

**PROCUREMENT OF INTERMEDIARY SERVICES:
INTERPRETERS IN THE NETHERLANDS**

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ABSTRACT. This paper reports on the procurement of intermediary services in interpreters to approximately one third of all public clients in The Netherlands. The procurement has led to a smooth transition from public to a private organization and the new intermediary performs to the satisfaction of its clients. The problem is however that the procurement has led to a situation with a dominant intermediary. We discuss the implications in two situations that are very likely to take place in the near future: a situation in which a new lot will be procured on the monopolized market, and a situation in which the current contract will be replaced. One of the recommendations is to use the most-favored-costumer clause of the old contract to attract new entrants.

INTRODUCTION

The large and complex procurement of intermediary services in interpreters and translators to approximately one-third of the public domain in The Netherlands has not attracted much attention, in spite of the fact that it tackles a problem that the entire health care, the broadly defined justice domain and many other public services face on a day-to-day basis. That is probably because this intermediary solves a problem that is dispersed over many organizations and it is no ‘main concern’ of any of the organizations. Perhaps another reason for the silence around the topic is that the accurate expression “procurement of intermediary services in interpreters and translators” is something that is difficult to comprehend, however it is quite simple to understand considering the following example.

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Suppose you are a general practitioner. You receive a visit from a patient, perhaps a tourist or an immigrant not speaking your language. A general practitioner is liable for the treatment he offers, no matter whether there is a language barrier or not. In order to communicate effectively with your patient you need to find someone to interpret. If you had no arrangements on such situations, you would probably pick up Yellow Pages (or the internet equivalent of it) and start searching for telephone numbers of interpreters in the language you suspect your patient speaks. Then start calling the numbers you have collected and get one voicemail after the other until you finally get hold of an interpreter in the language you need. Next, the negotiation on the price and on the arrangements on the way of billing can start. The interpreter, who has never made business with you or your patient, might even request payment in advance. Hopefully, it was not an emergency situation so that you can proceed with your job. If you note the interpreter's number, you have one contact for one language. You have a couple of hundred to go.

The time and therefore income you lose by searching for an appropriate interpreter are search costs. It would save you time if you could call some coordinator (an intermediary) that would put you through to an interpreter in the requested language who is available at the moment when requested. Ideally you would want an intermediary who is sufficiently large, so that any time you call with a request to find an interpreter in any language, they can put you through. However if you as an individual general practitioner were to negotiate such a contract with a large intermediary, you would certainly be in a less favorable position than for example if you negotiated collectively with your fellow general practitioners, or maybe even together with colleagues from the entire health care sector.

A similar search problem occurs to policemen, district attorneys and judges when they handle a criminal case concerning a foreigner; as to: officers of the immigration and asylum authority, judges handling immigration cases, the organization responsible for the accommodation and medical care of asylum seekers, occasionally the tax authority, customs, social work, child protection, penitentiary institutes and many more. All these institutions performing public tasks must make sure that they can carry out their activities when they face a language barrier.

This paper is a case study of the procurement of intermediary services to the entire health care and basically all public users except for

the police, the courts and the asylum authority. Before this procurement took place, the intermediary services were supplied by a public organization. This public organization was privatized by means of procurement. The object of the procurement was the exclusive “license” to intermediate interpreters to the participating organizations for a certain period of time. The aim of this paper is to analyze the implications of this procurement and derive lessons for subsequent procurements. The first opportunity to benefit from the insights of this case study is a very similar procurement of the Immigration and Asylum Authority that will soon take place. This tender is comparable to a situation in which a new lot (of comparable size) is being procured on a monopolized market. Another situation in which the lessons from the first tender are of interest is the procurement that will replace the current contract when its term expires.

This paper is structured as follows. Section 2 describes the institutional background. The recent procurement is at the focus of Section 3: this section begins with the narrative history of the procurement, followed by a summary of the main elements of the contract and a sketch of the first impressions on the performance of the “new” intermediary. Section 4 discusses the implications of the procurement of the Immigration and Asylum Authority that will soon put a new lot of comparable size on the market. Section 5 focuses on the challenges of the procurement that will replace the current contract once its term expires. Section 6 concludes.

THE INSTITUTIONAL BACKGROUND

The institutional history of the large intermediary in interpreters and translators called TVCN, which stands for Center for Interpreters and Translators Netherlands,¹ explains the background of the procurement. The origin of TVCN goes back to the second half of the 1970’s when six regional intermediation offices were set up with the financial support of the Ministry of Public Health and the Ministry of Culture, Recreation and Social Work. Initially, intermediation was for free, however users had to pay for the services of interpreters, who were and still are, free-lance professionals. Later, these centers were subsidized to the extent that interpreters and translators were paid from public resources so that e.g. neither the patient nor the doctor had to pay for the services.

It was not that users of these regional intermediaries were *obliged* to use these regional centers to come into contact with interpreters: they were just *entitled* to. However, if a user was entitled to use the subsidized services, he could use interpreters free of costs, as the costs were simply covered from the central budget. So there was a very strong incentive to use this intermediary. De facto, it was a reserved market: no other supplier of intermediary services could enter the public segment of the market and equivalently, interpreters could only offer their services through these intermediaries to the clients who had access to the subsidized services.

Who was entitled to use these services? Basically, on top of the health care sector, many other users from the public sector were entitled to use the subsidized intermediaries *and* interpreters. Roughly speaking, the public users that were *not* entitled to use the services are the organizations on the domain of criminal and asylum justice: (1) the courts; (2) the Immigration and Asylum Authority; and (3) (with some exceptions) the police.

An obvious question on the side, is of course why services were provided for free to the 'entitled' users? Concerning prison officers or child protection employees, the interpreters work is closely related to the work of some public official, so the free provision of services to these officials makes sense. Doctors however are not quite "public" clients. Some doctors are free professionals; others are on the payroll of hospitals that are no public organizations either. The bill of an interpreter could be charged to the doctor, who on his turn could include these costs on the bill to the patients or their health insurer. Without going too much into the public interest at the background, some illustrations in support of the public interest argument is insightful. In the absence of professional interpreters at very low costs, it is tempting to rely on non-professionals such as family members. This could seriously threaten the quality of health care. An extreme example of the possible problems is an abortion that was performed on request of a husband, while the non-Dutch speaking wife had quite a different idea regarding the treatment she would get. A less extreme, quite common but none the less unwanted other example is the difficult communication when patients attempt to discuss intimate medical problems in flower language using their children to translate. For these reasons, and from efficiency considerations, the use of interpreters in case of a language barrier in The Netherlands is encouraged by the provision of services for free.

Now let's leave the side-track on public interests and return to the main track on the intermediary. In 1996 the responsibility for the six regional intermediaries were brought under the responsibility of the Minister of Justice.² This responsibility included setting the fees (for more on fee regulation, see Section 4) and bearing the budgetary responsibility: all costs of the provision of interpreting services through these regional intermediaries were financed from a separated account on the budget of the Ministry of Justice. This was a so-called open-end account. If the total costs exceeded what had been reserved to this end, than deficit was just covered without any question.

The link between the users of the services and the responsible Ministries (first Public Health and later Justice) was often not a direct one so no wonder that users were not quite disciplined. Interpreters were used rather inefficiently; there were a lot of last-minute cancellations of planned assignments, no attention was paid to minimize travel costs so that interpreters were frequently working the other side of the country, while there were interpreters available closer by, and if there were two assignments on the same location for one language, two different interpreters were sent instead of scheduling the two assignments right after the other. And all costs were simply covered by the budget of (first the Ministry of Public Health and later) Justice. Besides the critique on the inefficiency of the system, there were also complaints on the quality of interpreters. Rethinking the system was inevitable. At the same time, it was realized that intermediation of interpreters is not necessarily a task that has to be performed by a public organization.

The plan was to re-organize the regional intermediaries so that they become more efficient and prepared for privatization. Privatization would then proceed by means of procurement whereby the winning bidder would not only win the license to intermediate to the traditional clients but would also take over personnel and facilities.

The reorganization started in 2000 when the six regional centers were merged into one national organization and TVCN was born. The regional centers were replaced by one central office coordinating all assignments through The Netherlands. The organization was slimmed down from an employment that was equivalent to 160 full time employees to just 40 fte's.

At the same time, some innovations were introduced. Most importantly, a telecommunication platform was set up where interpreters

log on through internet, whenever they are available. Clients wishing to use a telephone-interpreter are put through to an interpreter in the language of request within a couple of minutes. The system registers the length of the call and takes care of administration and billing. Besides this platform, a central planning facility is developed that assigns interpreters to sessions that are requested by a buyer for later moment in time.

The reorganization and innovations increased the productivity of intermediation spectacularly: the production of a full time employee of the intermediary, measured by the number of hours of services she intermediated, planned and administrated increased from 4.500 hours in the year 2000 to 10.000 hours in 2004.

Besides the preparation of TVCN for the tender, there was another important issue to be taken care of: repairing the budgetary responsibility of users, at least to the extent to which it was possible. As of 2005 the account reserved for the deployment of interpreters through TVCN on the budget of the Ministry of Justice, was split and transferred to the organizations from which calls originated from. This means for example that the costs of a service to a general practitioner from the above example were not billed to the Ministry of Justice as between 1996 and 2004, but to the Ministry of Public Health.

After all these preparations, the intermediary services provided by TVCN were put out to European tender. This tender and its implications is the main topic of this paper.

THE PROCUREMENT

The Narrative History of the Procurement

The preparations for the procurement have started in 2003 with consultations with possible candidates. Interviews were held with two types of candidates: (1) large temporary labor agencies and (2) commercial intermediaries in interpreters and translators. The first group consisted of the well known large organizations in flexible work; the ones that intermediate in temporary jobs in all sorts of professions at all possible educational levels. The second type of candidate was specialized (and much smaller) agencies who intermediate in interpreters to private clients and (on an ad hoc basis) to other Justice related users. These

specialized intermediaries had their own pool of interpreters, they had a good understanding of what was involved but did not operate on the same scale as the large temporary labor agencies.

The discussions with these possible candidates were the major source of considerations of what actually would be at stake. One could think of issues such as the question whether taking over the labor force and existing infrastructure should be a pre-requisite. The candidates' willingness to compete for lots was considered as well as the candidates' views on what a feasible distribution of lots would be: regional separation, lots separated by the users or types of services.

The announcement of the procurement was published in five large Dutch newspapers on the 4th of January 2005. What was finally at stake was the exclusive right to intermediate interpreters to all organizations participating in the procurement. The participants to the procurement were practically the same users who were formally entitled to use TVCN's services; the Ministry of Justice (on behalf of users from the organizations for accommodation and medical care of asylum seekers, for penitentiary institutes and the Child Protection Agency *but not* the institutions on the domain of criminal and asylum justice), the Ministry of Public Health, Welfare and Sport, the Ministry of Internal Affairs, the Ministry of Defense and the Ministry of Finance. The lead for the procurement was taken by the Ministry of Justice.

As it appeared, there were no separate lots. Intermediation for telephone interpreting, for interpreting with the physical presence of the interpreter as well as for the translation of written texts, was procured at once. However, at the time of the announcement, there were plans with subsequent procurements of intermediary services on behalf of at least two courts that have previously not been served by TVCN. So the expectations of potential bidders might have been that there would be lots coming on the market at some later moment. These plans however had been shelved for some time. We will come back to subsequent procurements in Section 4.

The announcement in the newspaper also made clear that taking over the personnel of TVCN (at that moment approximately 40 fte) and facilities was a condition; this was believed to be the safeguard for the continuity in the level of service provision.

The newspaper ad invited candidates to submit a letter of interest. However, only a limited number of parties would be selected to prepare a proposal. The allocation mechanism was a beauty contest (which is sometimes also referred to under the terminology ‘request for proposals’) in which the license is awarded to the party presenting the best proposal. The proposals were evaluated according to the following scoring rule: fees and other costs (30%), arrangements on taking over personnel (20%), plan of implementation (15%), policy on account management (10%), optimalization of use of the service (10%), complaints policy (10%) and marketing (5%). Note that only 30% weight is given to fees and costs. Clearly, this mechanism would not produce the cheapest solution, but in retrospect, it seems that that was only a secondary objective in this procurement. The continuity of service provision was considered as more important.

The expectations on the buyer’s side were rather high concerning participation. The preparatory consultations gave the impression that there would be a lot of parties who would be seriously interested. It was believed that also smaller intermediaries would make a chance by for example forming bidding consortia with larger temporary employment agencies. The number of parties that eventually have reacted to the call was sobering: only six candidates have shown interest to participate in the tender. From these six candidates, four have been selected to prepare a proposal. As it later turned out, none of the four proposals, that had been prepared, satisfied all requirements. The procurement organizers therefore broke the line of action as planned in advance and proposed a next round based on bargaining. Two candidates remained in the contest.

The procurement was finally awarded to Manpower Business Solutions, a subsidiary of Manpower Netherlands BV. Manpower is one of the largest international companies in “services in employability”. Although most people associate Manpower with temporary employment services, this is quite a different branch. Manpower Business Solutions is specialized in “insourcing and outsourcing” of activities that do not belong to the core-activities of organizations. Manpower takes over certain labor-intensive activities from other organizations, including personnel and builds a new broader business model around it. Here, the idea was to take over TVCN and put the service on the market for new clients: mainly private clients within the Netherlands or introducing this model to public clients in other countries.

As of 1st of January 2006, TVCN's personnel and activities were taken over by Manpower Business Solutions. TVCN is functioning under its' old name, however the trade-mark is still a property of the Ministry of Justice.

The Terms of the Contract in a Nutshell

The contract period was set at 3+1 years. (At the time of writing this paper, it was not yet officially confirmed, but it is very likely that the contract would be extended with that additional year, meaning that the current contract would be in force until 1st of January 2010.)

The contract is exclusive in the sense that the participating organizations would not use interpreters through other means. Exclusivity did not go both ways: while all buyers buy exclusively through the intermediary, the winner of the procurement was encouraged to look for other clients. Too much reliance by the winner on this one contract was seen as very unappealing to the buyers. The contract however contains a provision that, if the intermediary is offering a service to new clients, and if he offers the same service cheaper to these new clients, than the buyers participating in the tender would too be charged the lower price. This provision comes from the fear that the intermediary would cross-subsidize at the cost of the buyers and in favor of the new clients.

Note furthermore, that the object of this procurement were intermediary services. Buyers buy intermediary services as well as the services that are being intermediated in. This implies that both intermediary and interpreters' fees had to be quoted by candidates. The procurement design specified that quotes had to be made according to the scheme as presented in Table 1.

Let's start by the fees for intermediary services. The intermediation fee was allowed to differ for the different types of services: (a) ad hoc telephone interpreting, (b) telephone reserved and (c) personal presence (d) standard translations (e) translations to and from character script and (f) emergency translations; however it had to be a fixed fee for each successful match. The intermediation fee is thus not a function of the length of the assignment: it is the same amount no matter whether it is a very short or very long or large assignment. Furthermore, the

TABLE 1
Schemes for Quotes

| Panel A. Schemes for quotes interpreting assignments (exclusive translations) | | | |
|---|----------------------|--------------------|-----------------------|
| Types of costs | ad hoc telephone | telephone reserved | personal presence |
| Fee for intermediation (fixed fee for each successful match) | | | |
| Mark-up on intermediation fee in case of outside office hours (fixed fee per occurrence) | | NA | NA |
| Fee for interpreter (fee per minute) | | | |
| Fee for interpreter for waiting time, travel time and the time spent standby (fee per minute) | NA | | |
| Cost of cancelling a call, excluding intermediation fee (fixed amount per occurrence) | NA | | |
| Travel costs (a fixed amount per km) | NA | NA | |
| Panel B. Scheme for quotes translations assignments | | | |
| Types of costs | Standard translation | Character script | Emergency translation |
| Fee for intermediation (fixed fee for each successful match) | | | |
| Fee for translator in standard translations (fee per Dutch word) | | NA | |
| Fee for translator from or to character script (fee per Dutch word) | NA | | |
| Mark-up for revisions (fee per word) | | | |

procurement design allowed for a markup for intermediation of telephone interpreting outside office hours, in the form of a fixed mark-up.

In the winning tender, the fixed fee is set equal for all intermediation services in case of interpreting assignments (a – c). The intermediation fees for the three different types of translations (d-f) are also set equal,

although on a higher level than that for (a-c). Furthermore, the winning bidder has specified a quantity discount for the fees for (a-c) depending on the total of hours of interpreting services, by specifying 3 ranges of volumes.

As Table 1 shows, bidders were also invited to bid on the fees for the primary service providers: the fees for interpreters and translators. To understand the bidding strategy, some further explanation on this fee regulation is necessary. The fees that interpreters working for public clients would receive were traditionally regulated by three Ministerial Decrees which stated the hourly fees (or fees per written word) in case of criminal Justice, in case of asylum law and in case of assignments through TVCN. These regulated fees were set equal over all public users (and actually, also equal over all languages), so that the different public clients would not price each other out of the market: if some users pay higher fees, others would suffer from a lot of cancellations by interpreters. Not surprisingly, Manpower set its bid on the fees for interpreters equal to the TVCN fees before privatization, which was equal to what other public users were paying.³

Another important point concerning interpreter's fees is that the contract basically specifies what Manpower can charge to buyers, but that is not necessarily what the primary service providers would receive. The contract is not very clear on the extent to which Manpower/TVCN is free to diversify the fees the interpreters earn working through him.

Note that the bidding scheme implies that bidders were uncertain of the total monetary value of the contract. The procurement design did not provide a guarantee on minimum volume. Bidders however were provided with an estimate of the volumes for the year 2005 (the year in which the tender was published): the total volume was estimated at 164.000 – 252.2000 hours interpreting and 5.203.000 – 9.295.000 words translated. The expected volume of "sales" was calculated at 15 to 22 million Euros (Excl. VAT) out of which, approximately 30% would be the intermediation fee.

The contract's provisions on quality were mainly geared to the intermediary's own performance rather than on that of the services in which it is being intermediated in. The main requirement is a matching score of 90%.⁴ Furthermore, the procurement specifies a number of other requirements such as the availability of the intermediary (so that someone picks up the telephone), complaint policy etc. Concerning the

quality of the primary service providers, the contract goes no farther than to demand that interpreters adhere to a behavioral code, that Manpower/TVCN maintains a system for registering complaints and that TVCN intermediate registered interpreters when necessary. Manpower accepted no liability for misconduct by interpreters.

The First Impressions Are Good

Felso et al (2007) presents empirical material on the efficiency and effectiveness of TVCN compared to the search strategies of clients who do not use TVCN to employ interpreters. Clients who search through TVCN get an interpreter far more quickly than clients who have a different search strategy. That said, it should be clearly understood that the needs of TVCN clients are different from those clients who have an alternative solution to the search problem: TVCN clients often come with short assignments of an urgent character, clients relatively often do not attach all that much importance to the physical presence of an interpreter; telephone interpreters usually suffice. TVCN clients are entirely satisfied with the services they receive, in their opinion TVCN is just getting better and better compared to before the public tender and definitely compared to the regional centers before the reorganizations. In the perception of the regular clients, TVCN is working harder than ever to recruit interpreters. Clients who use TVCN as a second option (when the first search strategy, usually an internal coordinating facility fails) are slightly less satisfied than the regular clients.

On the other side of the coin, interpreters who (frequently or occasionally) acquire assignments through TVCN are generally less satisfied with the services of TVCN and are only 'marginally' positive about them. Interpreters miss the personal approach of the old times. Another noteworthy aspect is that TVCN has not yet attempted to diversify the fees among interpreters; it still pays the full fee to every service provider.

However, if we take the perspective of the buyers, it seems that the procurement was a huge success.

DISCUSSION: A NEW LOT ON THE MONOPOLIZED MARKET

So was this procurement a really huge success? The procurement awarded the entire portfolio of TVCN to just one bidder. This bidder has

taken over the personnel and the facilities of the old organization. The transition was smooth and Manpower/TVCN performs much to the satisfaction of the procurers. The problem is however, that the procurement created a powerful player. The danger is that subsequent procurements could suffer from low participation: potential entrants could be reluctant to prepare a proposal as there is reason to believe that they make little chance of winning. An incumbent with no potential competitors around can indeed charge a high price in a subsequent tender. In the worst case, procuring agencies could find themselves locked-in with just one dominant player.

What should we think of when we talk about “subsequent procurements”? Obviously, the most straightforward subsequent procurement is the procurement that will replace the current contract. However, there is more. The old TVCN domain constitutes about one third of all volumes generated by public users of interpreters. Another one third of the volume is consumed by the Immigration and Asylum Authority and the rest by the courts and the police.

The courts and the police do not have a centralized coordination system for the search and matching of interpreters. All courts and the regional units of the police function in this respect as more or less independent units and all of them have its own approach to matching interpreters to assignments. The court of Amsterdam for instance, has a bureau for interpreters and all assignments go through them. This bureau has its own list of interpreters they work with. They keep track of interpreters who are present at the courts' premises on a given day, and in case of a new assignment, an interpreter who is present is matched to the assignment. Some other courts are much less organized. They perhaps have a list of registered interpreters who live not too far, and when one is needed, the judge, his assistant or perhaps a secretary or an administrative employee of a court picks up the telephone and calls around. This ‘calling around’ might often take more than 30 minutes until an appropriate interpreter is found.

With respect to the police, a similar description applies: there are large (regional) variations in practices and efficiency of the solutions to the search problem.

At the time of the procurement of TVCN, at least two pilots were anticipated whereby the intermediary function of two courts would be outsourced. These pilots never took place, mainly because of the

resistance on the side of the courts, who felt that something was forced upon them. Nevertheless, lately interpreters report that a number of courts and police units have started to work more or less systematically with TVCN instead of matching interpreters by their old approach.

The Immigration and Asylum Authority (Immigratie en Naturalisatiedienst, or in short IND), which in itself constitutes a similar volume in terms of total hours interpreting as the old TVCN-portfolio, has had its own (internal) centralized coordinating office which took care of the selection of appropriate service providers, the matching when an interpreter was needed and administration and billing. IND however does not have a telephone platform: most assignments are longer assignments; assignments are somewhat less frequently of an urgent character so that most sessions are done with the personal presence of interpreters, as opposed to telephone interpreting. A short while ago, however, it has been confirmed that the IND's coordinating office would be outsourced by 1st of January 2009. It has not yet been announced how this procurement would be designed.

IND's procurement is comparable to a situation in which a second lot is being tendered on a monopolistic market. Can we expect other bidders than the incumbent Manpower? Entrants would only be interested to compete if their expected profit of participation is nonnegative: the expected profit from participation should be larger than the costs of preparing the proposal. This means that an entrant should believe there is some positive probability of winning at least some part of the procurement. But why would the entrant believe he makes little chance?

For instance, it could be that there are cost complementarities. It might be so, that Manpower's costs on this supply contract would be lower compared to that of an entrant, as it already supplies the TVCN contract. Certainly, there would be economies of scale and scope to Manpower/TVCN, but would these cost complementarities be so strong that the market is not contestable? Remember, we are talking about intermediary services, not some procurement that necessitates large investments in advance. All what an intermediary needs is a 'pool' of interpreters and some organizational experience, perhaps in some similar markets. Recall that interpreters are free-lance professionals, they are not employed by the intermediary, nor does the intermediary have to provide any guarantees on minimum volume. Having a "pool" of interpreters just means having an address list (and preferably some additional

information) on interpreters who consent to be intermediated. Such a list of interpreters is easily made: the winner of the lot could for instance start-off with the old IND pool.⁵ Currently, Manpower/TVCN does not require exclusivity from its interpreters: they can work through as many intermediaries as they wish. Should IND decide to award the contract to some other intermediary, interpreters would surely be willing to work through this intermediary as well; the volume of IND is just too large to ignore. It might however be so, that in case the IND contract is awarded to an entrant then Manpower/TVCN would compete with this new intermediary for the primary service providers. We will touch on this point in Section 6.

If there is one type of service, where complementarities between the TVCN lot and another large contract would be strongest, than it is probably telephone interpreting. Telephone interpreting is however rarely used by IND: it is just unfeasible for the long sessions that are typical for IND. With respect to the other types of services, scale certainly does not hurt, but the advantages to the incumbent are not that large.⁶

Furthermore, it is interesting to note that the fact that Manpower/TVCN performs so well proves that you do not need to have a long track record in order to do a good job. Should IND's centralized coordinating office be part of the procurement (as it was for the TVCN-lot), an entrant could very well be as successful in providing the service as Manpower/TVCN.

To sum up, from the perspective of investments and costs, this market seems contestable. However, as it is the case with procurements where a large share of the market is awarded at once, small asymmetries of bidders can have far reaching implications. And in this situation, Manpower has three things very much to his advantage.

Its first main advantage is its good reputation. If IND believes that it is only Manpower who can do the job, than the entrant makes little chance. The procurement design should make very clear that entrants do have a chance.

The second advantage of Manpower is that it has better information on demand than any other entrants. If contestants are bidding on a lump sum intermediary fee, as it was the case in the TVCN contract, than good information on expected volumes is important. Of course, the demand of IND is probably somewhat different than that of the traditional users

under the TVCN contract; the volumes of some TVCN users (for instance that of the accommodation and medical care of asylum seekers) might however offer valuable clues that are not available to other bidders.

The third advantage of Manpower is that it is the incumbent and therefore it must have a larger value to the lot than the entrant; and the entrant knows that. It should be clear that the value of the new lot to the monopolist Manpower is his future monopoly profit. The value to an entrant is the profit that he can obtain when competing with the monopolist: the duopoly profit. Of course, the expected profit is not just the profit from carrying out this lot but also the expected profits from future licenses or ad hoc new clients (perhaps some courts that would outsource or maybe commercial clients). As the profit for a monopolist is at least as large as that of a duopolist, the incumbents valuation must be at least as large as that of the entrant. As Gilbert and Newberry (1988) points out, when bidders are in such an asymmetric position, a standard approach may produce an inefficient outcome. If the procurement is designed in such a way that the bidders can react to each others bids (no sealed bid), then the incumbent would win the second license as it can always offer a lower fee than the entrant. This implies that the monopoly would remain and the benefits of future competition would not be realized. As a matter of fact, the higher the potential value of competition, the lower the value to the entrant and therefore the lower the chance of socially optimal competition. In this situation, if the procurer really wants to act in the public interest, it should somehow discriminate against the monopolist.

From the preceding arguments it follows, that procurement design for the IND lot will be very important. The IND lot is a great opportunity to introduce competition on the market for intermediary services. The design should make it very clear to entrants that there is a positive probability that they would be successful if they prepare a proposal.

Dimitri, Piga and Spangolo (2006) offer many practical tips on how to design procurements that enables new entrants and disadvantaged bidders to compete with incumbents. The toolbox includes instruments like the division of a contract into lots, introducing an awarding constraint, multi-contract seal bidding and allowing for package bidding. A natural question is how to approach the division of lots, especially that here we are talking of just one type of service: the intermediation of

interpreters for sessions where the interpreter is present. One possibility is to divide the lots by groups of languages such as European languages, Arabic dialects, African languages etc. These types of lots would possibly attract the small intermediaries that are active on the private segment of the market and who offer their services to courts and some police units, mostly on an ad hoc basis.

However, if taking over the personnel and facilities of the internal coordinating office of IND is one of the conditions, then lot division may not be feasible. Note that if personnel and facilities is part of the deal, than awarding the entire lot to another bidder may just achieve what is needed: a player that can offer counterbalance to TVCN in the future. Note also, that if taking over the existing organization is a pre-requisite, small intermediaries would be discouraged to participate just as they were discouraged during the TVCN procurement. The potential bidders here are the larger organizations in in- and outsourcing or temporary labour agencies.

Whether or not IND opts for lot division, two practical recommendations can be made: (1) commit that you will stick to the sealed bids and (2) use the most-favored-customer clause from the TVCN contract to attract entrants.

The first point follows from the argument made above concerning the value of the lot to the incumbent monopolist versus the entrant who would become a duopolist. In an ascending auction, it would always be the incumbent who would win the lot, because he must have a higher valuation for it. In sealed bidding, the entrant makes a chance. If IND decides who to award the contract based on bargaining with a number of candidates, than the procurement is in essence an ascending auction and the lot would go to the bidder with the highest value: the incumbent monopolist (see for example Klemperer, 2002). The entrants know this and they would not be willing to participate. If the procurement starts off as sealed bidding but IND has the possibility to switch to bargaining with selected bidders, than the procurement is again comparable to an ascending bid auction. It is therefore important to endorse a procurement plan that commits to the bids as supplied by the bidders. A special problem is of course what to do if none of the proposals satisfies the requirements as announced by the procuring agencies. A whole new procurement is an option, what is important is that IND should make it

clear in advance what would happen if none of the proposals satisfies the requirements.

The second point concerns the provision of the TVCN contract that specifies that Manpower/TVCN cannot offer intermediary fees to other clients that are lower than those in the TVCN contract, unless Manpower charges the lower fee for the TVCN contract, as well. This provision which here probably comes from the fear that the intermediary would cross-subsidize at the cost of the buyers and in favor of the new clients, is known in the literature as the most-favored-customer clause. It might sound very appealing to clients; however it is a rather dangerous clause as it can serve to commit to high prices and tacitly collude (see for example Salop 1986). Nevertheless, in this situation, this clause offers an opportunity to entrants. If any new entrant would find it profitable to bid just under the current fee for intermediation, it makes a good chance of winning the contract, as it is likely that TVCN cannot follow: it would not only have to lower the fee for the IND lot, but also on the TVCN lot.

Please note that even though in this special occasion this provision offers an opening that is at the advantage of entrants, the most-favored-customer clause should in general be discouraged. This is especially the case if there are a limited number of large players. This provision can be used to credibly commit that a bidder would not bid aggressively on new lots that would come on the market at a later point in time!

DISCUSSION: THE RECURRING PROCUREMENT

The preceding section discussed the implications of the TVCN procurement for a situation in which a new lot is being procured on a monopolized market. This section will comment on the implications of the first TVCN tender for the procurement that will replace the current TVCN contract that is (probably) in force until 31 December 2009. This implies that the preparations for the recurring procurement must start in the near future.

Again, the main problem is that there is a dominant player and that entrants might be discouraged. How dominant Manpower is at that moment, depends of course also on the outcome of the IND tender: will the procuring agencies face (a) a monopolist, (b) two large intermediaries or (c) one large and several smaller players. As these three scenarios pose quite different challenges to the designers of the procurement, we

will focus the discussion on two general issues that are relevant in all three scenarios: first, the implications of the Demsetz auction, the mechanism applied in the first round of procurement and second, some notes on lot division and multi-contract tendering procedures.

Competition ‘for the Field’ or ‘in the Field’?

Note that the approach of the first TVCN procurement with respect to the fees was a so-called Demsetz auction (Demsetz, 1986). In a Demsetz auction, agents bid on an exclusive contract by bidding on the price that will be charged for services that are carried out under the contract. The lowest price bidder wins the contract. This method is sometimes referred to as "competition for the field" as opposed to "competition in the field."⁷ "Competition for the field" implies intense price competition ex ante, but in the aftermath, there is no competitive pressure. There are a number of features of the Demsetz auction that are of particular importance here.

First, note that in a Demsetz auction the entire risk associated with fluctuations in demand is borne by the winning bidder. If there is a lot of ex-post demand, then sales would be high, but if demand suddenly falls then sales slump. The demand for interpreters is strongly dependent on external shocks. Just think of a war on some distant continent which induces a wave of asylum seekers resulting in a large peak in demand for interpreters. A similar large impact could be a change in the institutional background, for example if patients would suddenly be forced to pay the bill of the interpreter in the health care. In this case, demand would probably decline. In a Demsetz auction with fluctuating demand, information is of great value. The incumbent can use its knowledge to assess the value of the contract and benefit from this during the bidding procedure. This information advantage of the incumbent can lead to the phenomenon called the winners curse. When entrants have less information, they would only win an (ascending) auction, if they overestimate the value of the contract. Knowing about the winners curse will cause entrants to bid cautiously. The advantaged bidder does not need to bid cautiously, as he knows that his information is superior to the cautiously bidding entrants. This implies that the advantaged bidder has a higher probability of winning. With other words: Manpower is in an advantaged position in a subsequent Demsetz auction because of its informational advantage.

The second important feature of a Demsetz auction is that there is usually a risk that the winner of the contract would be inclined to perform poorly on non-contractible quality of the services ex post. To what extent, is this really a danger here? First, note that the quality aspects of the intermediary service are contractible: the availability of the intermediary, waiting time and matching score are aspects that can be quantified. Monitoring is of course costly, but at least it is possible. The quality of the services of the primary service providers (interpreters) is however much more difficult. As a matter of fact, not much is specified in the contract on these aspects. As of now, however, there is no evidence that Manpower/TVCN would be attempting to cut costs and only work with “cheap” interpreters.⁸ Furthermore, survey evidence (Felső et. al 2007) suggests that TVCN users are rather satisfied with the services of interpreters. (It might however be the case that users are so poorly able to evaluate the quality of interpreters that they really cannot know what quality they receive.)

One question arises naturally: was the choice for “competition for the field” the right one or should one have considered “competition in the field”? Competition “in the field” would have implied a situation in which two (or more) independent supply contracts are awarded to a number of intermediaries and they would then compete in the market on price, on quality etc. Perhaps, “competition in the field” was not even feasible at that point in time, as it might have been difficult to split the existing centralized TVCN organization. However, in the next round of procurement “competition in the field” might be a feasible solution, especially if the IND lot would be awarded to some other supplier of intermediary services than TVCN. It is an interesting avenue that should be thought through after the results of the IND procurement becomes clear.

If TVCN users opt again for the Demsetz auction for the next round of the TVCN procurement, then the next step for the designers of the procurement is to determine the optimal way to split the contract and choose the optimal multi-contract tendering procedure.

Notes on Lot Division and Multi-Contract Tendering Procedures

The general problem is that the level playing field is not level. Many of the observations of Section 4 are still valid here, however, the context is somehow different: Manpower might as well loose its current position on the market. Nevertheless, Manpower still has a strong bidding

position compared to entrants. Entrants have to compete with Manpower who might enjoy some (but probably not prohibitive) cost advantages, who has an advantage with its good reputation, who has better information on demand and who has the advantage of possibly staying a monopolist (as opposed to probably the best case scenario of the entrant becoming a duopolist).

Again, practical tips on lot division and tendering procedures can be found in Dimitri, Piga and Spangolo (2006), so here, we will just summarize the general rules of thumbs. The first general lesson from literature is that the number of lots should be smaller than the expected number of participants. This is clearly not applicable in a situation with just one dominant incumbent. The next general rule of thumb from the literature is that it is wise to define at least one lot more than the number of incumbents and reserve it to new entrants. This is clearly useful!

However, how should lots be split or bundled? The most important reason to bundle several lots is to exploit synergies in production. For instance, if there are strong synergies between intermediating telephone interpreters ad hoc *and* telephone interpreting planned sessions (or interpreting in language A and B), then these lots should be bundled. The economies of scope between telephone interpreting and interpreting with the physical presence of interpreters however may not be that strong, so that these lots could be procured separately. Or if intermediary services for telephone interpreting to the health care exhibit synergies with telephone interpreting for the accommodation of asylum seekers, than these lots should be bundled together.

The lot division however should not lead to a trivial solution to split the pie between competitors. Suppose that the entire IND lot is won by another bidder than Manpower so that there are two large bidders. In this case two lots - one on telephone interpreting and another one on intermediation for interpreting with personal presence - is clearly not a good idea. TVCN would win the lot on telephone interpreting, the other: the personal presence at fairly high fees!

Another practical tip is that procurement design should be such to induce participation from entrants. The trick here is to try to increase the expected profit of entrants from participating, without decreasing the expected profits of the incumbents. What does this mean for this specific market? Just disregarding for the moment what may happen on the IND lot, there are a number of small intermediaries who are established on a

“neighbouring” market: that for intermediating interpreters to private clients for sessions with personal presence. They do not have sufficient capacity to accomplish the entire contract on their own. It could however be that they could perform a lot such as intermediation of physical presence interpreters in a given geographical region. Small bidder’ participation has also the advantageous feature that their presence complicates large bidders attempts to collude.

In this particular case study a lot points to the direction of splitting the lots. The tendering procedure should however take the exposure problem also into account. When a bidder has strong synergies between different lots, it might be facing a high risk in the bidding process: if it bids lower than its cost for the single contract in one competitive tendering speculating that it will be successful also in the other one, it might end up with a loss. The strategy the bidder would follow then is to bid relatively high, so that he does not risk a loss, but it reduces his chances of winning. Higher fees are clearly not in the interest of the procurer. The solution should be sought in some sort of package bidding.

Again, as it was already recommended in Section 4, the procedure based on sealed bids is preferable to any procedure that opens up post-sealed-bid-bargaining. That is because when a contract is based on bargaining with a number of candidates, than the procurement is in essence an ascending auction and the lot would go to the advantaged bidder, presumably the incumbent monopolist. If entrants anticipate that this would happen, they would not be willing to participate.

The final point is that it may be wise to consider a so called awarding constraint: a constraint on how much of the market can be awarded to just one bidder. Such an awarding constraint elicits participation and offers an entrant the possibility to acquire experience and exercise competitive pressure in the future.

CONCLUSIONS

This paper is a case study of the procurement of intermediary services to approximately one third of all publicly financed users of interpreters in The Netherlands. Before this procurement took place, the intermediary services were supplied by a public organization. This public organization was privatized by means of procurement. The object of the procurement was the exclusive “license” to intermediate interpreters to

the participating organizations for a certain period of time. This paper aims at analyzing this procurement and drawing lessons that are useful for similar procurements in the future.

The procurement awarded the entire portfolio of TVCN to just one bidder called Manpower. This bidder has taken over the personnel and the facilities of the old organization. The transition was smooth and Manpower/TVCN performs much to the satisfaction of the procurers. The problem is however, that the procurement created a powerful player. The danger is that subsequent procurements could suffer from the lack of competition. This implies that procurement design for future lots is very important.

The first opportunity to introduce competition on the market for intermediary services in interpreters is the outsourcing of the intermediary function to the Immigration and Asylum Authority. This procurement can be compared to the situation when a second lot is auctioned on a monopolized market. Two practical suggestions can be put forward: (1) the procurer should commit itself to a sealed bid approach and (2) the procurer should use the most-favored-customer clause from the TVCN contract to attract entrants. It is however a lucky coincidence that the most-favored-customer clause is useful. In future procurements the use of this clause should be strongly discouraged as it can facilitate tacit collusion.

The second challenge will be the procurement that will replace the current contract when its term expires. At the moment of writing this paper however, it is not yet clear in what market condition this procurement would take place. It largely depends on the outcome of the procurement of the Immigration and Asylum Authority. The three possible scenario's are that the procuring agencies would face (a) a monopolist, (b) two large intermediaries or (c) one large and several smaller players. These three scenarios pose quite different optimization problems to the designers of the procurement. In view of the market structure that will emerge, the designers of the new procurement should evaluate the merits of "competing in the market" against the current approach of "competing for the market" (the Demsetz auction). Should procurement agencies opt for the Demsetz auction approach, the problem becomes how to find the optimal division of lots, as well as the optimal multi-tender procurement format? The preliminary analyses point to the

direction of splitting the contract, applying some sort of package bidding mechanism in combination with an awarding constraint.

So far we have focused on the effects of the procurement on the market for the intermediary services. A possible further avenue of research is the effects of the procurement of the intermediary on the markets for the services in which it is intermediated in. Although this procurement focused very much on the intermediary service, intermediation itself is just a modest link on the market. Promoting a sufficient supply of good quality ‘primary service’, that is interpreters and translators, was in this case at least as important as having an efficient intermediary. The following questions are especially interesting: What are the possible effects of the intermediary on the markets for primary services when it is allowed to charge a different fee than what a service provider is receiving? What are the effects of competing intermediaries on these markets? These issues are left for further research.

ACKNOWLEDGEMENTS

I thank WODC, the Research and Documentation Centre of the Ministry of Justice for funding the empirical research that is at the background of this study.

NOTES

1. In this paper we will only make a distinction between interpreters and translators when the difference is relevant and for most part we will refer to all primary service providers under the denominator of ‘interpreters’. The services of interpreters are similar to translators: translation of oral texts as opposed to translation of written texts.
2. This might seem strange at first sight, but this was just an element of a larger re-organization whereby of the responsibility for the accommodation for asylum seekers (one of the big users of interpreters) was transferred from the Minister of Public Health to the Minister of Justice. As the Minister of Justice was already responsible for interpreters and translators who worked for the courts and for the Immigration and Asylum Authority, it seemed like a good idea to

concentrate responsibility for all ‘public use’ of interpreters in one hand.

3. While the general fees in the Ministerial Decrees were set equal for the services over all users, they did differ on the compensation for travel costs and for waiting time in between two assignments. These compensations were more generous in case of criminal and asylum Justice than in case of TVCN assignments. Manpower’s bid on these elements was conform to the compensation of TVCN prior to privatization.
4. This matching score requirement is only applicable for registered languages, i.e. languages for which there is at least one interpreter in the Register that is used for the domain of Justice.
5. Besides that, there is also a register for court interpreters which could be used to set up a list of possible service providers.
6. Of course, one could argue that for certain types of intermediary services smaller scale would even be better than large scale. For courts for example, an office on the premises of the court works perhaps better than an office on distance. However, a larger intermediary could always decide to organize its service provision as it is most efficient. A small intermediary does not have a choice.
7. This terminology is due to E. Chadwick (1859).
8. Actually, from the contract it is not clear whether such practices would be allowed or not: the contract only specifies the fees users are charged for the services of interpreters, but not what interpreters would receive.

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