



Appointing the Olympic Delivery Authority's delivery partner

Highly innovative delivery partner model helps build London 2012 infrastructure on time and under budget



Situation

The London 2012 Olympic and Paralympic Games was the biggest sporting event London had ever staged. Over 32 days of competition the city hosted 9 million spectators and 16,500 athletes from 205 nations. We were the official legal services provider to the Games.

Behind the scenes lay thousands of contracts, agreements and licences that were crucial to making London 2012 a success, none more so than the contract appointing a delivery partner to manage the construction and infrastructure on behalf of the Olympic Delivery Authority (ODA), the public body responsible for developing and building the venues and infrastructure for the Games.

We led and project-managed the procurement process, and undertook all the contract drafting and negotiations needed to appoint the delivery partner. When the process began in 2006, it was Britain's first major competitive dialogue tender to take place under new EU procurement rules. The infrastructure budget, set at £2.4bn at the time of the bid to stage the Games in 2005, increased to over £9bn in 2007.

Challenges

- ▶ The ODA was a small but highly capable organisation with a limited lifespan. When it was set up, it was agreed that the bulk of its capability would come from a delivery partner. Getting the right partner, incentivised and guided appropriately and clearly by the contract, was crucial to delivering the infrastructure needed to stage the Games.

- ▶ The contract had to set the standard for the whole of the London 2012 procurement. Intense public and press interest meant that not only did it have to do its job faultlessly, but it also needed to hit the right note in terms of safety and environmental issues, stakeholder involvement and what happened to the infrastructure when the Games were over. It had to be a model of its kind.
- ▶ Timing was tight: with a fixed deadline and a multi-billion-pound budget, there was not a minute to lose.

Solutions

- ▶ The competitive dialogue process helped both the ODA and bidders work out what they wanted from the delivery partner contract and to find out whether they could work together. This was critical in a relationship where the ODA was the client but would also work side-by-side with the delivery partner.
- ▶ The delivery partner was incentivised primarily by reference to the overall programme and not perversely incentivised to cut its own costs to the detriment of the programme as a whole. The provisions of the contract closely controlled the delivery partner's costs.
- ▶ The contract was based on the NEC3 professional services contract. It included provisions for stakeholder warranties, cost build-up elements, availability of employees, subcontracting controls, protection of branding and intellectual property – and for the delivery partner to provide 'open book' financial information and services to be priced by way of task orders. Initially a single draft was issued to bidders but divergences were allowed during the dialogue. John Armit, ODA Chairman, has credited the decision to use the NEC3 contract as the most important factor in getting the Olympic Park built on time because it encourages problems to be resolved when they occur, rather than ending up in court at the end of the process.



The model has informed other major infrastructure projects, from London's Crossrail commuter railway to the Dubai Expo 2020

- ▶ Unusually, the contract included the ability to task the delivery partner to step in itself or by a nominee at different levels in the supply chain to remedy contractor or subcontractor default. It also built in an emphasis on securing social and environmental benefits and an exemplary safety culture. The Games themselves delivered real socio-economic benefits and apprentice training.
- ▶ With timing so tight, the delivery partner procurement had to begin while the ODA was still being set up and many posts were filled by secondees. As permanent employees came into post, they attended dialogue sessions in their field of expertise. We contributed lawyers to the night and day support teams who worked round the clock over several months on the discussion documents and contract. The day team handled the negotiations while the night team did the drafting.
- ▶ Three streams of dialogue ran in parallel with the bidders for four days a week: technical, financial and commercial. The fifth day was spent on governance and keeping the stakeholders – the Treasury, the London boroughs, the London mayor and the Department of Culture, Media and Sport – up to date with progress. The Treasury, in particular, was keen to see the budget spent in the most effective way.

Impact

London 2012 was delivered on time and under budget, with the highly innovative ODA delivery partner model playing a large part.

We've gone on to use the delivery partner model in high-profile infrastructure projects worldwide. These include the Qatar 2022 World Cup, the Thames Tideway tunnel in the UK and an upgrade of the Pacific Highway in Australia, where we're supporting our Australian relationship law firm Clayton Utz to advise the New South Wales government.

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