

Procurement Innovation

This is a series of two articles

- **The first – What do you prefer – Sclerotic or Agile Procurement? Not for release before Fri 5nd June;**
- **The second – Delivering Agile Procurement – Making public procurement faster, fairer, local, compliant and robust. Not for Release before Fri 12th June.**

What do you prefer - Sclerotic or Agile Procurement?

You may remember the award winning series of British Heart Foundation adverts which showed cholesterol blocked arteries and how slow and sluggish they are. In many people's views, that's just like much of the public procurement which is being conducted currently. And we know what happens if you ignore sclerosis, it kills you. Sclerotic Public procurement is in danger of killing the beast for a range of reasons and practice needs to be urgently reformed. This is the first of a series of 2 articles which highlight the many concerns about the interpretation of the EU Procurement Directives and point the way to solutions which have been ignored.

Very few procurers, firms and contractors including NCVO and CBI are entirely happy with the state of public procurement. Even procurers in Councils are reporting fleet acquisition exercises taking two years with excessive cost being incurred in the short term to keep an aging fleet on the road. Then only to find there is no finance available for the leasing deal. So the contract was awarded to an existing supplier. Facilities management contracts are also taking two years and being frustrated as the firms go into liquidation. This is not a recipe for success at any level, to service users, taxpayers and suppliers.

Frameworks are increasingly being mooted as the way forward, but there is evidence that in areas such as printer toners and consumables, the recent exchange rate rises have made previous frameworks unsustainable and they are being retendered. We are also hearing that cash strapped builders are offering market sensitive deals but being blocked as they are not on frameworks. So how is the public sector able to take advantage of the downturn? Within the NHS, PCTs are being charged with decentralised procurement due to the inflexibilities of large scale national contracts. We have recognised that Stalinist command and control policies do not work as they favour the producer rather than service user.

There are now so many frameworks in operation that even these are like a 'pick and mix' operation with inconsistencies and differing terms. So just look at mobile phones where there are five network owning operators yet countless frameworks involving

mobile telephony. In many frameworks, there is an unseen rebate which the contractor pays to the framework operator. These can vary and affect the choice of which frameworks to use, particularly if your agency gets a cut of the fees. In today's environment, are these rebates likely to distort competition? Of course they are. Surely the choice of framework has to be competitively neutral as is the method of evaluation.

Multiple contractors are being asked to bid from multiple frameworks for the same contract. The legal minimum is 3 yet over 50 can be asked to tender. The term 'sufficient competition' seems to have been substituted by 'saturated competition'.

A recent Joseph Rowntree Foundation report recommended higher thresholds as these are some £90,000 for Civil Service and NHS Tenders. With 30 bidders for open tenders, each costing £1,000 to prepare a bid, for a job which will make £10,000 profit, its costing the private sector collectively £30,000 for one firm to make £10,000. That is the economics of the madhouse. You'd do better at the bookies.

The recent Glover Report on SME procurement made the usual recommendations, which we have seen for the last 15 years, of more training, more localisation and flexibility and SME encouragement. Indeed, other reports have said that the bulk of innovation comes from SMEs. Yet the movement towards frameworks is having an adverse effect and cutting out SMEs in favour of larger and fewer suppliers in order to reduce procurement administration costs. This is the tail wagging the dog. It is resulting in slow and sclerotic procurement. Worse than that, it is killing off SMEs.

So this all leads to skill shortages amongst procurement officers at a time when the recession is leading to more firms moving into the public sector space. Few procurements ever run to time and costs are increasing. In the Legal Aid space, watch out for massive eAuctions for legal services. This will cause a backlash from some of the most vocal and persuasive members of the community, the legal profession. The ultimate risk is a breakdown of parts of the Justice system as solicitors take the ball away. With jails already bursting, it would lead to more untried people on the street and its attendant public risk.

So what can we do – withdraw from Europe or look for innovation and like the French, use the flexibilities in the system to devise better ways of dealing with EU rules. Surely we need to use the rules to devise methods which will relieve the pressure and move towards Agile Procurement by using Dynamic Procurement systems.

Agile is fitter, faster, hates sclerotic tendencies, is flexible, works locally and ensures probity, health and safety, social, environmental and Competition Act compliance.

The next article will describe how we can use innovation to overcome these obstacles with Agile Procurement.

Notes For Editors

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The IoCP is a member owned not for profit with the goal of acting as the voice of commissioners and improving commissioning standards.

Barony is a management consultancy whose strapline is 'Performance through Innovation'

Article 2 – Not for release before 12th June

Delivering Agile Procurement – Making public procurement faster, fairer, local, compliant and robust

Lets look at what we mean by Agile Procurement and how it would work. Agile is fitter, faster, hates sclerotic tendencies, is flexible, works locally and ensures probity, health and safety, social, environmental and Competition Act compliance.

You will say that you are governed by the timescales for competition, the need to be competitively neutral, the aggregation rules and tendering limits. That is correct and we now translate these into individual tendering exercises and use frameworks. Yet we are missing a trick to use the regulations to our advantage.

The EU Procurement Directive 2004/1 allows for the use of a Dynamic Procurement System which, if developed properly, will provide the mechanism to deliver Agile Procurement. It does not appear to be an option in the Glover report and to our knowledge, software which can deliver it has never been commissioned. The outcome is that Dynamic Procurement Systems are not in general use. So government and local government, SMEs and Third Sector are not gaining the advantages from their use. The challenge is to design a Dynamic Procurement System to meet the Agile requirements.

For your information, we have outline a number of benefits of a well constructed DPS below.

What is a Dynamic Procurement System?

It is a wholly electronic system which is open to participants at any time who meet the quality and price criteria.

Will it help SMEs?

Yes as frameworks lead to SME lockout for the firms who are not included. Also SMEs inevitably have capacity issues and a well constructed DPS will allow firms to leave and join, based upon qualifications on a local basis.

Will it lower costs for Government?

Yes by engaging with SMEs directly and cutting out the framework operator. Costs will be lower and communications faster.

Will they supplement Frameworks?

Yes and bring more decentralisation and localisation into marketplaces.

Will they help to procure Innovation?

As innovation is focused in SMEs, then they will encourage SMEs to qualify for contracts, deliver innovation and cut down lead times. This will be more agile.

Will they help EU Procurement compliance?

Yes through improved transparency and electronic selection providing audit trails. Joseph Rowntree Foundation has criticised the current EU procurement limits as too

low. The low thresholds have also led to a skills shortage in procurement and commissioning. Correctly designed, here is the way forward through the EU rules, which will help alleviate skills shortages and deliver government programmes faster. Of course, there may be some self serving interests which want to foster skills shortages.

Will they help the Construction Sector?

Discussions with Constructing for Excellence indicated problems with Frameworks. For instance, smaller firms which have capacity and are willing to price aggressively in the current market are being locked out due to frameworks.

Are they Sustainable?

They can be designed to suit and include environmental, social and Competition Act Compliance tests.

Do the current eProcurement Offerings represent a Dynamic Procurement System?

To quote -“Not as I understand them Scottie”.

The question of why Dynamic Procurement Systems are not being used may shed some light on current practice and perhaps attitudes to the EU. However, DPS is EU Compliant and does not seem to have been considered as a solution to a number of policy issues. Rather than having sclerotic public procurement, we should move to Agile Public Procurement.

The next step surely is for government to agree to promote the new thinking of Agile Procurement and use Dynamic Procurement Systems to deliver it on the ground.

We also ask supporters to register on the Google Groups site – Agile Procurement and make their views known. In addition, anyone can also comment on the proposals on the Institute of Commissioning website forum, www.iocp.co.uk.

We will then take this to ministers for their consideration.

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