



# More than managing

Creating collaborative government contracts which deliver for the public and for business

January 2020

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# Summary of recommendations

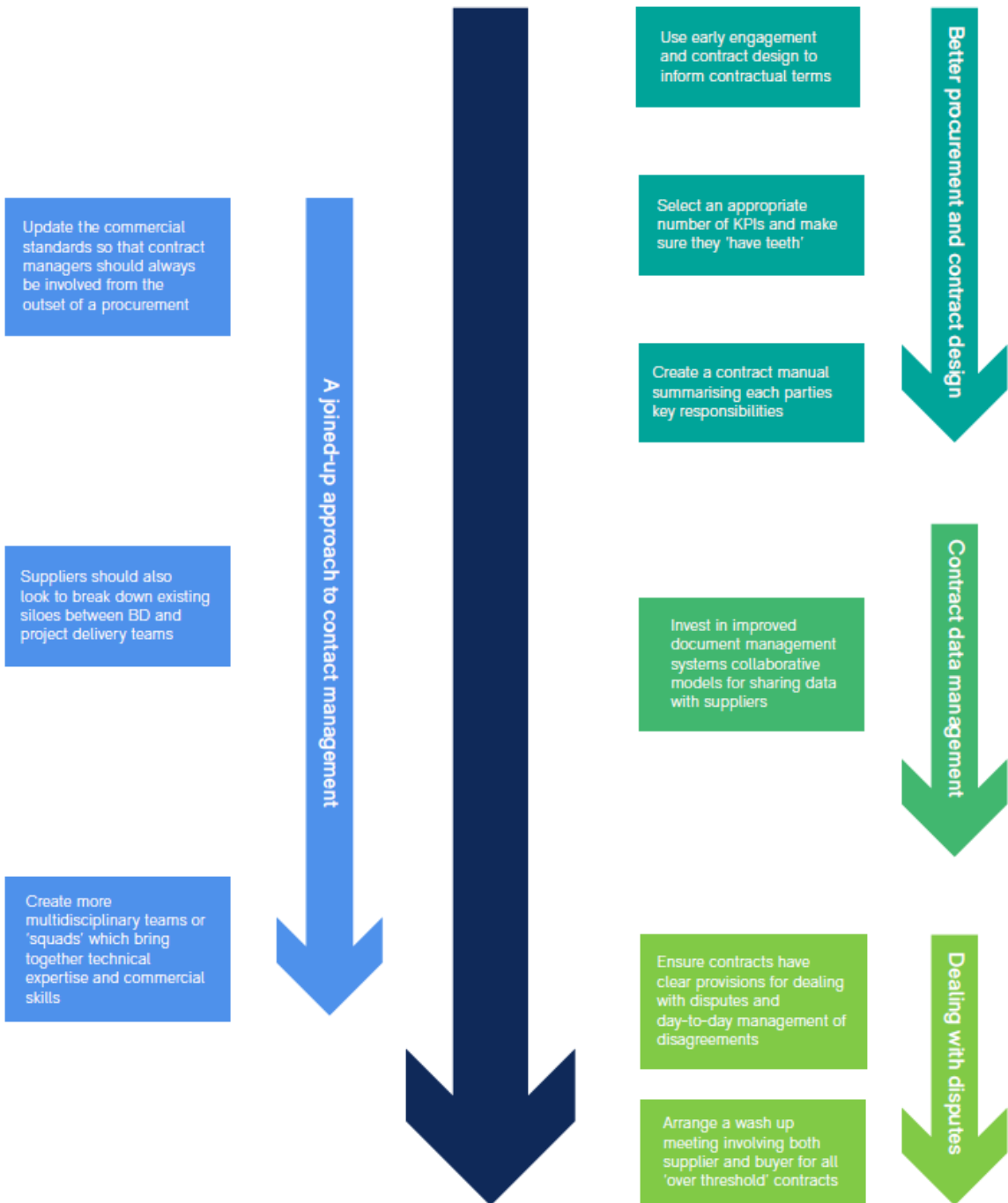
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## **Improving contract management processes to support better collaboration between businesses and the public sector**

- Commissioners should use early dialogue with suppliers to inform the procurement route and contractual terms including those related to performance specification, risk allocation and, where relevant, the approach to intellectual property.
- Public bodies should select an appropriate and proportionate number of KPIs which are tailored to the size and complexity of the contract, and that encourage both parties to focus on outcomes instead of process.
- Commissioners should ensure that the KPIs selected are clearly defined, can be measured and 'have teeth' so that, where appropriate, under-performance can be held to account. KPIs should be accompanied by a statement of the buyer's responsibilities.
- Contracts should be accompanied by a contract manual summarising the key responsibilities and deliverables for both buyer and supplier.
- Public bodies should invest to improve document management systems, and put in place structures which support the sharing of data and documents with suppliers.
- The Contract Management Professional Standards should be updated to state that contract managers should always, rather than ideally, be involved from the outset of the procurement process.

In exceptional circumstances where this is not possible, a thorough handover document should be created detailing the background to the partnership. This must be updated regularly, and for complex contracts a meeting to discuss this should be held at the outset of the project.

- Suppliers too, must work to break down existing siloes between their business development and project delivery teams, for example by ensuring their internal processes support delivery employees to be involved in the bid-writing process.
- Public sector commissioners should create more multi-disciplinary commercial teams involved in the end-to-end process. The Squad methodology adopted by organisations such as DVLA could provide a blueprint from which other public sector bodies can work from.
- Public sector contracts should contain clear provisions for resolving disputes beyond just legal remedies. Particular focus should be given to the day-to-day management of disagreements so that issues can be identified, recorded and nipped in the bud quickly.
- Over threshold public contracts should include a duty to hold a wash-up meeting. This should involve both buyer and supplier, with key reflections captured in writing, and accessible to other commissioners.



## Attracting and retaining the right people with the right skills and incentives

- HR departments within public sector bodies should ensure recruitment campaigns position procurement and contract management roles as part of a strategic function and highlight key benefits to a career in the civil service beyond pay.
- The Cabinet Office should form a Local Government Commercial Taskforce with HM Treasury, the Ministry of Housing, Communities & Local Government (MHCLG) and the Local Government Association (LGA). This group will be charged with extending commercial training, wherever possible to local government commissioners, and encouraging the take-up of the commercial operating standards amongst these bodies.
- The Cabinet Office should work with industry to encourage more commercial secondments and to increase business involvement in commercial training.
- The civil service should introduce more performance-related pay to incentivise commercial staff to ensure contracts successfully deliver improved contract outcomes.

Introduce more performance-related pay to incentivise commercial staff to deliver

Use recruitment campaigns to position commercial roles as part of a strategic function. Ensure key benefits of a career in a civil service beyond pay are highlighted.



Encourage more commercial secondments from industry and increase business involvement in commercial training.

Make the most of existing materials, including e-learning modules and the commercial standards, particularly within local government bodies

# Introduction

## **Effective management of government contracts is critical to the public purse and the delivery of high-quality public services and infrastructure**

At any time, central government departments alone are estimated to be managing over 100,000 contracts, with the wider public sector responsible for considerably more.<sup>1</sup>

In addition, over 30,000 officials are involved in overseeing these partnerships – which makes up the bulk of commercial staff in government, and a significant commitment of resource. As a result, effective contract management is critical to the public finances.

Sir John Manzoni, Chief Executive of the Civil Service and Permanent Secretary at the Cabinet Office has also recognised the importance of effective delivery across the commissioning cycle:

*“The ability to successfully procure these services is a critical skill. However, if we only focus on this aspect, we can risk underestimating the impact of other important elements of contract management such as managing contract delivery, change control, stakeholder management and ultimately the close-down of one contract and the design of the next.”<sup>2</sup>*

More importantly, ensuring contracts deliver is vital for UK citizens who rely on access to high-quality public services and infrastructure every day. When contracts fail, it is members of the public who are impacted. Improved contract management therefore has the potential to support the wellbeing of citizens in communities up and down the UK.

## **Yet, poor contract management is often the reason for project failure or poor service delivery**

Despite its recognised importance, the National Audit Office (NAO), Institute for Government (IFG) and Cabinet Office have all acknowledged that contract management remains a key area for improvement.

In fact, recent data from the Government Commercial Function (GCF) shows contract management and managing supplier relationships are the two areas which have not improved since the introduction of the commercial operating standards in 2015.<sup>3</sup>

Common issues highlighted include a lack of clarity about desired contract outcomes, a scarcity of commercial expertise, poor data collection and irregular review of KPIs.

And the impact of this has been significant. Complex national projects, such as Crossrail and the Emergency Services Network are just a few of the contracts highlighted as underperforming due, at least in part, to poor contract management.<sup>4</sup>

Previous CBI research also supports this view, with only 12% of CBI members surveyed in 2018 stating that public sector commissioners had got better at designing contract terms which support flexibility in service delivery since 2015. During the same period, only around one in five stated that government had improved at anticipating changing needs and remodeling contracts over time.<sup>5</sup>

## **By working together, government and industry can ensure more contracts deliver on time and on budget**

Many of these issues are not new, and have been the subject of government attention and investment for many years, including in the recent Outsourcing Playbook. However, problems persist. Driving a step change in how contracts are managed will therefore be a significant challenge, and one that will require both short-term action, and a longer-term plan.

Given the scale of the task, this industry-led briefing does not seek to provide all the answers. Instead, it brings together a series of practical recommendations which draw on industry expertise of managing complex supply chain partnerships. Taken together, business believes these steps can help ensure more public contracts are delivered on time and on budget.

What is common to many of these is the need for government and industry to work together to create more effective partnerships, centred around collaboration and focused on delivering long-term value for the public, whom this marketplace ultimately serves. With the refresh of the Playbook due to be published over the next few months, the CBI also hopes this briefing will be a useful aid for policymakers as they continue in their efforts to improve government's commercial behaviour.



# Set partnerships up to deliver success

*While better procurement alone cannot ensure that public contracts deliver value for money, effective procurement processes and contract design can lay solid foundations for successful delivery.*

## 1) Design contracts which support collaboration

### **Embracing dialogue with suppliers about contract design can encourage a culture of collaboration**

As the Cabinet Office's Outsourcing Playbook acknowledges, before a formal tender begins, it is critical that public sector commissioners engage with the market.<sup>6</sup>

This is essential not only to gather knowledge on existing capability and products, but also to better understand the market's appetite to bid for the contract.

Early engagement is an important opportunity to try and engage SMEs and voluntary sector organisations, and to think about the broader social and environmental objectives that can be achieved.<sup>7</sup>

Suppliers believe that Commissioners should also seek to use these early conversations to directly shape contract design and performance specification.

#### **The Cabinet Office Outsourcing Playbook**

Published in February 2019, the Cabinet Office's Outsourcing Playbook laid out detailed guidance which aimed to improve how government works with industry and the voluntary sector.

It included specific measures related to managing risk, piloting complex projects and engaging the market as early as possible, with a view to ensuring more public sector contracts are set up for success.

The Playbook is due to be refreshed in early 2020.

Many businesses work across numerous public sector clients, and can bring considerable expertise about 'what works' in different types of partnerships, and also what are 'market norms', particularly in contracts involving new products or services. Working hand in hand with industry partners can also help all parties to view interactions with the public sector as collaborative, rather than simply contractual or adversarial.

While pre-market engagement is now carried out more frequently, suppliers suggested that there can still be significant differences between what is discussed, the procurement process, and the contract that is eventually put in place.

In particular, early conversations about risk allocation or the management of intellectual property can often be collaborative. Contractual terms, however, frequently don't reflect these early exchanges, creating tension between buyer and supplier even before project delivery has begun.

Ensuring early conversations about collaboration flow through into the contract terms and contract delivery phase is important for building a strong partnership.



To support this, these discussions should be captured in writing. This can help ensure that early discussions are taken into account by those designing the contract, and that both parties can be held to account for the commitments they make during the pre-market engagement phase.

Finally, suppliers would like to see early engagement with suppliers having a greater impact on the procurement process itself. As the playbook acknowledges, where a department identifies that a contract has ‘areas of complexity and risk that will benefit from dialogue and/or negotiation, it should select the competitive dialogue (or competitive procedure with negotiation)’ procurement route. In practice, however, suppliers report that these more complex forms of procurement are still underused, and that contracts with high-levels of complexity or risk may not be identified early enough.

**Recommendation:**

- Commissioners should use early dialogue with suppliers to inform the procurement route and contractual terms including those related to specification, risk allocation and, where relevant, the approach to intellectual

In addition to engaging with the market, suppliers also observed that procurement teams could do more to undertake dialogue with policymakers to better understand the outcomes they are seeking through a partnership with the private sector.

## 2) Adopt fewer KPIs with ‘more teeth’

### **Improving performance measurement will require a fresh approach to KPIs**

The design of KPIs, and their subsequent measurement, is also an area which presents opportunities to improve contract management.

While the Playbook encourages commissioners to use ‘performance measures that are relevant and proportionate to the size and complexity of the contracts, currently, the inclusion of too many KPIs leads to confusion for suppliers, and a lack of clarity about what the key deliverables actually are.

Businesses report that too frequently, KPIs can be included which are unsuitable or not tailored to the contract at hand – in part due to a reliance on ‘borrowing’ KPIs from other existing contracts. This may reduce the time and resources required upfront to develop an agreement, but in the longer term is likely to have a negative impact on contract delivery.

We heard from suppliers, for example, about agreements which contained in excess of 100 KPIs. Not only does this place a significant administrative burden on both parties, but it can also drive the wrong behaviours.

In particular, contracts with a large number of KPIs can lead to an overreliance on process, rather than both parties coming together in the spirit of collaboration. In these contracts, there are also often more disagreements, leading to additional cost and slowing down contract delivery.

Suppliers also suggested that a disproportionate focus on KPIs reduces flexibility, and prevents both parties from adapting to changes in the external environment. In an age of

rapid technological, social and environmental change, creating contracts which are able to evolve is critical, particularly when it comes to complex multi-year projects.

Businesses consistently report that their most successful partnerships—with either public or private organisations—occur when both parties work to the spirit rather than the letter of the contract that has been agreed. While this does not mean that contracts should not be implemented in accordance with the terms and conditions agreed, a more flexible approach which sees all parties working collaboratively to improve contract delivery and to evolve the contract over time is viewed as preferable by business.

Highways England was frequently cited as an example of a public sector agency who have taken a pragmatic and sensible approach to KPI development, with several of their recent programmes demonstrating a slimmed down number of performance indicators. Suppliers also noted that, in these projects, performance measures were agreed collaboratively and subject to ongoing review.

As a result of taking this approach, not only did both parties experience a reduced administrative burden, but it also increased trust and improved communication. Suppliers believed this had a positive knock-on impact on contract outcomes.

Many businesses stated that they been through similar changes in their own organisations, and were actively working to ensure KPIs supported, rather than undermined effective contract delivery.

A common theme from these discussions was that commissioners should take time to consider why they are including each performance metric. In particular, public bodies could ask the following question about KPIs:

- *Will its inclusion drive exceptional performance through financial incentives?*
- *Will its inclusion prevent service failure by setting basic standards for delivery?*
- *Will its inclusion encourage discussion between buyer and supplier about opportunities for enhanced service delivery or innovation?*
- *Is the data to measure the KPI readily available or easy to collect?*

If the answer to all of the above questions is no, and a clear rationale for a KPI cannot be found, then the inclusion of this metric should be seriously questioned. In addition, commissioners should also take time to consider whether the inclusion of particular KPIs could create perverse incentives for suppliers.

Business believes this more structured approach can help create a more streamlined and appropriate set of performance metrics.

To accompany a core set of KPIs, commercial teams should also consider the value of putting in place a 'code of conduct'. This is an approach that has already been put in place by government within the Strategic Supplier programme, but could be used by more public sector organisations with a wider set of suppliers<sup>8</sup>

This document would lay out a series of principles and standards that both buyers and suppliers will adhere to throughout the duration of their partnership.

In their contracts with other businesses, suppliers suggested that a standard code of conduct helps create a set of shared principles, fosters a culture of collaboration and prevents them from leaning on KPIs due to a fear that fewer metrics may lead to poorer performance.

**Recommendation:**

- Public bodies should select an appropriate and proportionate number of KPIs which are tailored to the size and complexity of the contract, and that encourage both parties to focus on outcomes instead of process



## **Case Study: Bechtel & Sellafield – championing a culture of collaboration**

### **Background**

The Pile Fuel Cladding Silo (PFCS) at Sellafield was built in 1949/50 to receive and store fuel cladding from reprocessing of Windscale Pile fuel; it has been used to store this material and other waste from the UK nuclear programme ever since. The Silo is unsuitable for indefinite storage; this along with uncertainty in the make-up and condition of the inventory combine to rank the facility alongside the most hazardous in Western Europe.

Sellafield Ltd began working with its supply chain partner Bechtel Cavendish Nuclear Solutions (BCNS) in 2012, to execute work to create an access route to the waste and a capability to retrieve waste from the silo.

### **Taking a new approach**

In the first few years of their partnership, the traditional client contractor relationship – characterised by strong contractual control, formal design review and approval, endless formal correspondence and lack of clarity in accountability and responsibility – failed.

The project leadership recognised that simply working harder at what we had always done would not deliver results. The size of the challenge faced by the project would take the combined capability of the three organisations – Sellafield, Bechtel and Cavendish Nuclear – working together to achieve its goals.

To build a new culture, change was needed. This started with a change of some personnel on both sides of the lead team. Once this reorganisation had been achieved, a new lead team, made up of both Sellafield Ltd and BCNS personnel on a ‘best athlete’ basis, was established.

This was followed by a short period of behavioural training to start the trust building and shared goal setting processes. As a first step in the trust process, Sellafield Ltd’s oversight was reduced to the minimum required to meet its duties as a Nuclear Site Licence holder, and responsibility for this pushed down into the integrated project team. This saved 130 posts across the team and increased the pace of work.

### **Improving outcomes**

By maintaining the focus on behaviours, and actively striving for a collaborative and innovative relationship, Sellafield, Bechtel and Cavendish Nuclear have been able to unlock the capabilities of each organisation. In doing this, the project has not only delivered results significantly ahead of expectations, cutting 15 months off a five year schedule and saving £120m, it has also delivered many spin off benefits such as enhanced graduate development, expanded and developed supply chains and improved staff job satisfaction.

Consistent and regular KPI measurement is also critical. Suppliers observed that in some relatively short projects, it was still commonplace for a number of months to pass before a performance review would take place. This prevents any issues with the contract from being identified and dealt with early—be that problems with data gathering, performance or changes in the external environment.

Suppliers also suggested that the wording in contracts should make it very clear how these KPIs will be measured, and how under-performance will be managed. This can help ensure all parties clearly understand the consequences of KPIs not being met.

While this is commonplace in some commercial teams, the picture across the public sector as a whole is more patchy. Some public bodies continue to use vague or broad language within their agreement with suppliers, leading to confusion on all sides. This again can contribute to a higher number of disputes, which are both costly and time consuming for both buyer and supplier.

For a KPI to be effective, it must therefore be clearly linked to a contractual remedy, be that financial penalties, a ‘black mark’ for suppliers or ultimately contractual termination.

Clear information about KPIs and KPI measurement should also be complimented by a statement of the buyer’s responsibilities. While KPIs can be found in the vast majority of contracts, it is less common for commissioners to take the time to consider what their core responsibilities are, and for these to be formalised within the agreement.

Often supplier performance is linked to the actions of the public sector customer. Changes in internal systems or processes, for example, may have a direct impact on the goods or services being provided. Contracts should therefore layout both buyer and supplier responsibilities.

These steps should not, however, discourage buyer and supplier from discussing performance issues. The drivers of performance within public contracts can be complex, and can sometimes be outside of the control of the parties involved in the contract. Ensuring there is open dialogue about performance, alongside having a robust set of KPIs is therefore essential.

**Recommendation:**

- Commissioners should ensure that the KPIs selected are clearly defined, can be measured and ‘have teeth’ so that, where appropriate, under-performance can be held to account. KPIs should be accompanied by a statement of the buyer’s responsibilities.

Contracts can be hugely complex and contain large swathes of legalistic language which is difficult for even the most experienced contract managers to untangle. This can again contribute to confusion about the objectives the relationship with the supplier is ultimately seeking.

In their own organisations, businesses have taken steps to help simplify contractual discussions with their supply chain partners. This includes holding meetings at the beginning of a partnership to talk through the project, and how its constituent parts translate into the formal clauses and performance requirements enshrined in the contract.

As an aid throughout the delivery phase of more complex contracts, business would also like to see greater use of contract manuals. These documents seek to explain in layman terms the key deliverables outlined in the contract and the responsibilities of both parties.

While currently contract manuals are used in some instances, industry believes they should be viewed as standard, particularly when it comes to more complex, multi-year programmes of work.

The Government Commercial Function should therefore work with industry to bring together example contract manuals for different types of partnerships. These can provide a blueprint for commercial teams to use in upcoming procurements.

To be effective, it is critical that these documents are put together with care, so that they are consistent with what is stated in the contract and so that they don't incorrectly layout the liabilities of each party.

**Recommendation:**

- More complex contracts should be accompanied by a contract manual summarising the key responsibilities and deliverables for both buyer and supplier.

### 3) Create one agreed version of the truth

#### **Good data management is a critical part of successful contract management**

Ensuring contract data is effectively gathered and monitored is a key part of the role of a contract manager, be that private or public sector.

Across government, however, it has been widely acknowledged that data collection and record keeping remains problematic, in part due to a continued reliance on paper-based working and legacy technology within some public agencies.

Only last year, for example, did the Health Secretary, Rt Hon Matthew Hancock MP announce the end of the use of fax machines in the NHS. Other key departments, including the Home Office, HMRC and the Ministry of Justice remain wedded to manual ways of working.<sup>9</sup> This leads not only to inefficiency and squandered resources, but also increased margin for error, particularly when working with external suppliers.

The view that data management is a key area for improvement was echoed by CBI members, who suggested that too often they found public bodies struggling to gather, process and organise contract management data effectively.

Many had submitted regular performance reports, but found that this data was not being collated or that some information had been misplaced. Paper-based reports continued to be a concern, with documents often filed incorrectly or entered into computer systems inaccurately.

Examples were also provided of public bodies who continued to rely on excel files which had incorrect formulae, or which failed to ask for data on key contract KPIs. Given these issues are relatively simple, it would seem that there are a number of quick fixes that could be undertaken to improve the quality of KPI information, and ultimately contract oversight.

Additional concerns were highlighted about what was happening to the data that suppliers had submitted. In many cases, businesses felt that the data provided was not being actively reviewed, and this led to poor communication about the ongoing success of the contract.

Alongside creating issues with individual contract management, a paucity of good contract data also prevents organisational leaders from providing effective oversight of spending. It was suggested, for example, that currently it would be challenging for a Permanent

Secretary within a large spending department to be able to accurately assess the performance of all current contracts, or even a number of contracts held with a single supplier. Improving data management is therefore also key to being able to spot trends across a number of contracts.

In their own businesses, suppliers suggested that putting in place the good document management systems so that all parties are singing from the same hymn sheet had proved critical. Not only had it reduced the burden on administrative staff, but it also decreased the chance of poor performance being overlooked, with more sophisticated programmes able to track contract performance automatically and flag potential issues.

Even before contract delivery begins, there are steps that can be taken to ensure effective data management. Early discussions can help establish what is actually available, and what steps may need to be taken to improve access to-or the quality-of information required to measure the performance of the contract.

Establishing collaborative models of sharing and storing contract-related data was also viewed as fostering a culture of openness between public sector clients and suppliers. Better document management software can also help ensure that key documents are kept up to date, and are accessible by all parties.

By creating one transparent version of the truth, confusion, uncertainty and ultimately disputes can be avoided. Business recognises that this action may require a degree of upfront investment. However, in their own organisations they believe this type of financial commitment has delivered significant savings in the long-term, particular through reducing duplication of effort and disputes.

Better data and document management would also deal with the issues of contract change notices. During the course of complex contracts, particularly those which last for a period of years, businesses suggested that there can be numerous changes to the original contract, most commonly in the form of a contract notice. Currently, these changes are often not reflected in any shared documentation, or in documents held by public bodies. This means both buyer and supplier can be unaware of their current responsibilities.

A shared document, which can be easily updated by the contracting authority, and is also automatically visible to the supplier can help prevent this, and ensure all parties are singing from the same hymn sheet.

**Recommendation:**

- Public sector bodies should invest to improve document management systems, and put in place collaborative models for sharing data and documents with suppliers.



# Tackle capability challenges

*Commercial capability challenges remain widespread and are consistently cited by suppliers as driving ineffective contract design and management.*

It is important to acknowledge that significant progress has been made in developing commercial expertise across government. In particular, the establishment of the Government Commercial Function, the creation of the Crown Representatives programme, and the appointment of the Government Chief Commercial Officer have all helped improve both government's commercial capability and its relationships with its suppliers.

More recent developments such as the publication of the Contract Management Professional Standards and the launch of an ambitious programme which will seek to train over 30,000 contract managers, are also positive steps and can help guide departments to develop the right skills and processes to oversee more contracts effectively.<sup>10</sup>

However, the scale of the task to address current skills gaps cannot be underestimated. While the development of training programmes and resources is a positive step, it is likely that equipping all commercial staff with even the basic skills will take a number of years.

As a result, it is unsurprising that feedback from suppliers suggests that in too many cases a lack of commercial and technical expertise continues to undermine contract delivery.

While progressing current initiatives should remain a priority, there are some additional steps which could be taken to support the development of commercial capability, and ultimately improved contract delivery, across government.

Within this, business has an important role to play and can work in partnership with their public sector clients to help overcome some of these challenges.

## **4) Leverage existing programmes and materials**

Training provided by the Government Commercial Function (GCF) has had a positive impact within central government departments, and the Commercial Operating Standards have helped departments to kick-start their journey towards improved commercial capability.

This move has been welcomed by businesses, who have observed an additional degree of professionalisation within commercial teams, and also a better understanding of commercial skill gaps.

However, whilst this has had a noticeable impact on some central government departments, and agencies such as Highways England and Network Rail, more broadly there is inconsistency across government on how contracts are managed. Pockets of best practice exist, but there are limited structures in place to ensure good commercial behaviours are translated more widely.

As a first step, suppliers therefore believe that more could be done to cascade materials and training programmes created by the GCF to more public sector bodies, particularly within local government.

From their own businesses, for example, larger suppliers suggested that the development of e-learning materials had made it much easier to deliver basic training at scale. This is both in the form of written content for staff to read, and more interactive online videos and



quizzes to help test learning on the go. In recent years, government has developed similar materials, particularly since the introduction of the GCF, but this has focussed predominantly on central government departments. Incentivising and encouraging local government bodies to use existing resources as part of their own efforts to boost commercial skills is therefore viewed as a sensible first step.

Secondly, there is also an important role for the GCF to try and encourage best practice to be shared more widely. The peer review process established under the standards is a good step towards encouraging departments to communicate about contract management, but more could be done to ensure specific examples of best practice are gathered and shared.

Over the past year, for example, the Outsourcing Team at the Cabinet Office have been working with the CBI and suppliers to put together case studies, showcasing contracts where partnerships between the public and private sectors has delivered innovation or improved outcomes for citizens. These examples have then been analysed to provide practical insights to commissioners which they can implement within upcoming tenders. This approach could be widened to also include a specific focus on contract management, and the CBI stands ready to support this

**Recommendation:**

- The Cabinet Office should form a Local Government Commercial Taskforce with HM Treasury (HMT), the Ministry of Housing Communities & Local Government (MHCLG) and the Local Government Association (LGA). This group will be charged with extending commercial training, wherever possible to local government commissioners, and encouraging the take-up of the commercial operating standards amongst these bodies.

## 5) Draw on industry expertise

Business believes it can play an important role in supporting government's ambition to become an effective buyer of goods and services.

While classroom learning and online materials can help ensure all commercial staff have the basic knowledge, suppliers suggested that it is often face time with commercial leaders which can really drive up standards, and also embed the right behaviours.

UK government suppliers have a wealth of expertise and many years of experience within this space, so can support this type of knowledge transfer.

In addition, suppliers can work in partnership with the GCF to deliver commercial training for civil servants. This would build on the collaborative knowledge-sharing model adopted by the Outsourcing Programme at the Cabinet Office in relation to the Outsourcing Playbook.

Under this model, businesses have been invited to support the Department with 'knowledge drop' sessions for commercial teams from across the public sector on key topics such as risk allocation. These meetings have been well-received by those involved, and could provide a blueprint for increased industry involvement within commercial training across government

The Government Technology Innovation Strategy, published in June, recognised the potential role for harnessing the power of secondments more frequently, in order to bolster technical expertise.

This principle is equally applicable when it comes to commercial expertise, although business recognises that in this case it is also critical that secondments are structured carefully to avoid any conflicts of interest. This is not always the case currently. Businesses should, for example, not be placed into roles where they could impact the overall commercial strategy in a way that could benefit their organisation, or in individual procurements where their employer is an interested party.

Where secondments have taken place, it is also important that public bodies are transparent about this. Minutes and email signatures, for example, should clearly state that an individual is on secondment from a particular supplier. This can help ensure there is written record of the projects and programmes a secondee was involved with, which is key to preventing future conflicts of interest.

There is also a need to ensure that an increased number of secondments does not disadvantage SMEs, who may be unable to free up the resources required for this type of programme. Industry believes that shorter or more flexible secondment programmes can help avoid these challenges. Reverse secondments, where commercial officials spent some time working within smaller suppliers may also be a useful mechanism for sharing commercial expertise across the marketplace.

**Recommendation:**

- The Cabinet Office should work with industry to encourage more commercial secondments and to increase business involvement in commercial training.

## 6) Position the civil service as an attractive employer

Attracting commercial talent into government is a continuing challenge for departments, the GCF and wider public sector bodies.

While steps have been taken to provide higher financial rewards for commercial staff, research still suggests that departments can struggle to secure high-quality candidates. In 2017, for example, the Institute for Government found that 1/3 of commercial fast stream applicants who were recommended for appointment still declined it.<sup>11</sup>

To address this, the civil service should take some practical steps to position itself as a more attractive employer. As a starting point, it was suggested that it is critical that departments' position commercial roles as part of an overall strategic function, rather than as part of an administrative process. To date, too great a focus has been on the importance of the government's policy and economic functions, rather than the key role played by commercial teams.

Commercial leaders ultimately play a vital role in implementing public sector transformation programmes and ensuring tax payers money is well spent. By focussing on this rather than just procurement as a process, business believes that public sector commercial vacancies can appeal to a wider variety of candidates.

Secondly, more should be done to highlight the strengths of a career in civil service beyond financial reward. Given spending constraints, it is unlikely that for many roles the civil service will be able to compete with the private sector when it comes to basic salary.

Many industry leaders we spoke to recognised that the civil service can offer a varied and wide-ranging career and give people the opportunity to be involved in very interesting projects, which has a real impact on the community—or even country—within which they live.

Research also shows that financial reward is often not what drives people to move or attracts them to new posts.<sup>12</sup> In their own businesses, work-life balance, for example is a key part of the offer for new joiners, and this is a key strength for the civil service which could be made more of.

**Recommendation:**

- HR departments within public sector bodies should ensure recruitment campaigns position procurement as a strategic function and highlight key benefits to a career in the civil service beyond pay.

## 7) Reduce staff turnover, particularly at senior levels

Attracting high-quality commercial people is only half of the battle, with turnover of senior commercial staff also a challenge for public sector organisations.

Businesses strongly recognise that the market for commercial talent is highly competitive, however there are additional push and pull factors within the civil service which can lead to a lack of consistency within more senior commercial positions.

Firstly, suppliers noted that often progression for civil servants is viewed as dependent on moving around to a different department or agency, and this is particularly true when it comes to pay.<sup>13</sup> Addressing this, could help deliver more consistency of approach to similar projects.

Secondly, it was suggested that with commercial capability scarce, public bodies may end up fighting over high-performing individuals. As a result, this can mean good commercial talent is not made full use of, with key individuals often unable to see major transformation programmes or complex contracts through to their conclusion.

While it may not be advantageous for civil servants to spend too long in one single role, it is equally important that commercial experts are not subject to a regular departmental merry-go-round.

This means it may be necessary to prevent commercial staff from applying for other internal roles within a defined timeframe, or during the life of particular project. On large multi-year programmes, for example, it might not be realistic to have individuals involved in the end-to-end processes, but it may still be sensible to put in place a minimum period, where internal applications are discouraged.

This would support higher levels of accountability, encourage consistent leadership, and help key individuals to build up knowledge about the specific goods, works or services that the department relies upon. Again, where this is not possible it is important to ensure that robust handover documents are created and shared. This can ensure project-specific knowledge is not lost.

Business recognises that these are challenges affecting not just commercial officials across Whitehall, but also other functions within the civil service including data, digital and technology. Tackling this will require significant change to recruitment, pay, training and performance management and it is therefore welcome that the new Government has stated its ambition to undertake radical civil service reform.

## 8) Invest strategically in commercial functions

While there are steps can be taken to improve contract management, business recognises that commercial teams face significant resource challenges, particularly within local authorities.

The Local Government Association, for example, estimate that by 2020 local authorities will have faced a reduction to core funding from government of nearly £16 billion over the last decade.<sup>14</sup> This has resulted in less frequent contact with contract managers, and at times ineffective oversight of contracts.

Less regular interaction with contract managers also prevents issues being identified early, and can ultimately see taxpayers money squandered on ineffective goods or services.

The scale of the funding cuts in some agencies has also led to some staff taking on commercial responsibilities in addition to their day-to-day roles. This has further eroded capability within these bodies and created fewer effective partnerships with suppliers.

Business recognises that these funding challenges are unlikely to go away in the short to medium term. However, procurement is a critical function, and one that offers the ability to make savings with targeted investment. Public sector bodies should therefore invest in their commercial teams in order to deliver value for money in the longer-term



# Drive up performance through increased accountability and the right incentives

*Low levels of accountability and ineffective reward structures mean there can be little incentive for contract managers to ensure contracts are delivered on time and on budget. By creating joined-up teams to oversee more contracts, public sector commissioners can both improve delivery and boost accountability.*

## 9) Create more end-to-end multidisciplinary teams

The Contract Management Professional Standards state that “contract management activities should not wait for a contract award to start. Individuals responsible for performing these activities should ideally be involved from the outset”.<sup>15</sup>

Despite this, officials managing contracts too often remain siloed from those overseeing procurement. This creates more scope for mismanagement, and a lack of clarity about whether contracts are delivering on their objectives.

In fact, suppliers told us that contract managers frequently had little interaction with procurement officials at the point of a project entering delivery phase. As a result, there is often confusion about what the contract is ultimately trying to achieve, the context surrounding its creation, and how the agreed contractual terms aimed to support this.

This lack of integration also misses opportunities for contract managers to gain valuable insight from colleagues within procurement. These officials often have significant insight into the supplier-market, and this should be harnessed throughout the contract delivery phase.

More importantly, by keeping these two parts of the commissioning cycle separate, accountability for the overall success of the project is diluted. In the current model, for example, it is possible for contract managers to blame the underlying contract model for underperformance, rather than looking at what steps could be taken within their remit to improve outcomes.

Given the data management issues identified earlier in this briefing, the lack of join-up between procurement teams and contract managers is even more problematic. Suppliers consistently stated that handover documents from procurement officials were of varying quality, and in some cases non-existent. Improving this handover process also presents an important opportunity for more effective contract management.

### **Recommendation:**

- The Contract Management Professional Standards should be updated to state that contract managers should always, rather than ideally, be involved from the outset of the procurement process. Where this is not possible, a thorough handover document should be created detailing the background to the partnership. This must be updated regularly, and a meeting to discuss this should be held.

Suppliers acknowledge that they too can have functional silos, and that more could be done to ensure their business development teams are carrying out an effective handovers with those involved in project delivery.

Similarly, businesses should also be involving their project delivery teams in early commercial discussions with public bodies. This can bring additional technical expertise to the discussions and help ensure contracts are structured in a way that is both ambitious, and practically achievable within the current market for those goods or services.

**Recommendation:**

- Suppliers too, must work to break down existing siloes between their business development and project delivery teams, for example by ensuring their internal processes support delivery employees to be involved in the bid-writing process.

In addition to improving collaboration between different commercial functions, suppliers stated that greater integration of commercial expertise with subject matter knowledge and technical expertise would help improve contract delivery.

While a good grounding in commercial principles can help to ensure contracts are administered efficiently, it is important that commercial teams have knowledge of their specific sector—particularly when it comes to specialised goods or services.

This has already proved effective in agencies such as Her Majesty’s Revenue and Customs (HMRC) and the Driver and Vehicle Standards Agency (DVSA), who have implemented a squad-based structure which brings together officials from policy, legal, technical and commercial to deliver key projects.

Having different squads for different projects within a department can help bring a fresh approach to the same challenges, and that the ‘squad mentality’ is spread out more quickly across the organisation.

To maintain open and ongoing dialogue, multidisciplinary project teams or squads should meet (either physically or virtually) regularly, although the exact frequency should depend on the complexity of the project.<sup>16</sup>

Within their own businesses, a number of suppliers suggested this kind of approach had already borne fruit, and was leading to not just more effective programmes, but the creation of a more collaborative culture in which teams were always learning.

Of course, there are limitations to this approach. In particular, the sheer volume of contracts being procured by public sector bodies means multi-disciplinary teams will only be possible for some projects. For contracts over £10 million, however, business believes that commissioners should look to form a multi-disciplinary contract team.

**Recommendation:**

- Public sector commissioners should create more multi-disciplinary commercial teams involved in the end-to-end process, and this should be mandatory for contracts over £10 million. The Squad methodology adopted by organisations such as DVLA could provide a blueprint from which other public sector bodies can work from.

## 10) Increase accountability and incentives

Commercial staff across the public sector often don’t have clear incentives to ensure that projects are delivered on time and to budget. This is particularly true when it comes to lower value or less complex projects which also receive less scrutiny from senior leaders.

Tackling the dual issues of low levels of accountability and a lack of incentives could therefore help drive performance.

Suppliers reported a lack of clarity surrounding reporting lines which can make it difficult to know who to flag emerging issues with. This is exacerbated by the issue of high-staff turnover identified earlier in this briefing paper.

The commercial standards rightly acknowledge this issue, and encourage commissioners to have a Senior Responsible Officer in place. In practice, however, application of this is still patchy, and more could be done to ensure every government contract has a clear owner, responsible for its successful delivery.

Mechanisms for holding those responsible for contract management failures to account should also be strengthened. Currently, much relies on examining failures once they have happened, such as through select committee inquiries or investigations led by the NAO. More proactive scrutiny of larger projects earlier in the process could help ensure failing contracts are spotted earlier, and turnaround plans are put in place.

There has been some debate about who should fulfil this role.<sup>17</sup> In the short-term, business believes government should explore utilising existing processes and bodies, such as the select committees, to undertake this additional responsibility.

But increased scrutiny should also be balanced with stronger incentives. Civil service commercial teams are unusual in the sense that they do not follow private sector best practice by using performance-related pay to drive up performance—except within the Government Commercial Organisation where a 15% performance bonus is available for middle management senior commercial colleagues .

This is not to say that the public sector should seek to match the level of reward on offer within the private sector, only that performance-related pay can play an important role in encouraging commercial staff to deliver.

Where this is introduced, it should be linked to not just the successful delivery of one project, but consistent delivery of all contracts being overseen by one contract manager during a given period. This could help avoid incentivising individuals to prioritise particular projects within their portfolios.

Performance-related bonuses should also not just be tied to projects being delivered on time and on budget, but to improved delivery of the contract objectives —particularly when the contract is related to frontline public services.

By aligning the objectives of the buyer and suppliers, contract managers can also help ensure all parties are working towards common goals, again fostering a culture of collaboration.

For these measures to be effective at increasing accountability, it is critical that contract objectives are clearly identified and measurable, and that realistic cost and time targets have been set at the outset of the project or programme of work.

**Recommendation:**

- The civil service should introduce more performance-related pay to incentivise commercial staff to ensure more contracts are successful.

# Embed effective dispute resolution and project evaluation processes

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*During the lifetime of a contract, conflict or disagreement can be unavoidable. Ensuring this is dealt with efficiently is key if budget and time overruns are to be avoided.*

*When projects come to a conclusion, conducting a thorough evaluation to ensure the right lessons are learnt should also be viewed as an important part of the commissioning cycle.*

## 11) Manage conflict sooner rather than later

Contract management teams should establish clear and accessible resolution processes for contract issues, so they can be dealt with as they arise.

As highlighted in the CBI's report *Markets for Good*, suppliers can be reluctant to formally raise grievances about their public sector customers, in part because it can be hugely costly and complex to access legal remedies.

As a result, informal mechanisms for dispute resolution are even more important, and thought should be given as to how these can be included within contracts from the outset, rather than trying to retrofit solutions to existing agreement. As part of this, commissioners should consider the potential legal issues that could arise within this type of partnership.

It is also important to acknowledge that suppliers are often wary of raising contentious issues with their customers as they are conscious of the need to protect their ongoing relationship. This is particularly true within the public sector where government is an immensely powerful buyer, and can account for a significant proportion of a company's revenue.

Similarly, public sector customers who may be reliant on a small number of suppliers for core services can be uncomfortable raising grievances with these businesses. Both of these factors can prevent an open relationship between customer and supplier.

To address this, it was suggested that contracts should put in place mechanisms which enable both sides to raise concerns in an open and transparent manner. Business would, for example, welcome greater use of joint issue registers, particularly within lower value contracts.

Without committing significant resources, business believes that these types of tools enable individuals from both the supplier and buyer side to log concerns as they arise, and help nip problems in the bud much earlier.

For higher-value and more complex contracts, more formal processes, such as mediation, are equally important, and should also be a consideration during the contract design process.

CBI members suggested that dispute resolution conversations are most effective when they bring together senior representatives from all parties, including individuals who are not directly involved in the contractual process.

The seniority of individuals present is paramount in these situations, as representatives must have the autonomy and power to take decisions off the back of dispute resolution



conversations. Agreeing one form of action, only to have it shot down by organisational leaders is likely to erode trust and lead to conflicts escalating. Ensuring that individuals are also present who are not involved in the day-to-day delivery of the contract can bring an additional level of objectivity.

For both of these mechanisms it is critical that there is a clear escalation policy, so all parties are aware of next steps.

When a more serious dispute does occur, it was suggested that it is important to acknowledge the personal nature of contract management, and to take steps to change the personnel involved with a particular contract. This should occur on both sides.

**Recommendation:**

- Public sector contracts should contain clear provisions for resolving disputes beyond just legal remedies. Particular focus should be given to the day-to-day management of disagreements so that issues can be nipped in the bud.

## 12) Learn the right lessons and apply them

When contracts have concluded, there are often insufficient feedback loops to ensure lessons are learned from both successful and underperforming contracts. The transition period between which one contract ends and the next begins is a critical period in which insights from the project need to be documented and shared.

In their own organisations, CBI members reported that ‘project wash-ups’ were seen as business-as-usual, and an important opportunity to reflect upon successes and failures. It was suggested, however, that this process would benefit from the involvement of more public sector clients.

Business recognises that this process requires resources, which are in short supply within the public sector. However, a short meeting to discuss the overall project need not require a large time investment, and could help prevent money being squandered in future contracts.

It can also be easy to want to move on to the next project when one has concluded successfully, however, this misses a valuable opportunity to capture the key drivers of success within a particular partnership. Even where projects seem particularly specialist or niche, there may be lessons to be learned which apply to a broader set of partnerships.

Ensuring that these key insights are crystallised within documents, which are accessible to other commissioners is also an important step towards spreading best practice, not just within one public sector body, but across the market more widely.

For multi-year projects, it may be desirable for a short ‘wash-up’ process to happen on an annual basis to encourage ongoing learning.

**Recommendation:**

- Over threshold public contracts should include a duty to hold a wash-up meeting. This should involve both buyer and supplier, with key reflections captured in writing and accessible to other commissioners.

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