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The Information
Society Alliance
EURIM



Draft Report of the Information Governance Group meeting on Procurement, 5 February 2009, Guildhall, City of London

Chair: Roger Marshall (City of London)
Rapporteur: Dave Wright (EURIM)

Any details discussed in this meeting are 'off the record' and confidential.

SUMMARY OF MAIN POINTS

- 1) A self-explanatory Report on existing guidance on IT and related procurement, with a number of links to various relevant web-hosted documents, was presented to the meeting on behalf of the Audit Commission. A major Group aim is to simplify the advice for the public sector, including for smaller scale projects, to pick up on new guidance and to apply it to our community. There is also a need for a high-level set of guidelines that executives and politicians can understand, and which can be readily applied to and tested at the operational level.
- 2) Procurement does not end with the placement of the contract, but requires pro-active management, with a continued drive for both value for money and successful delivery during the lifetime of the contract; the project management stage is a key risk area. One strategy is to obtain pre-value through aggregation and partnership, and the re-use of proven solutions to reduce the time to market. While recent changes in the EU Directives have reduced the time limits for the restricted procedure to 30 days, ensuring that the business case is well focused may expedite procurement. We should also look at introducing flexibility into procurement strategies to meet the requirements of financial regulations. Some local authorities now procure IT by entering into strategic partnerships with suppliers.
- 3) Topics suggested for inclusion in the forthcoming work of the Audit Commission might include pre-procurement preparations, since a project will often be condemned to failure before it goes out for procurement. Examples of successful procurement might be used as evidence upon which to base guidance and recommendations, including where the private sector is subsidising the public sector in aggregated joint network procurements when the regulations on state aid do not apply. Risk-reward structures might operate through a risk-share arrangement that formalizes how the potential reward or penalty will be shared between the parties.
- 4) The OGC publication 'A Formula for Success: Procurement Effectiveness in Major Project Delivery' will be the focus of a meeting of 20 industrialists and 20 permanent secretaries, conveying the message that procurement is not an impediment but a strategic tool for delivery. EURIM has offered to facilitate the engagement of local government and other bodies audited by the Audit Commission, and separately for Select Committee members and clerks/support staff of the Houses of Parliament, so that all constituencies are familiar with the approach set out in 'A Formula for Success'. A team within OGC is working on rationalising the number of frameworks to simplify user choice, while deterring departments from creating unnecessary new ones.
- 5) Another work programme is looking at large and complex Government contracts where the IT has been less than successful, and identifying the causes. A 3-stage solution is proposed involving concept viability, risk allocation and innovation.

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1 Introduction

1.1 The Chair opened the meeting and invited all present to introduce themselves, and moved to the Agenda.

2 Agreed Actions (individuals)

Report on the All-Party Parliamentary Small Businesses Group's inquiry into SME access to public procurement

2.1 The All-Party Parliamentary Small Business Group' inquiry is being run by the Association of Chartered Certified Accountants, which is providing secretarial support to the APPSBG, chaired by Andy Love MP. Its purpose is to further the aims of small businesses and to provide feedback on small business issues to Parliament.

2.2 The inquiry will investigate the barriers small firms face in winning public sector contracts, and will take oral evidence in Parliamentary sessions. The APPSBG are inviting inputs at this stage, before making any recommendations. APPSBG may be invited to join this EURIM Group, and a meeting between the Parliamentary Chair of the EURIM Information Governance Group, Philip Dunne MP and the APPSBG Andy Love MP, has been proposed. It was suggested that we make available to the APPSBG any suitable material from the procurement exercise.

Report on available guidance on IT procurement

2.3 A Report on existing guidance on IT and related procurement, with a number of links to various web-hosted documents, was presented to the meeting. Some links to Audit Commission sources were not functional, but it was hoped that this would be a temporary problem.

2.4 The report was self-explanatory, and enabled people to pull out guidance as needed from the different sections. Some of the papers were older, and now possibly superseded by later material. Much of the material was collated from colleagues familiar with IT contracts within the Audit Commission, and while some of this was focused specifically on IT procurement, other sources of more general procurement were also listed.

2.5 One issue relates to current practice among local authorities to procure IT by entering into strategic partnerships with suppliers. This enables rapid procurement of subsequent systems related to the original contract, but importantly the process should not be driven by the technology – rather the technology should be meeting the business needs. [DW: [A contract between Somerset County Council, Taunton Deane Borough Council and Avon and Somerset Constabulary, together with IBM, produced a "strategic partnership" \(South West One\), which delivers IT, finance, HR, property procurement and customer contract centres. However, the contract has been criticised for excessive secrecy, with the MP for Bridgwater, Conservative Ian Liddell-Grainger, telling Parliament in March 2008 that "South West One is an outfit born in secrecy and reliant on secrecy", amid other reports of unprecedented levels of 'commercial confidentiality' during the procurement \(see: <http://www.computerweekly.com/Articles/2008/07/23/231598/ibm-seeks-to-stop-council-divulging-400m-contract-details.htm>\).](#)

However, in January 2009, Southwest One's Newsletter reported that its Strategic Procurement Service won two awards from the Society of Procurement Officers in Local Government: see <http://www.southwestone.org.uk/docs/SWOne%20Anniversary%20flyer.pdf?action=pre&id=405>.

2.6 A key risk area for IT contracts was the project management stage, rather than in the procurement stage. One strategy is to obtain pre-value through aggregation and partnership, and the re-use of proven solutions to reduce the time to market.

2.7 The Audit Commission's current programme is likely to include another study on procurement, and this may touch on PFI. If we are looking at how we can influence how procurement can be expedited, we should consider suggesting what business cases should include, so as to ensure that short-order procurement strategies are encouraged. We should also look at how to introduce flexibility into how procurement strategies meet the requirements of financial regulations.

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2.8 Recent changes in the EU Directives have reduced the time limits for the restricted procedure to 30 days. The negotiated tender process can also be applied to larger procurements. Additionally, partnership-contractor relationships could be enhanced through more risk and reward mechanisms and so encourage faster procurement. Other ideas include using standard clauses in contract management, while cultural and training issues also need to be addressed, particularly around working relationships.

Discussion

2.9 How, if at all, do strategic partnerships differ from the framework agreements that were in vogue some years ago, and what guidance exists for those involved? Partnerships are likely to favour large suppliers, and are therefore likely to be intrinsically unfavourably disposed towards SMEs that would be unable to tender on the scale required. Experience showed that subcontracting from large companies is often not the best way for SMEs to gain a foothold or visibility in the market, because there is often an incentive for the large suppliers to hide the subcontractor's contribution and minimise their importance.

2.10 Government contracts that include standard clauses presented huge difficulties for SMEs: we have to find a better way to enable SMEs to engage directly with Government, that does not repeat the mistakes of the past. While the EU rules have now shortened the time taken, there is little guidance on the issue of aggregation.

A book on Digital Era Governance by Patrick Dunleavy and others has been referenced on the EURIM website. This provides a coruscating critique of new public management, but is the result of a 5-year study of Government ICT procurement in major countries. In a series of comparisons of success, the UK was invariably bottom, while the most successful country was Holland. A recent study comparing the 2 countries (a URL will be provided) showed that a contributory factor to Dutch success was the large number of small contracts. Aggregation is therefore not a problem in Holland – so is this another example of how the UK has interpreted the EU rules, or the guidance provided?

2.11 The Dutch Government tends to value and retain in-house expertise and skills within Government departments, at the contractual, project management and technical levels, thus enhancing its role as an intelligent customer. Perhaps we can learn from this, and issue guidance accordingly.

2.12 When considering topics for inclusion in the forthcoming work of the AC, we should be looking at **the pre-procurement stage**, since a project will often be doomed to fail before it goes out for procurement, for a number of reasons (e.g. confusion and conflict over objectives and priorities and split responsibility for policy and implementation). How people use different routines for different sizes of procurement is also worth investigation.

2.13 The AC might also look at examples of successful procurement as evidence upon which to base guidance and recommendations. Work by the Broadband Stakeholder Group's Aggregation of Demand Working Group on the aggregation of public sector demand for joint procurements for broadband networks is a case in point. Where demand is aggregated for a joint network and procurement is part-public, part-private, if the private sector is subsidising the public sector (and not *vice versa*), then the regulations on state aid do not apply, even though the associated documentation often does not make this clear.

2.14 An example of successful procurement is afforded by the East of England Regional Broadband Consortium, which copied a Dutch procurement model, thus avoiding the time and cost spent on legal advice. Nevertheless, some of the more recent Dutch procurements have run into trouble, because, according to their regulator, the contracts were getting too big. OECD guidance emphasised that large contracts should be broken up into more manageable components with shorter timescales, in order to help avert technical and political scope-creep. However, issues of project management and successful delivery were probably beyond the remit of this Group.

2.15 Although there is an abundance of guidance on procurement, this Group should focus on producing simple overarching guidelines that politicians and leaders of local authorities can understand and keep in mind when drilling down into greater detail. While lessons can be learnt from the Dutch, the Dutch market and culture is very different to that of the UK, and most of the private

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sector organisations outsource to contractors, and they are better at hiding failures. This might be related to small contracts!

2.16 From an SME perspective, Catalist is quite a useful tool, being self-funding and meeting EU regulations, but the proliferation of categorisation is an issue, and the costs of participation are significant and are incurred at many stages, including meeting EU and other compliance tests. It would be an improvement if it were possible to pay for entry to one catalogue that gave access to all others. While there are political reasons for the number of different schemes, we need interoperability between the schemes so that they will accept each others' accreditations, e.g. for penetration testing etc.

Report of the December meeting and agreed actions

2.17 The report of the Procurement Group meeting held on 17 December was circulated to the EURIM Public Service Delivery Group last month, together with the 'Procurement Guidance' report and a list of agreed actions. One of the actions was to gather examples of existing guidance, good practice, case studies and other relevant material on IT procurement, both online and 'offline', and their provenance, and a list is being compiled.

2.18 A RAND Europe Working Paper entitled 'Evaluating Public Procurement Contracting' (July 2008), has been circulated with RAND's permission to the Procurement Group and more widely within EURIM. It is also available on the EURIM website along with other relevant documents (see <http://www.eurim.org.uk/activities/pubproc/pubproc.php>).

2.19 Mandatory Requirement 43 of the HMG Security Policy Framework requires all Government departments and agencies to ensure that security requirements are specified in ICT contracts, and that all new ICT contracts handling personal data must adhere to the OGC ICT model terms and conditions. It was noted that this issue fell within the remit of the EURIM Information Governance Subgroup on Security by Design, with whom we should liaise.

3 Possible co-operation with OGC

3.1 A recent output from the OGC is a paper designed for discussion with permanent secretaries and senior business leaders to bring better practice on procurement to bear. The paper, 'A Formula for Success: Procurement Effectiveness in Major Project Delivery', will be available only after 11 February 2009.

3.2 For some while, the OGC has been working with the Cabinet Office colleagues on an initiative with the ICT industry. This is managed by the 'Strategic Supplier Board' (SSB), a sub-set of the CIO Council and ICT industry leaders, including Intellect representing the SME community, who are working together on a wide range of strategic supplier development work.

3.3 Three 'Tiger Teams' have been formed as part of the SSB with the objective of improving the overall timescales, quality and reliability of delivery of critical government IT programmes, through systemic improvements. The Procurement Tiger Team and the Projects Tiger Team aim to identify the issues around IT procurement and project delivery. Some of the tools they have developed have been listed in the AC report on procurement guidance, including the Pre-Qualification Tool (PQT), and the Joint Statement of Intent (JSI), both recently launched by OGC and Intellect. Another tool, soon to be launched, is the Pre-Qualification Questionnaire (PQQ), which avoids the need for suppliers to provide the same data to different organisations in slightly different forms.

3.4 There is also a model ICT contract hosted by Partnerships UK, on OGC's behalf with plans under consideration for the development of a less complex version of this, 'Model Contract Lite' (MCL). This to fit between the full ICT Model Contract and Frameworks and Catalogues.

3.5 While frameworks are useful, it is recognised by all that there are too many of them. The Markets and Collaborative Procurement team within OGC is currently working with Intellect to review the number and type of frameworks, intending to rationalise the numbers to simplify user choice, while deterring departments from creating unnecessary new ones.

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3.6 Another work programme is looking at the procurement aspects of the large and complex Government contracts where the IT has been less than successful, and identifying the causes. The analysis suggests change in all three stages of procurement.

- Firstly, in the pre-competition stage where approaches such as concept viability should be employed to gain a better understanding of the objectives, and the risk and cost drivers associated with their achievement. Discussion with suppliers in a non-competitive environment is an essential preparation for both customer and supplier.
- Secondly, during the competitive stage there should be discussions with the supplier on where risk is best held, leading to a contract that incentivises the supplier to deliver rather than simply protecting Government from failure. The unthinking transfer of risk through a contract is counter-productive, since failure to deliver ultimately falls back on Government.
- Thirdly, designing contracts that allow innovation downstream and focus on outcomes rather than outputs. Too often contracts are written around requirements which in complex situations cannot be securely defined in advance, and will inevitably change over time, pre-destining them to failure.

It is important to note that the procurement does not end with the placement of the contract. In reality, the contract requires pro-active management, with a continued drive for both value for money and successful delivery during the lifetime of the contract.

3.7 The OGC publication 'A Formula for Success: Procurement Effectiveness In Major Project Delivery' will not be officially released until after the meeting with permanent secretaries on 11 February, and those present were requested to treat it as confidential, so that its content would not influence the thinking of the intended audience in advance of discussions. Gus O'Donnell, who wrote the Forward for the publication, will be chairing the event attended by 20 senior industrialists and 20 permanent secretaries, with the aim of conveying the message that procurement is not an impediment to delivery, but a strategic tool *for* delivery, not just for IT-based projects, but more broadly.

3.8 OGC is happy to share the results of this initiative with EURIM, since the aims are complementary. In addition, while OGC's relationships with central Government are well defined, its reach to the wider public sector, including local government, is more difficult, and should be enhanced by working jointly with EURIM.

3.9 EURIM offered to facilitate the engagement of local government and other bodies audited by the Audit Commission, and separately for Select Committee members and clerks/support staff of the Houses of Parliament, so that all constituencies are familiar with the approach set out in 'A Formula for Success'. The document could be more widely distributed with links posted to the EURIM website, once it had been published by the OGC.

Discussion

3.10 Would there be representation for SMEs at the meeting with permanent secretaries, in addition to representation from large service sector organisations?

No. The event is focused on departmental permanent secretaries and senior business executives. The aim is to set out the potential of procurement as a strategic tool for delivering departmental outcomes, and to discourage adversarial approaches to contract implementations. Recognising the potential of a symbiotic relationship with strategic partners in which both sides are committed to deliver outcomes (both in terms of vfm and service delivery) is advantageous to the customer and taxpayer. This can only be achieved by adopting partnering principles.

3.11 It is important to note that the exercise is about procurement effectiveness in major project delivery – i.e. it does not address the 'model lite' constituency.

3.12 It is often in the interests of systems integrators to increase the complexity and duration of projects, and this was a problem for efficient procurement.

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This depends on how delivery is incentivised; partnering between Government and a private supplier is entirely dependent on the terms of the contract. A contract that enshrines partnering principles using appropriate risk and reward mechanisms will encourage a partnership approach in which the interests of both sides are linked. There is also often an assumption that long term contracts mean an enduring relationship, whereas the contract should carry requirements for the supplier to perform to pre-determined levels, and that allow for innovation and flexibility in supply.

3.13 The challenge for us is to simplify the advice for the public sector, including for smaller scale projects, to pick up on new guidance and to apply it to our community. Some of the biggest projects looking ahead under the continuing economic climate are in fact local government and NHS shared services.

While the OGC paper focuses on the more complex projects, most of its ideas are applicable to others, except the very smallest, such as those under the MCL and Catalist. If the outcome is critical to the customer, even if valued at only £100,000, some of the concepts in the paper are equally valid.

3.14 Some of the ideas that may be developed by this Group may be useful for DWP in its welfare reform programme, which is designed to actively encourage the use of innovation in delivery. [\[DW: this relates to James Purnell's offer, under the DWP 'Right to Bid' exercise, to consider directly funding innovative ideas that offer a real prospect of greater success in delivery. DWP will increasingly look to commercial relationships to build flexibility into contracts in order to "harness expertise across the delivery chain and create capacity for market innovation"\]](#).

OGC works very closely with DWP; Joe Harley (Chief Information Officer and IT Director General, DWP) chairs the SSB, while Dean James (corporate IT Chief Operating Officer, DWP) chairs the Tiger team that looks at procurement, so there is quite close coupling. The paper looks at e.g. leaving contracts open to allow innovation, and how to protect the IPR of suppliers, through practical means.

3.15 What are the timescales for bringing in the PQQ and standard contracts?

The introduction of standardized PQQ is imminent, following consultation with users, whilst the planning for the MCL has yet to be completed - a target date of the summer 2009 would not be unreasonable. The work will involve an analysis to determine which clauses from the full model contract might be deleted.

3.16 Procurement officers appear to lack a basic understanding of corporate insurance issues when they are developing a model contract. Often these involve clauses that the supplier cannot sign without being in breach of their insurance provisions. Each such proposal means a lengthy delay and additional costs while legal and insurance issues are clarified.

Procurement officers do not appear to understand corporate risk.

3.17 What constitutes an IT contract? Many departments do not use model agreements for projects that have a major IT element, employing costly, suboptimal alternatives instead, despite the investment made in model contracts which would cover a large percentage of the issues.

There may be a need for a different form of model contract for highly complicated programmes. One issue is ensuring that all those involved are reasonably comfortable with the model contract. Version 2.2 which became available in 2008 has been recognised as being much better than previous versions: it is hoped that Version 2.3 will deal with the outstanding issues troubling the industry, thus avoiding costly legal fees in alternative negotiations.

3.18 There is a need for a high-level set of guidelines that executives and politicians can understand, and which can be readily applied to and tested at the operational level.

'A Formula for Success' has about four pages of content and is aimed at permanent secretaries and other senior officials setting out some clear principles for use at all procurement stages. OGC is currently working to simplify its web based guidance and to make it more accessible.

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3.19 There is no such thing as a major IT project – only large projects with IT elements. Procurement guidance should therefore reinforce this point at a high level, particularly when used for informing politicians in advance of ministerial approval, since expectations are set at the policy level.

3.20 There is an issue about Conservative party policy to break down future large-scale procurements into smaller component parts, as recommended by Dr Mark Thompson: is OGC was considering how to incorporate this in their advice?

One possible consequence of breaking projects down into smaller components is that they could result in multiple stove-pipe solutions which then need to be integrated. It may be helpful to read Dr Thompson's actual report, which has not been published, and is only known from press releases.

3.21 While there is a need to introduce flexibility between and within Government departments, the main drivers of innovation and flexibility tend to be SMEs, which have relatively high costs. Is there a mechanism for bringing in the innovators?

Contracts could be used to specify a requirement to innovate: contracts drive behaviours. However, care should be taken not to encourage the supplier to steal the IPR from the innovator.

3.23 EURIM Council has placed a requirement on all its groups to produce forward business plans by Easter, with objectives, timetables and deliverables for the year ahead. We should therefore perhaps be aiming to **have a couple of briefing events, one for the AC (perhaps jointly with the LGA and SOCITM), in March, using the material generated by the Group and that for permanent secretaries, and another for the political constituency.** This action was agreed, in co-operation with AC, LGA, OGC, SOCITM and Intellect. The deliverable should also include informing Select Committee members, and we should aim to include prospective parliamentary candidates.

4 Actions Agreed

4.1 A number of successful case studies are listed in the AC report, though it had been assumed that a case study would refer to the procurement process used in helping to deliver a successful project. Projects that had been significantly changed or terminated before failure might also be included. In general, the best way to get people to do the right thing is to make it the easiest thing: the processes should be made easier, so that good practice is easier to follow than bad practice.

4.2 In order to compile a list of current large public sector IT procurement projects, we should contact the LGA and SOCITM and also ask them to inform us about what procurement methods were used. Intellect and Kable may also be able to assist.

4.3 The Appendix to the Report of the meeting on 17 December cited the International Research Study of Public Procurement as a source of academic research. This is a multi-national research centre "which develops international comparative procurement benchmarks and enhances the body of knowledge in government procurement"; two of its publications are also listed.

5 Next steps - plans to simplify guidance

5.1 Comment was invited on how we might wish to deal with shared risk: is the idea of a jointly-managed contingency sum a viable proposition?

This approach had been used in some supplier contracts, but some private sector clients had feared they might have to accept the loss of some of their benefits. Shared risk was also difficult to negotiate, and the idea pre-supposed that risk could be accurately identified.

This should be added to the list of topics that we suggest to the AC for their future exercises, and might include the different ways in which attempts to share risk have been made and negotiated, and its success or otherwise.

5.2 The AC local government national report of January 2008, 'For Better For Worse' had looked at strategic service partnerships, and it includes examples of success and failure, including early termination. SSPs are based on the principle of mutually aligned incentives throughout the course of a long-term relationship, and may involve shared approaches to the allocation and management of risks and rewards. The paper includes sections on allocating risk and the sharing of financial rewards. RA did not think that the AC would revisit this for study at this stage.

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5.3 However the issues now were more specific, being proposed for contractual arrangements, the savings to be made and the ways in which these might have motivational value. It might also be put into the context of how this affects probity in reporting and monitoring structures.

5.4 Risk-reward structures might operate through a risk-share arrangement that formalizes how the potential reward or penalty will be shared between the parties, with limits to prevent excessive profit or loss. Some work is being done on alliancing, which has its roots in North Sea oil and gas projects. [DW: in one project, BP formed an alliance of 7 partners to plan and execute a development which resulted in cost savings of 20 to 30 percent and time savings of 6 months. Dealing with many unknowns and uncertainties, the client was better able to manage its risks through a cooperative approach where the risk was embraced rather than transferred].

5.6 Alliancing models create a risk pool to share risk and can be applied to large IT contracts, sharing the gain on the supply side. The MoD has one successful example of an alliancing-type contract, the Aircraft Carrier Alliance, which affords MoD the opportunity to pay less than the target cost for the project, and the supply chain members to increase their profit. Much of this experience may be transferable. [DW: Commercial Guidance for the UK MOD Defence Acquisition Community, posted February 2009, is accessible at:

<http://www.aof.mod.uk/aofcontent/tactical/toolkit/content/topics/allig.htm>

6 Next steps - overlay of general good business practice guidance

6.1 The AC report on procurement guidance could be used by the Group immediately, although we should comply with AC policy and produce a version in pdf format. There is however a problem in getting the web links to work in this format, which would take time using the software available. The concept is for a short document with cross-references that enable drilling down to more detail – which could be done via the EURIM website.

6.2 The meeting was offered a short White Paper on the difficulty in procuring security services, to be drafted and delivered in due course.

7 AOB/Date of next meeting

7.1 Lord Carter's Digital Britain report is very much 'work in progress', and feedback and inputs invited. One of the potential EURIM inputs is the need for exercises on issues around guidance on funding, procurement and business cases because this is clearly going to be either a major opportunity or a major problem, given that the investment in broadband is going to be in community and shared-risk networks. A sub-set of this exercise, perhaps after Easter, on what is the existing guidance and practice in this area, to complement the work of Carter, would be useful.

7.2 It was agreed that the date of the next meeting would be 27th February, 0930-1130 in the Guildhall.