

**Practical Procurement in Central Government
Implementing 'Lean' Sourcing
- a Collaborative Solution**

January 2012

Executive Summary

Background

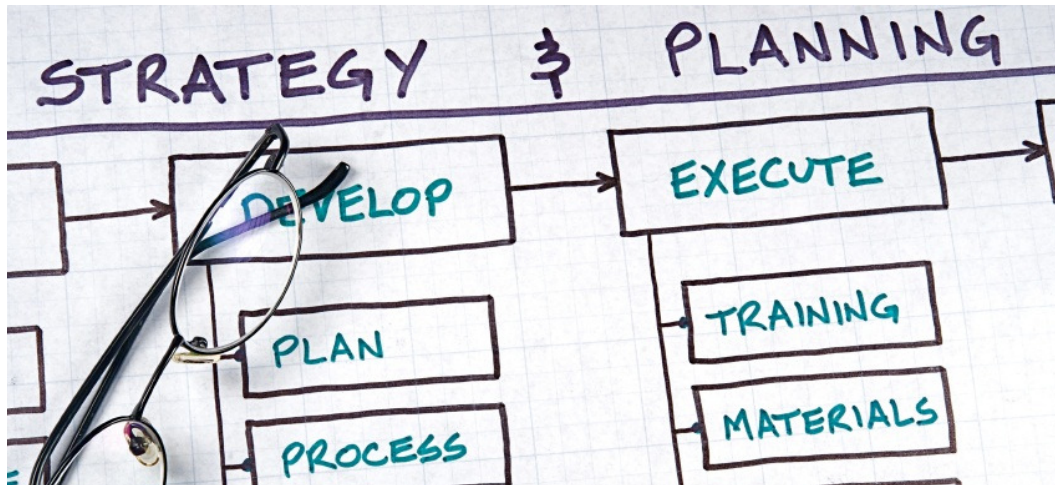
In February 2011, the Cabinet Office published 'Accelerating Government Procurement' (the "Lean Report")¹ - summarising the findings of the 'Lean Review', which was launched in November 2010 with a mandate to uncover wasteful practices and unnecessary complexity in public procurement and to provide remedial guidance to Government bodies.

Since then we have had the Chancellor's Autumn Statement and the Growth Review. Crucially also on 18 January 2012 Cabinet Office Minister Francis Maude announced important policy changes in Government procurement in the form of a single 'Lean' model, which will shorten delivery timescales to 120 days for all but the most complex procurements in Government.

This Paper pulls together the key messages from these initiatives and suggests some high-level solutions which we believe will help Departments to meet the underlying objectives.

Our thoughts have already been shared with a number of key civil servants from Cabinet Office and other Departments with expertise covering many different purchasing categories. Their responses and feedback have been reflected here.

Our observations are informed by our knowledge of the public procurement rules; our experience of advising on and supporting numerous major procurements and our analysis of key practical and commercial issues that can make the difference between success and failure. As the following paper demonstrates, collaboration is the secret to successful delivery!



¹ Accelerating Government Procurement - February 2011

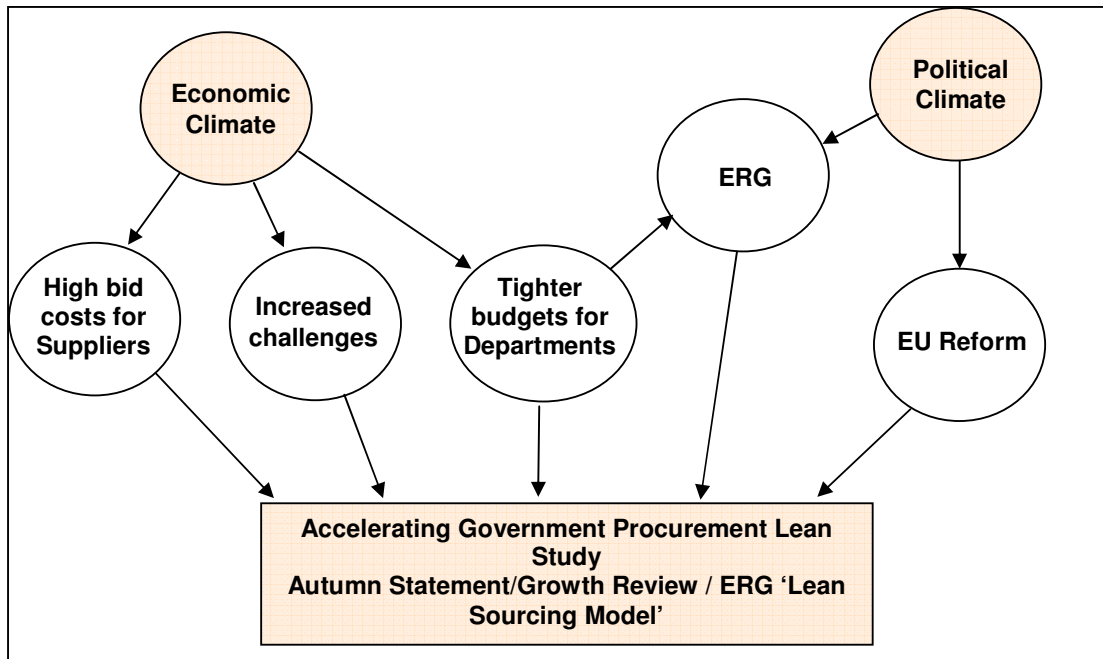
Headline Issues

The Lean Report covers the following issues:

- Procurement Process Design and Management
- Governance (or what it calls "Bureaucracy")
- Capability
- Procurement Strategy
- Pre-OJEU readiness
- "Misuse" of the Competitive Dialogue award procedure

One year on, we look at each of these in turn, distilling what we believe are the key underlying issues, resourcing implications and actions now needed to get to the next level. Our approach puts compliance at the heart of good procurement management but does not allow it to take centre stage from "Delivery".

The Context



Some Additional Context²

- The UK uses Competitive Dialogue more than any other Member State
- On average it costs each supplier £125,000 to respond to a competitive dialogue Pre-Qualification Questionnaire alone.

² Source "Accelerating Government Procurement".

Issue 1: Procurement Process Design Management

What the Report says

The Lean Report identified a number of issues surrounding process design and management, including:

- a perception that procedures are taking too long;
- that engagement with suppliers is inefficient;
- that there is much evidence of risk aversion; and
- the need to move to output / outcome based specifications.

The Lean Report is particularly critical of the process management procedures in place within government departments – these, it argues, are currently not fit for purpose.

Symptomatic of the inadequacies that are said to exist in process design and management is the lack of suitable departmental guidance.

There is no shortage of guidance it is just that existing guidance in many cases is said to be too lengthy to serve its purpose, and where improvements are made to guidance and best practice, these are not shared across departments, resulting in a loss of valuable know-how.

The net effect of current systems is an elongation of procedures and inefficient communications with suppliers, surfacing in the form of serial-processing and repetition.

What actions can you take?

There are a number of actions that can be taken by departments to address these issues and cut inefficiencies.

One observation we would make, (and this is borne out by officials we have spoken to) is that general "risk-aversion" is not really the problem. Instead it is an aversion only to certain types of risk especially "commercial" risk and performance management risks.

Another way of putting it is that departments can sometimes allow generalised concerns about legal compliance to prevent them from moving outside familiar territory and making the necessary exploratory steps into commercial discussions that would enable them to understand the market better. There is also evidence of departments losing sight of the original requirement and failing to fit the procurement process to their specific needs.

What does good Process Design and Management look like?

In respect of any proposed public contract, we think it is essential that you use a method of project management that:

- is fit for your immediate purpose;
- meets the Statements of Requirements -
It must reflect a clear and shared understanding of the requirements by the project team and ensure that they are equally clearly and comprehensively expressed in language that the supply-side will understand.
- recognises that the only reason you are undertaking the procurement is to meet your end-users' needs -

Before anyone attempts to draft an OJEU contract notice, it is vital to gain maximum understanding of the market. That is to say what supply-side can potentially offer. It is also essential to get their views on the likely commercial issues that will impact on their ability and willingness to bid. You want to encourage bids – so ask the supply-side what 'good' would look like. This pre-procurement engagement can often involve using PINs to alert the market. It needs to be planned and well managed so that the suppliers receive the right information, on time and that a level-playing field is maintained. The procurement rules do not ban pre-procurement engagement with suppliers. They simply require you to do it fairly and 'transparently'.

- Really does identify the best value based on the whole life cost -

Here it is worth reminding ourselves that long-standing HM Treasury policy requires Departments to ensure value for money (VfM);

- Ensures compliance (with internal and external rules) -

The best way to manage compliance risk properly is to engage specialist legal advice pre-procurement;

- Reflects the fact that there is a natural hierarchy of rules at the top of which sits the Law -

Below the Law sit the policies issued from the centre and your organisation's own internal policies and delegations. It is essential to remember that the Law always trumps policy. This is frequently not clearly understood and practitioners end up wading through a swamp of undifferentiated "bureaucracy"

- Start with the end in mind -

The whole purpose of the procurement is to award a 'public contract' that fully defines and embodies the commercial relationship. The contract documents themselves are absolutely crucial. They define the precise nature and scope of the services, works or supplies being purchased. They determine the price that the authority will be paying in return; the financing and the payment mechanism. They allocate a variety of risks to the right party (risks that are inevitably reflected in the price). They also create legally enforceable rights and obligations. By focussing early on the contract that will be awarded, managers can avoid the costs and compliance risks of trying to retro-fit your contract documentation to the deal that has been struck. It is important to be clear about the proposed contract documentation before you finalise the procurement strategy as it affects your choice of award procedure.

- Focuses at each stage on who your audience is and how best to tailor your communications to them;

- Anticipates the information bidders will need.



Issue 2: Governance

What the Report says

The Lean Report highlights unnecessarily bureaucratic approvals processes and governance.

The suggestion is that multiple layers of bureaucracy exist due to an inherent culture of risk aversion inhabiting some government departments that is focussed towards avoiding unnecessary spend and challenges from competing suppliers.

These factors have contributed to increased turnaround times.

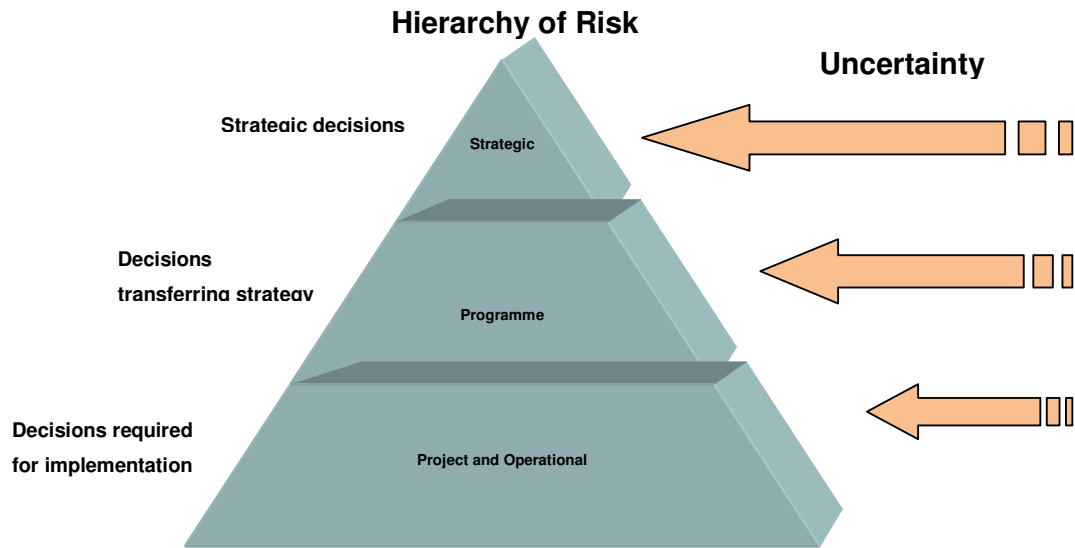
What actions can you take?

1. Implementing an effective model of project governance:

At a high-level, it is crucial that government departments have an effective project governance structure in place, which must achieve:

- Compliance with law and policy;
- co-ordination of delivery mechanisms;
- risk management procedures / assurance;
- audit;
- probity and accountability;
- approval (on time); and
- alignment with any other departmental or government-wide strategic objectives.

Crucially any effective project governance model should be able to address risk at the appropriate levels. A visual model, such as the one in this diagram, provides a reliable means of focussing on risk management and may be used to inform your project governance model:



(model reproduced by kind permission from HM Treasury, The Orange Book – Management of Risk – Principles and concepts October 2004 and SU Report Nov 2002)

Good governance requires that we remember to think in terms of the whole organisation, not just the specific task. The main purpose of this model is that it helps illustrate that risks can often helpfully be thought of in these (horizontal) blocks.

It is important, however, to get the vertical dynamics right too. In other words understanding the relationship between your project risks (financial, objectional, legal, reputational etc.) and the risks that are best managed at Programme level or by the Department's Board (sometimes referred to as 'Enterprise Level Risk'), which manages the Department's strategic risks.

The failure of the project may well have impact on one or more of the Department's strategic objectives. How will this factor be identified, managed, communicated?

The project must create and maintain a suitable Risk Register which covers the full range of risks including financial, reputational, legal compliance, reputational and availability risk.

Having a Risk Register is of course not enough. The team needs to have a shared appreciation of how the risks inter-relate; how they will be assessed and ranked.

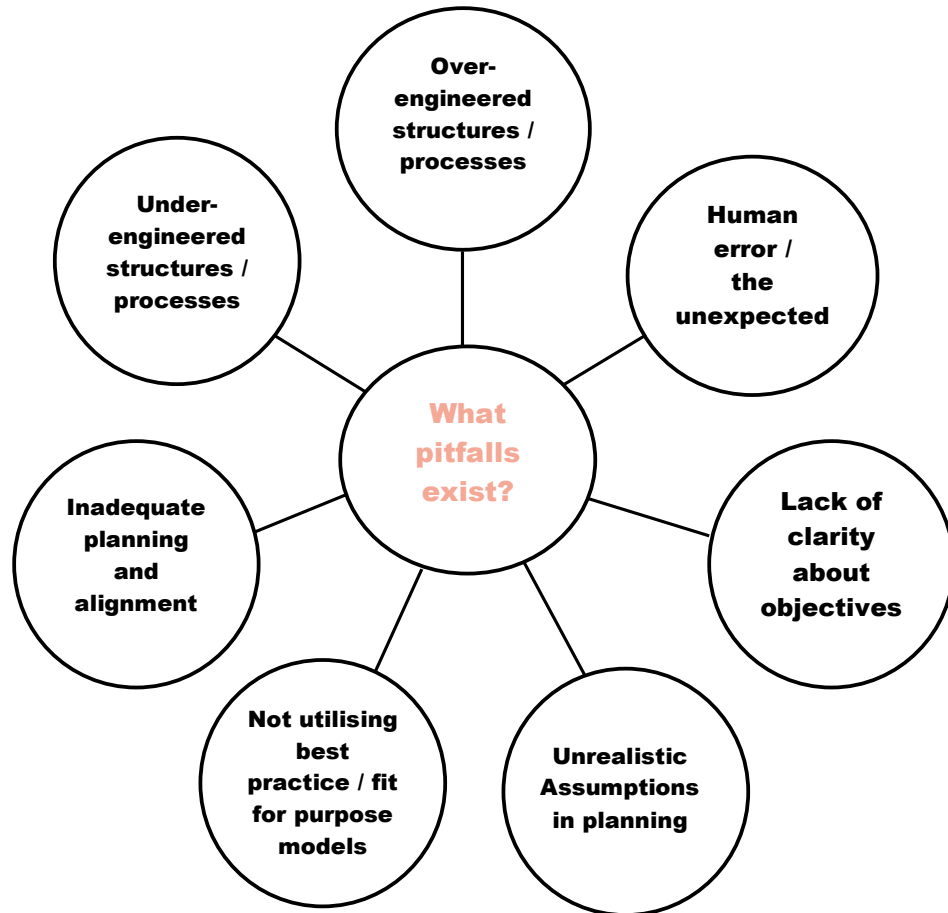
For inexperienced team members the term 'risk' implies something that should be avoided. Good project management provides the team with the confidence of knowing that risk is inherent and unavoidable. It is a necessary label for events or occurrences that can adversely affect the outcome of the project.

Whilst legal compliance risks are more likely to crystallise at some key stages of a procurement in truth they can happen at any point from Market Analysis and Sourcing Strategy to Contract award and beyond into the contract management phase.

Consideration of key project governance issues:

When considering how project governance works in practice, it is important to keep in mind the key issues which can lead to inefficiencies on the ground.

The diagram below visualises just some of the potential pitfalls which our clients are often faced with:



Fitness for Purpose:

Do you have a process that is fit-for-purpose?

In order to work towards lean and effective project governance, it will be necessary to review your current process to ensure that it is fit for purpose. This process will help to drive efficiency and lower costs by removing any bureaucratic elements that might be inherent within your current process.

Working towards a lean model will involve:

- removing unnecessary standard wording / drafting;
- removing unnecessary steps;
- removing unnecessary roles;
- removing unnecessary decision points; and
- viewing processes from end-to-end.

Ultimately each step in your approval process should add value or it should be removed.

Whatever method you use, it is important to choose one which is tried and tested and suited to your requirements.

Using an established project management approach such as Prince 2 will give your procurement the necessary framework for governance, controls, risk management, audit, clarity of roles and responsibilities and focus on delivery.

Issue 3: Capability

What the Report says

The Lean Report uncovered insufficient capacity of capable senior management resources with experience of complex projects, as well as a lack of commercial in-house legal advice.

These factors have contributed to an over reliance on external advisers and increased costs.

What actions can you take?



Building the Project Team

The Lean Report is bundling up a number of quite different skills issues here.

We think the pragmatic response is to assess what resources and skills you have, identify any gaps and decide what you need to bring in from other teams or organisations.

Early engagement with specialist advisers (legal, project management, technical) increases the efficiency of the procurement and ensures that you have the best chance of a successful outcome. That is itself a VfM issue.

An appreciation that effective management of internal resources can impact on delivery, will assist in this process.

Various tools exist that can help you build the right project team; the team with the right financial skills; legal skills, knowledge of the market; project management and communications skills and levels of commercial awareness. If the project lacks access to public sector (GLS) commercial lawyers then this highlights the need to bring external commercial lawyers on board. They can give you the combined skills of legal expertise and transactional experience relevant to your project. Other external specialists may be needed too. Bringing in that support is a vital part of building the right project team. Without the right skills and experience your project is unlikely to succeed.

Mobilisation

Be clear from the outset about what it is that you need your advisers to do. Everyone on the project team needs to have clearly defined roles and responsibilities. This is just as true of departmental staff as it is of external advisers.

Setting out clear roles and responsibilities will help ensure that internal resources are used where appropriate and that external advisers can add real value to the process. The key criterion for the selection of any adviser should therefore be value for money rather than lowest price. We recommend you invest considerable time and care understanding what specific benefits and 'value' each type of adviser can bring. How will you evaluate them on 'Quality'?

The timing of each adviser's involvement is also a critical success factor. Too often specialist advice is sought once the procurement has started. The section on Procurement Strategy looks at this in more detail.

Early engagement with the market pre-OJEU Notice will assist you in understanding what it is that you require from your advisers and will assist you in clearly defining the scope of their involvement.

You should be aiming to develop a close network of trusted business advisers who have the specialist market knowledge that cannot be sourced internally. Developing such a network avoids the inefficiencies associated with 'churn' and helps to ensure that your advisers develop a good corporate memory of your needs and requirements.

Issues 4 and 5: Procurement Strategy & Pre-OJEU Readiness

What the Report says

The Lean Report identifies a lack of pre-OJEU Notice upfront planning.

The Report observes that there is a lack of early work with suppliers which often means that Government departments are unable to articulate their requirements succinctly at OJEU Notice stage. This has resulted in increased turnaround times and increased costs for all .

The Report also identifies that there is a general mis-use of the Competitive Dialogue ("CD") procurement route.

What actions can you take?

Don't Start before you are Ready

The pressure to demonstrate progress all too often forces procurement teams into publishing the OJEU prematurely.

This is likely to be fatal to (i) compliance, (ii) efficiency, (iii) effective delivery or (iv) VfM.

Sometimes it proves fatal to all four.

Long before OJEU publication the project team needs to spend valuable time and effort engaging with the supply side. This is especially important if it is a technically complex procurement or one where you want innovative solutions to service delivery, for example.

The importance of "warming up" the market was one of the key themes in Francis Maude's speech on 18 January.

Early engagement is part of your Market Analysis and Sourcing Strategy and helps you develop your understanding of how the project may be able to meet your customers' Requirements.

The Industry Boot camp or similar exercise needs to be shaped to provide a fair process for fruitful discussions with industry. The best way to ensure fairness is to manage your communications properly, providing the same information in the same format and at the same time to each of the participants. A well managed process gives the participant's confidence in your determination to run a fair and effective process. One they are more likely to want to take compete in.

Advanced preparation and ensuring each participant gets the same opportunity will reduce the risk of non-compliance. It helps avoid legal challenge as well as making good business sense.

It helps you shape your Procurement Strategy (by establishing, for example, whether there may be cross-border interest);

It helps you assess the likely level of interest you will get from bidders when the OJEU is published;

It will shape your understanding of the affordability of the whole exercise.

It is crucial to involve your specialist legal advisers in the preparation of the Procurement Strategy. Their input on the compliance and commercial issues will help identify the best approach and the correct choice of award procedure giving your project the necessary assurance when considering -

- sole sourcing;
- in-house arrangements;
- varying an existing contract within certain limits;
- excluded contract types; and
- sub-threshold contracts;
- full competitive tendering using the Open, Restricted, Accelerated Restricted, Negotiated or Competitive Dialogue award procedures;
- using an existing framework agreement.



Legal Compliance and Commercial Sense

The two are closely related – the Public Procurement Rules offer ready designed award procedures.

- The procurement rules in the UK and the rest of Europe are driven by the legally enforceable principles of *transparency*, *non-discrimination* and *equal treatment*. Values that fit squarely

within the public service ethos.

- UK regulations³ establish a specific obligation in UK law for contracting authorities to disclose information about the criteria and weightings to allow all tenderers to understand how they will be scored.

The PP Rules are also designed to create a competitive market in the EU. That means that commercial and economic issues lie at the heart of the rules.

A compliant procurement does not have to mean a costly or inefficient procurement.

Following a common 'sourcing' methodology and ensuring your project benefits from specialist advice will improve the chances of a successful outcome for your customers and reduce procurement cost.

What a standard methodology cannot provide, however, is the degree of assurance that comes from having expert advice and support on dealing with the unexpected.

Issue 6: Misuse of the Competitive Dialogue Award Procedure

What the Report says and what ERG says

Finally, the Report and ERG raise the issue of 'misuse' of the CD procedure stating that poor selection and application of award procedure is resulting in elongated procurements and additional cost for both government and its suppliers.

What actions can you take?

We have seen a number of very successfully run competitive dialogues.

When they are designed and managed confidently and against a clear output based specification CD is an excellent procedure for allowing bidders to offer tailored solutions. Solutions that may be very different from each other but which offer the type of imagination, technical innovation and operational efficiency needed to remodel public service delivery.

Poorly managed they can be a perfect storm of confusion, wasted cost, wasted time and a loss of confidence in the procuring authority.

Our advice to clients who have to decide whether they can use the CD is to address up-front the technical, financial and contractual elements that will form the proposed customer/supplier relationship.

³ The Public Contracts Regulations 2006 (as amended)



Our section above called 'Start with the End in Mind' also considers this point. But there is further guidance available in the HM Treasury/OGC Guidance on the use of the Competitive Dialogue.

The single most important message we think departments can take on board is that CD is not a substitute for being clear at the outset what your Requirements are.

It is not the job of the suppliers to tell government what its requirements are. This is a crucial issue to be addressed earlier in the sourcing process namely in the Business Case and Market Analysis phases.

The CD procedure allows the authority to discuss a wide range of potential solutions with bidders involved in the Dialogue phase. This is vital time for working on solutions, not requirements.

The vast majority of delays to CD procedures flow from this misuse of the Dialogue phase rather than from any inherent problem with the award procedure itself. It is an implementation issue.

What very often drives authorities down the path of using Dialogue to establish their Requirements is a lack of confidence about how the legal, contractual, financial or technical aspects will be put together.

If there is an issue about any of those elements then the department should always obtain specialist advice to fill the gaps in its internal knowledge.

By doing that, departments will be able to establish whether they actually need to run a Competitive dialogue or not⁴. Very often we have found that authorities who take advice early on find they can instead opt for the shorter and easier Restricted procedure.

This is because very often there is a tried and tested approach that can be adapted. It is just a question of finding it.

What are Output Based and Outcome Based Specifications?

A specification is essentially a detailed statement of requirements, very often containing technical data.

Whatever the terminology used, what is essential for good procurement is to state your customer's Requirements fully and accurately.

Doing that by means of stating what effects, results or outcomes must be achieved is an 'output based specification'.

⁴ Strictly speaking the Regulations do not give contracting authorities a free hand in choosing to use the CD. It is only permitted when the authority 'is not objectively able to define the technical means...capable of satisfying its needs or objectives, or to specify the legal or financial make-up of a project or both' (regulation 18 (1)).

The key distinction is between an OBS on the one hand and an 'input based specification' on the other.

An input based specification will tell the supplier how to perform the service. An OBS won't. It will leave the supplier free to use his own ingenuity skills and experience. This is particularly important to the authority in two areas:

- 1 Cost – since the private sector typically invests considerable effort and skill in reducing costs (and reduced costs can translate to reduced price); and
- 2 Innovation – since the private sector typically invests considerable effort and resource into developing innovative technical and other solutions (since that is one way that businesses differentiate themselves from their competitors).

The drive for efficiency and cost saving means that there has to be a shift away from telling suppliers how to provide the service (input) to telling them what the service needs to achieve (outputs and outcomes).

That requires a major change of mindset for some officials. Instead of exhaustively stating what needs to be done the new approach means leaving that comfort zone and using new terminology to describe what 'good' looks like in terms of the results achieved. That will generally be done by identifying the end-user experience and imagining yourself travelling along the user-pathway.

It means adopting the end-user's perspective.

Conclusions

The emerging 'Lean' model for central government departments and agencies will no doubt assist in removing a number of unhelpful inconsistencies of approach to government procurement.

It will also no doubt go some way to alleviating some of the gaps in process management skills.

If departments successfully combine the lean sourcing model with intelligent and timely use of external professional advice, commercial awareness and support they will be able to make a step change in their procurements. It would deliver real savings to the tax-payer both in terms of reducing the process cost of procurements and in terms of the real benefits flowing from service improvement and value throughout the life of the contract.

The civil service successfully manages complex programmes and projects in countless policy and operational contexts. It is, collectively, adept at handling complexity.

But Public Procurement is a unique hybrid of public administration, financial management, legal compliance and commercial deal making. Expecting the public sector to resource all those different elements and offer all the necessary skills may not be realisable or indeed desirable. But a combination of robust process modelling and continued skills transfer will no doubt achieve the right balance between using internal procurement resource and securing the necessary external skills, support and experience.

Applying sound project management to public procurements, with fit for purpose arrangements for governance, risk management and communications will also play a critical role in enabling departments to secure real and sustainable improvement.

It will need to be a working collaboration between procurement specialists in the public and private sectors.

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If you would like to discuss any of the issues raised in our Report please feel free to contact any member of our procurement team on the numbers below.

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