to demonstrate financial capability as they were competing in the marketplace.
- The British Rail privatisation demonstrated that it was impossible for in-house teams to have commercial experience as they had no experience of operating in a competitive market. There was only one management-led buy-out.
- The Next Step agencies involved the privatisation of public sector support services, such as in-house couriers and the car pool for Ministers. These organisations had a set of accounts and already competed and operated in a highly competitive market. In-house teams were successful and were provided with funds by Government to seek professional advice to structure bids.

Due to the requirement to demonstrate past financial capability, it was difficult for the TGC to demonstrate financial competence. Its advisers regard this process as elitist. According to CAN: "There is the necessity to change attitudes and stop the tendering process being an exclusive club of the big boys and this issue needs to be taken up at the national level. The tendering process is very formulaic – everyone makes a fortune out of the tendering industry.

There is prejudice against those who bring a lifetime of experience and a passion to bring personal excellence to the job, but without the accepted skills. There is a myth about the necessity for professional management. In employee buy-outs it is often the workers who turn around a business that has been run into the ground by management. It is therefore not an open process."

There is another potential reason the TGC was excluded early in the procurement cycle. As part of the tender process, companies invited to tender were allowed to spend one day with the DRC management and to examine the company's books. It is logical to assume that the Agency would not want the workers with their advisers, and possibly the trade unions, having access to financial information not publicly available in the company's published set of accounts.

This has been highlighted in a research project by Professor Jean Schaoul of the School of Accounting and Finance at the University of Manchester. Professor Shaoul's paper 'Highway Robbery – A Financial Analysis of Design and Build Finance and Operation in Roads in the UK' stated that commercial confidentiality is a smokescreen to hide costs from the public - making scrutiny, control and accountability all but impossible. Professor Schaoul concluded that PFIs were poor value for money - an impression that concurred with the feelings of the DRC workers. City accountants Grant Thornton believed that the co-operative could submit a very competitive tender as it would not be obliged to provide aggressive returns on capital for external shareholders. Unfortunately the TGC

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were involved in a level of business that was beyond tendering for the management of the crossing.

The TGC leadership also claim that the Highways Agency failed to keep them informed as agreed, which was why the workers missed the tender deadline.

Pre-tender application form

The Highways Agency issued the following instructions with the pre-tender document:

- It is essential that submissions are brief and concise. The questionnaire covers all issues to be addressed at pre-qualification stage and no further information is required other than that directly requested in the questionnaire. Responses are governed by available space and word limits as described within this document.
- Information submitted outside these requirements will be disregarded except that it will reflect negatively on assessment of the clarity of the overall submission.

The key phrase “and no further information is required other than that directly requested in the questionnaire” is effectively a trap for the uninitiated. As outlined earlier there is a grey area because the Government department might make a judgment on issues relating to competency even though it has not asked the question. The TGC took these guidelines as written and adhered to them. Organisations and their advisors with experience of public tendering would know exactly what to include and what to omit, and what additional information is acceptable. The TGC did not, at least initially, have access to this level of support and advice.

Two issues arise in the workers writing a bid. First, it became evident that TGC would be critical of the current management operation. There was concern in the group about being too critical of management, as the employees if unsuccessful would have to work with them later. Some of the criticisms were:

- A culture of confrontation
- Unacceptable waiting times on the crossing
- Lack of attention to work-life balance and high levels of absence
- Lack of communication and co-operation.

Second, the TGC tender application was a very valuable document – the distillation of years of experience of working at the crossing, which should not have been given away lightly. The guide 'Public procurement: a toolkit for social enterprises', published by the DTI, suggests in-house bidders for contracts should be careful in sharing information, stating: “It is advisable to weigh up whether sharing your thoughts may give other organisations the chance to take your concepts and gain their own advantage. If your ideas for innovations are precious to you then keep them back for yourself.”

The information provided by the TGC in its pre-tender questionnaire was an important negotiating tool that the workers could have used in negotiations with the Highways Agency. In March 2002, at a steering committee meeting held two months after the TGC

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had submitted its completed pre-tender questionnaire, workers recognised that suggestions made by them in the document were being implemented.

“When we were completing the pre-qualification questionnaire, it struck me then that we were shooting ourselves in the foot because that information, supposedly given to the Highways Agency in confidence, would get back to management. A number of points which were included in our must-change scenario were dealt with prior to the takeover so that leaves no doubt in my mind that is what occurred”, says Colin Coe.

This suggests the Agency at least divulged the information submitted by the TGC to the existing management, which is counter to the confidential nature of pre-tender documents. However the Highways Agency asserts that it did not divulge pre-qualification information to the existing management of DRC.

It also became obvious that the successful bidder, Le Crossing, valued the workers’ knowledge and experience and was relying on accessing it to run the crossing. Shop stewards were told at a meeting by Le Crossing’s chief executive after the company had won the tender that: “We don’t know how to run the company. You know how to run it. We must learn from you.”

Political will

There was little political support from the Department for Transport to assist a worker bid. Angela Smith, the local MP who championed the TGC bid, believes that it came down to minimising risk, which is the objective of public procurement. Ministers are understandably cautious in trying out what is widely seen as a relatively untested and unproven business model: “There was a lack of confidence, a lack of understanding, will this work? It was a gamble. There was a natural erring on the side of caution. The Minister must be confident that it doesn’t backfire.”

In support of this view, it's worth noting that the Highways Agency has been criticised by both the Commons Public Accounts Committee and the National Audit Office for "a lack of leadership and urgency in tackling congestion on England's motorways." This was seen to be due to "a lack of imaginative thinking and concentrating too hard on building and maintaining roads, and not enough on ensuring they did not become congested" (Financial Times, 28 June, 2005.)

History may be a factor. Previous Labour Governments had experimented with work co-operatives. The 1974-79 Labour administration had backed three co-operatives, but Triumph Meriden, Kirby Engineering and the Scottish Daily News were all financial failures. The Amicus union representative who led bargaining negotiations with management at the crossing summed up the lack of faith in the co-operative model: “If you look back at the history of (worker) co-operatives it’s not that brilliant. Looking back at the co-operative (movement) and comparing it with what it is now - it is now a disastrous set up. Even on the Continent I don’t know of any great successes. The Tony Benn co-operatives, Triumph Meriden, were a fucking disaster. The only one that was successful was the National Freight Corporation and Tony Benn was not involved. I can

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understand the Government's reluctance to allow the TGC to be involved as it was only the workers involved. There were huge chunks of expertise missing. It is far more complex than they realised."

Ministers and their advisers, in other words, may have paid more attention to experience from more than three decades before than to the fact that there are now numerous highly successful employee owned businesses in the UK in a sector that JOL calculates has combined annual turnover of not less than £20-25 billion – from the massive retailer John Lewis through to a host of small and medium sized co-owned enterprises and worker co-operatives.

JOL's recent report 'Shared Company: how employee ownership works' details extensive evidence of why employee owned businesses are frequently able to outperform other business models on key indicators favoured by the Treasury.

The lack of high-level political support for TGC was illustrated by the lack of financial backing from the Government, which contrasts with the DTI grant (£80,000) awarded to workers at Tower Colliery in 1994 to fund their bid for the colliery. The DTI also bestowed preferred-bidder status on the miners' buy-out, which, incidentally, did not include the incumbent management.

Conclusions

The TGC experience pointed the way to a new model of social enterprise for public procurement in the UK. It was one of workers engaging in a partnership with management/capital to bid for the business in which they work, allowing them to form a co-operative and design a highly-productive workplace and leave the financing and strategic issues to other experts.

The process of attempting to tender for the Dartford Crossing took a year and seven months from March 2001 to September 2002. The TGC attempt to tender failed. Many attempts fail the first time, but there is much to be learned from the experience that should be the basis of a very strong bid the next time workers somewhere in the UK decide to submit a tender. The chance of the bid succeeding would be greatly enhanced by the lessons learned from the TGC bid being addressed by Government, politicians, trade unions and employee ownership sector.

The main conclusions are:

- 1 The tender process and the rules adopted by the Highways Agency were a barrier to workers mounting a successful bid.
- 2 There is official prejudice against the worker co-operative model – there was not sufficient confidence in a worker bid by the Highways Agency to take the risk.
- 3 TGC pre-qualification application was below standard – the tender application was rushed and there was little time to write the submission, but two firms of accountants believed it was sufficient to get into the next phase.
- 4 TGC failed, until too late in the process, to generate sufficient support among the wider workforce or to mobilise political support.
- 5 There was no personal financial support for the bid from the workforce, which demonstrated a lack of genuine commitment.
- 6 Failure to secure the support and participation of the incumbent management undermined the TGC bid.
- 7 TGC failed to develop a trusting and working relationship with the Highways Agency.
- 8 Too late in the day, the TGC realised the need to identify and involve suitable partners.
- 9 There was a lack of potential advisors for a workers' bid. Accessing appropriate advice was further hampered by the lack of financial resources.
- 10 The cost of tendering for a large public contract by the workforce is prohibitive.
- 11 The trade unions failed to provide any support for the bid and were generally negative about the plan.
- 12 The workers were inhibited from tendering for fear of being branded “troublemakers” by the existing management as they were very critical of how the crossing was being managed and operated by DRC.

Policy recommendations

This report recommends that several steps are taken – by the key stakeholders - to ensure that the UK's public procurement and bidding process works fairly, and that employee tenders can compete on a more level playing field.

'The Tender Trap' has argued that even though employee owned businesses now have an established track record in the UK, employee-run enterprise is still treated by policy makers and their advisers as an unproved business model. The entire infrastructure of public procurement reflects this doubt and antipathy.

Accountants, bankers, solicitors, public officials and other key players in the process are quite simply under-informed about the nature and potential advantages of employee ownership, co-operatives, and management/employee buy-outs. At the same time, workforces themselves are frequently under-equipped to enter the competitive arena of public bidding.

The author, publisher and funder of this report believe there would be immense advantages to the quality of public services, the diversity of business models in the economy, and the fairness of the public procurement process if the following steps were taken to end what, for the Thames Gateway Co-operative, amounts to a tender trap:

- 1 Information is not readily available for employees on how to participate successfully in the public procurement system. Key stakeholders should collaborate to produce a manual similar to the DTI guide 'Public Procurement – a toolkit'. Trade unions should help to ensure that the toolkit is widely distributed to union officials and other workforce representatives.
- 2 The DTI should issue information and guidelines to Government departments and relevant officials explaining the positive role employee owned enterprises and workforce bids are entitled to play in the public procurement process.
- 3 Stakeholders such as JOL, Co-operatives UK and unions should ensure that there are easy-to-read publications for employees explaining about employee ownership, co-operative enterprise, employee buy-outs, and how workforces can bid for public contracts.
- 4 The DTI and other stakeholders should collaborate on a research study into how the public procurement process can operate more accessibly for workforce bids and employee owned enterprises.
- 5 The funds and other resources required for workforces to prepare and submit a tender for public contracts are excessively and potentially prohibitively high. The Government should review the scope for providing financial or other assistance to such bids.
- 6 Key stakeholders should collaborate to improve the training, support and expertise available to advise and mentor employee teams' leaderships through the tender process.

Policy recommendations

- 7 Stakeholders should collaborate to establish a system for providing rapid and very widely accessible information on new tender opportunities.
- 8 The current public procurement tender process discriminates against employee bids where they are required to:
 - a. Be on the preferred tender list, which is impossible
 - b. Have a track record, which is also impossible
 - c. Have published accounts, which again is impossible.

Government should now review the bidding process and requirements to remove anomalous and unfair requirements which discriminate against employee bids. In particular, Government should ensure that all its agency and other public procurement arms issue and observe transparent criteria, in a manner that is consistent and fair to all bidders.

- 9 The TUC should encourage unions to re-assess their attitudes to employee ownership, and the support they are able and willing to give to employee buy-outs and workforce bids for public contracts.
- 10 Companies bidding for public contracts should consider a partnership arrangement with the existing workforce or at least offering them financial participation.

Appendix 1: Sequence of events

2001

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|---------------|--|
| May | Workers informed of intention to tender and information put on notice board by shop steward. |
| July | Contact made with Social Enterprise London and meeting organised with Greenwich Leisure and Greenwich CDA. |
| October 3rd | Tender for the Dartford River Crossing announced in the press. |
| December 7th | Deadline to submit pre-qualification application passes and workers excluded from the process. |
| December 12th | Meeting for Dame Pauline Green to address the workers cancelled. |
| December 14th | Workers readmitted into the tendering process and given three weeks to submit the pre-qualification application. |

2002

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|--------------|--|
| January 3rd | Pre-Tender Application submitted. |
| January | Meeting with Lord Parkinson, Chairman of Dartford River Crossing Limited. |
| March | Workers claim that their confidential bid proposals were being implemented. |
| April 8th | Highways Agency informs TGC that the application has been rejected. |
| April | Local MPs write to the Highways Agency expressing support for TGC. |
| June 20th | Appeal meeting with Highways Agency confirms application is rejected. |
| June | DTI Minister Patricia Hewitt launches the Social Enterprise strategy to, among other things, support social enterprises who tender for Government procurement. |
| June | Advice from QC. Legal action considered. Rejected as too expensive. |
| July | PR Agency appointed by TGC. |
| July | Press and radio campaign. |
| August | Lobbying of Minister of Transport by Lord Graham begins. |
| September | Complaint registered with European Commission. |
| October 15th | Petition with 250 signatures presented to Minister for Transport. |
| November | Minister rejects petition. |

Appendix 2: Case Studies

Tower Colliery and Greenwich Leisure provide two contrasting examples of co-operative-based businesses that succeeded in purchasing a business from the public sector.

The case of the Tower Colliery is similar to the TGC bid as it was also worker-led. Greenwich Leisure is a co-operative, structured as an Industrial Provident Society that has become a model for the externalisation of leisure services from local authorities. The leisure services trust model has now been replicated more than a hundred times in the UK.

Tower Colliery

Management at Tower Colliery in south Wales had spent some time re-capitalising the loss-making pit in preparation for its closure when the miners would be made redundant and they could purchase and restart the business. The 300 miners decided to challenge this, at which point management declined to be involved in the buy-out.

The miners made contact with the Wales Co-operative Centre (WCC) through their union, the National Union of Mineworkers (NUM), which knew of the Wales TUC-sponsored WCC. The process of making contact took some time and the miners nearly missed the pre-qualifying stage, which required a letter expressing interest to the bankers handling the privatisation of the UK coal fields.

As the coal industry was being sold off on a regional basis, a deputation sought permission from the then Secretary of State for Wales for the miners to bid for their pit. Permission was granted.

The DTI offered to pay 50% of all costs involved in making the bid, which resulted in the WCC receiving £45,000 and PricewaterhouseCoopers, which provided advice on how to structure the bid, put in a bill for £300,000 and received some payment. It was necessary to have PWC involved, as the Treasury would only deal with one of the top-five accountancy firms.

The miners were granted preferred-bidder status. The tender regulations involved explaining the management structure and demonstrating how the company would be financially viable. There were no problems in getting information on the operation and there were no barriers to the process - in fact the authorities were very helpful.

The existing management refused to join the employee tender. "They didn't join even after personal approaches. The miners recruited their own managers by targeting people they knew in the industry", says WCC Advisor Norman Watson.

The inclusion of PWC added strength to the bid but it is clear from the Tower experience that advisory teams must be brought in at the right time, when the business plan is ready in draft form, and the management and finances are in place. Also, the employees and the local worker co-operative agency need to know their limits.

The miners also raised their own funds, collecting almost £2 million - with each miner contributing £8,000. However, miners did not know the value of the pit due to

Appendix 2: Case Studies

depreciation issues and because they were not buying the fixed assets. To overcome this problem, PWC proposed a £1 million deposit, with the £9 million balance paid out of a royalty of £3.20 per tonne of coal over five years. This was accepted.

Greenwich Leisure Limited

Greenwich Leisure Limited (GLL) is a “not for profit” industrial provident society with an employee-controlled board. It was formed in 1993 to manage Greenwich Leisure Centre. It was the first of its kind in the UK and now 27 other local authorities have followed this model. It is an example of the so-called new third-way social enterprises favoured by the Government.

Greenwich Council pioneered the way by suggesting an externalisation of its swimming pools. There is long co-operative tradition in the borough so a co-operative was favoured. In 1993, a Society for the Benefit of the Community was registered under the Industrial and Provident Societies Act and the existing seven leisure centres were transferred to it. GLL had a turnover of £21.9 million in 2003.

The number of contracted staff rose from 110 in 1993 to 300 in 2000. There is a sickness rate of 1.5% as opposed to the industry norm of between 6% and 8%, and London local authority norms of between 10% and 15%. GLL also has an extremely low level of permanent staff turnover. The trade unions were reluctant to become involved initially, but the TGWU was encouraged to support the plan with the promise of a seat on the Board. Unison, however, did not support the venture.

The Greenwich model is an ideal vehicle to secure for staff the public facilities in which they work. The industrial and provident society model combines the benefits of commercial management, the dedication of stakeholders, including both staff and customers, with public accountability and ownership. It provides private sector freedom to manage alongside public sector values and ethos. All surpluses are reinvested in improving existing service, developing new ones and staff development.

Appendix 3: Sources of help

JOL

Job Ownership Limited
2nd Floor
Downstream Building
1 London Bridge
London SE1 9BG
www.jol.org.uk
020 7022 1960
Contact: Patrick Burns

Co-operatives UK

Holyoake House
Hanover Street
Manchester M60 0AS
0161 246 2900
Contact: Helen Seymour

Deloitte and Touche

Stonecutter Court
1 Stonecutter Street
London EC4A 4TR
020 7247 1056
Contact: Mike Kerr

Social Enterprise Unit

Small Business Service
Department of Trade and Industry
Kingsgate House
66 - 74 Victoria Street
London SW1E 6SW
0845 001 0031

GL Consulting

Middlegate House
The Royal Arsenal
London SE 18 6SX
020 8317 5000
Contact: Mark Sesnan

Ithaca

Ithaca House
72 Cambria Road
London SE5 9AS
020 7737 1899
Contact: Anthony Jensen

Social Enterprise London

3rd Floor
Downstream Building
1 London Bridge
London SE1 9BG
020 7022 1920
Contact: Allison Ogden-Newton

Succession London

Business Development Centre
7-15 Greatorex Street
London E1 5NF
020 7247 1056
Contact: Gregory Cohn



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