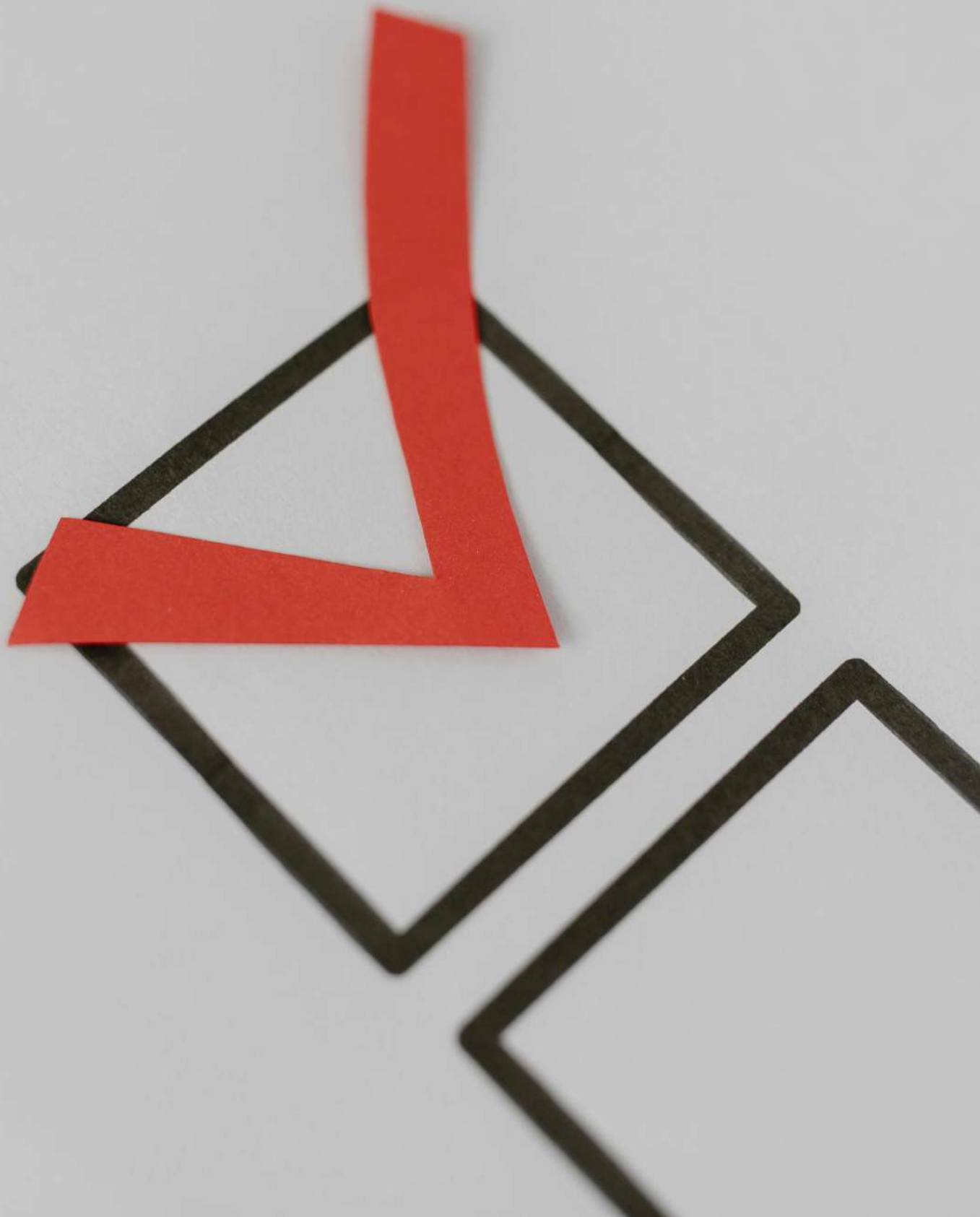


in-supply

VOLUME #6 ISSUE #6 - NOVEMBER / DECEMBER 2024

BUYERS AND
SUPPLIERS
ARE YOU
READY
OR NOT?



BUYERS AND SUPPLIERS ARE YOU READY OR NOT?

THE PROCUREMENT ACT 2023 AND PROCUREMENT REGULATIONS 2024 ARE ALMOST HERE

By Helen Rees
Head of Procurement and
Contracting
**Mid and West Wales Fire &
Rescue Service**

I cannot believe that I am saying this, but the implementation of the Procurement Act 2023 and Procurement Regulations 2024 has now been deferred to 24th February 2025. However, how well prepared are public sector buyers and suppliers for the revised big day? We may have been given a reprieve in terms of some extra time, but we should not rest on our laurels as the next few months will fly by.

We have been talking about procurement reform for some two years or so now, so it should not come as a surprise to anybody, however, up until recently it has probably felt like something that is far away in the distance. But now that we are only a few months away from implementation, it probably feels like a runaway train trundling down the track towards you for many people. So how far have you got in terms of your preparation for the changes ahead? It is no longer

something you can put to the back of your mind, it should be something that is at the forefront. Preparation is key to a smooth transition from the Public Contract Regulations 2015 as this will be the biggest change in terms of procurement within the last decade.

Personally, I feel excited at the prospect of the changes ahead, particularly the breaking down of barriers to tendering for Small to Medium Enterprises (SMEs) and the increased transparency which will enable suppliers to learn more about how to improve their performance in future tenders. Like many, I do have some trepidation in terms of the increased administrative burden, but time will tell in that regard as there is no point in worrying about that until the full impact is understood. I firmly believe that if you prepare well then you will weather the storm and reap the many intended benefits of this new legislation, both as buyers and suppliers. What does preparation really look like for buyers and suppliers though, and have you done everything you can to enable as smooth a transition as possible?

Below I have summarised what I feel is the necessary preparation required by buyers and suppliers.

“ Prepare a folder for the Act, Regulations and accompanying guidance documents so that they are all in one place, as you will undoubtedly need to refer to them quite frequently for the first year or so – no one will be able to remember every tiny detail as there is a lot to take in. ”

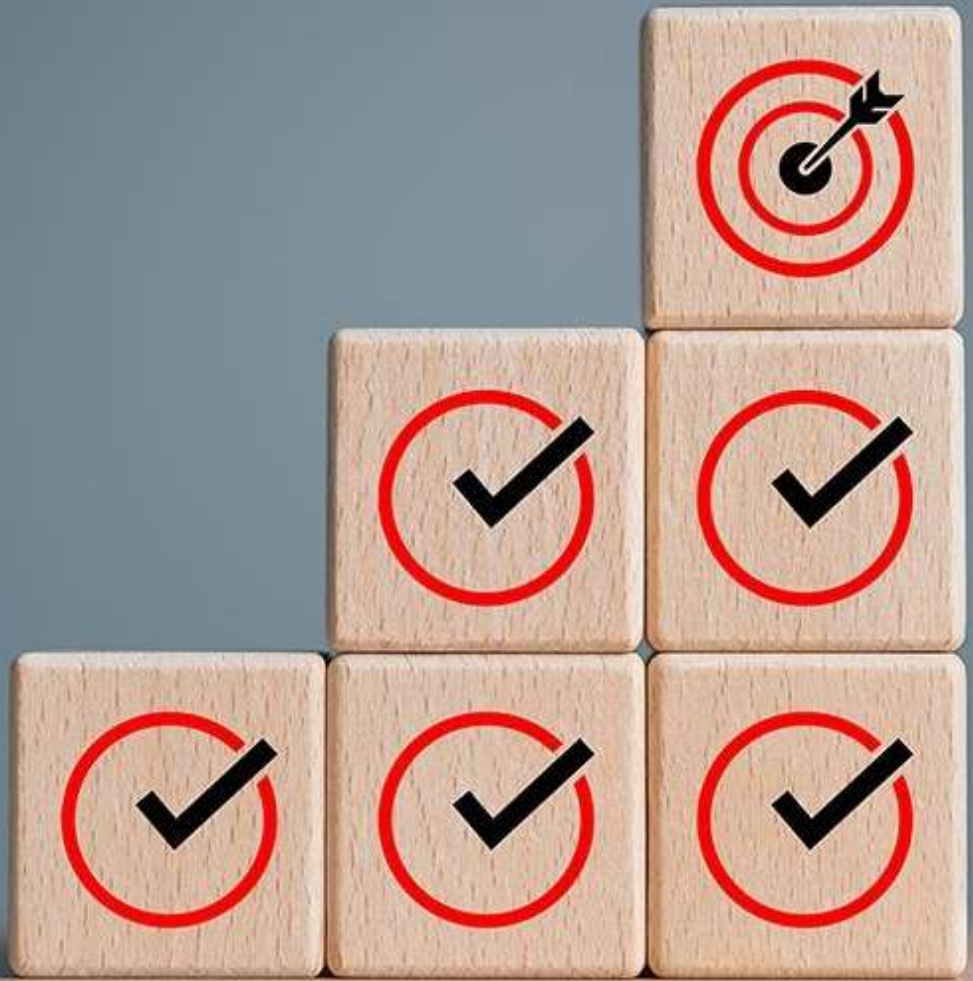
Buyer Preparation

- Make sure you have identified the appropriate people who need to watch the UK Government Knowledge Drop videos for buyers. This won't only apply to members of the procurement team as it will also apply to any stakeholders within your organisation that have any involvement in procurement or contract management. For example, in my organisation all 4 members of the procurement team have watched the videos, but almost 100 additional stakeholders from other departments have also viewed them. This is not just a change for the procurement team but for the whole organisation, so it is key that all stakeholders are involved and are made fully aware of the changes ahead and why they are happening.
- Watch the Welsh Government (if you are a Welsh Public Sector buyer) Knowledge Drop Videos which lay out the differences in Wales. Although Welsh Government have adopted the UK

Government Procurement Act 2023 there are specific Procurement Regulations (Wales) 2024 that cover some differences that apply here in Wales.

- Identify those who need to complete the Deep Dive 3-day workshops – these will be the individuals that need to have a more in-depth understanding of the legislation, such as senior procurement leaders.
- Familiarise yourselves with the document 'Transforming Public Procurement - Our Transparency Ambition' as this outlines the government proposals to improve the transparency of UK public sector contracts. This should help to increase your understanding of the objectives of Procurement Reform.
- Participate in the UK Government Transforming Procurement Community of Practice as you can share your frustrations, get guidance from others and even give your own advice if you feel sufficiently knowledgeable in the procurement reform arena. Teamwork is always better when dealing with change as two heads are always better than one as they say.

- Work with your sectoral lead to get as much information as you need – they are there to help you get prepared and keep up to date with developments so don't feel that you have to struggle on your own.
- Prepare a folder for the Act, Regulations and accompanying guidance documents so that they are all in one place, as you will undoubtedly need to refer to them quite frequently for the first year or so – no one will be able to remember every tiny detail as there is a lot to take in.
- Review your contract procedure rules (CPR) and accompanying user guidance documents. Make sure you leave sufficient time for approval, if your CPR's have to be approved internally.
- Once your CPRs have been approved, communicate them to your organisation's leadership team so that change can be driven from the top down. Getting support at senior level will make it easier to implement change within your organisation.



- Make sure you review your procurement pipeline and decide which contracts are to be tendered under PCR 2015 and which are best left to tender under the new legislation. You will also need your pipeline ready for when it is to be published – this will give suppliers more time to prepare for tendering in the future.
- Provide regular updates at your senior leadership team meetings so that everybody is aware of the forthcoming changes – after all, knowledge really is power, and the aim is to drive organisational change and not just procurement department change.
- Communicate with your suppliers and help them get prepared for the forthcoming changes. You don't want to implement the new legislation only to find that your suppliers know nothing of what lies ahead and are not able to bid for tenders when the new regime comes in due to lack of knowledge.
- If any stakeholders want to learn more about procurement reform, signpost them to the UK

Government Transforming Public Procurement landing page or the Welsh Government Procurement Reform page. There is an abundance of information and guidance available out there, just need to set aside time to read up on it.

- Along with Cabinet Office, numerous legal suppliers are providing free of charge webinars relating to procurement reform, so even if you have a limited budget for training, you can take advantage of these excellent resources at no cost.
- Ensure that any guidance documents that you currently provide to your internal stakeholders are reviewed and updated in line with the new legislation. Ask yourself whether new guidance is required or does current guidance need strengthening.
- Consider whether your current systems have the required capability to cope with the reporting requirements that will be introduced with the change of legislation. This will mean engaging with your finance team as some of the reporting requirements will come under their remit e.g. payment within 30 days

report and payments above £30,000 report. Your contract management systems will also need reviewing, and they will need to be robust enough to handle any new reporting requirements e.g., Key Performance Indicators (KPIs). It will also mean engaging with your E-Systems providers as there will be a requirement to make many changes to these systems to ensure they are capable of administering the new notices required under the new regime.

- Areas that you will need to place particular focus on include conflicts of interest, contract management, evaluation/assessment and pre-market engagement as these areas will all be strengthened under the new regime.
- Take the opportunity to review your procurement thresholds so that they align with the new legislation.
- Work with your communications team to publicise the

forthcoming changes via your intranet or weekly circulars if you have them.

- Ensure that your internal stakeholders are aware of the transition arrangements i.e. every tender let under PCR2015 will continue to operate under that regime until the contract expires and any procurements starting from 28th October will operate under the new regime.
- Keep a checklist of things that you need to do to ensure a smooth transition to the new regime – it will feel very satisfying when you start crossing them off one-by-one.
- Remember that when any changes occur people can react negatively – it is important therefore to bring them on the journey with you by ensuring they understand why the change is happening and what benefits it will bring to them, the wider organisation and its supply chain.
- Make sure that contract managers are given suitable contract management training as this is one area that is strengthened within The Procurement Act 2023 and Procurement Regulations 2024.
- Review your resources to ensure that you will be able to cope with the increased demands on your team – for example the number of transparency notices that will need to be published under the new legislation will increase significantly and you will need to decide whether this is best done centrally by members of the procurement team or delegated to internal stakeholders within buying departments.

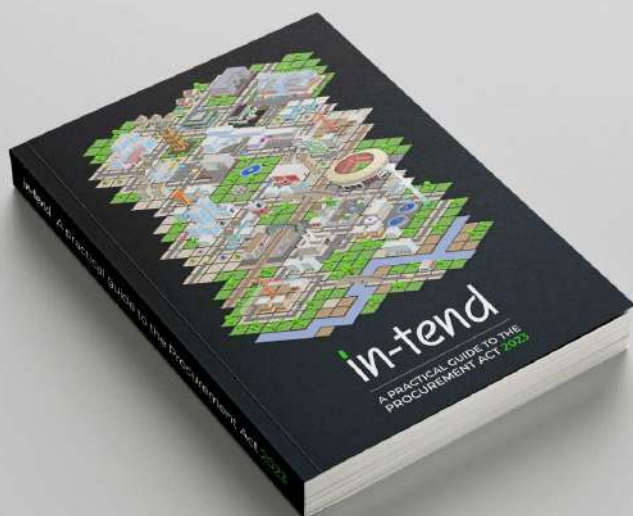
Supplier Preparation

- Watch the UK Government Knowledge Drop videos for suppliers, SMEs and VCSEs.
- Make sure you attend any supplier events that are put on especially for sharing knowledge about procurement reform with you. From my perspective I have already written to all our suppliers, provided them with the link to the Knowledge Drop videos and offered them drop-in sessions if they feel they need more advice and guidance on procurement reform. I will also be manning a stand at a Supplier event organised by Business Wales for Welsh Suppliers and will also present at two additional supplier events that are being organised across the area that our organisation covers. There are likely to be similar events in England that you will be able to learn from. We want to bring our suppliers with us on the journey and ensure that they are not left behind.
- Review all your policies and procedures to ensure that they are up to date. The reason I say this is that there will be a central digital platform where suppliers will be required to register and upload all their details into including qualification information e.g. finance, equality and diversity, health and safety, insurance etc. In the longer term it will save suppliers a lot of time, as there will be no requirement to complete separate qualification questionnaires for each contract a

tender is submitted for. However, it is essential that you put some effort in at the outset and ensure that your details on the central database are kept updated at all times. This should be far less time consuming than the current process, which is very bureaucratic.

- Ensure that you are fully conversant with the requirements of the new legislation so that you are aware of aspects such as exclusions and debarment as the new regime makes it easier for buyers to exclude suppliers and get them added to a debarment list, which may preclude them from tendering for public sector contracts for a given period of time. You could be excluded from tendering for serious misconduct or poor performance so you will need to consider carefully whether you are capable of delivering a contract prior to submitting a bid.
- Keep a checklist of things that you need to do to ensure a smooth transition to the new regime – by doing this you will ensure that you don't miss anything important.
- Please accept any help that you are offered - it may require an investment in time, but it should pay dividends in the longer term as you will be fully prepared for the biggest changes in the procurement arena since 2015.

In the words of internationally acclaimed organisational consultant and author Idowu Koyenikan "Opportunity does not waste time with those who are unprepared." That is sound advice indeed for both buyers and suppliers.



in-tend

A PRACTICAL GUIDE TO THE PROCUREMENT ACT 2023

The full Procurement Act covered,
commentary from procurement experts,
system demonstrations and much more.

Launching October 2024

procurementact@in-tend.co.uk

0114 407 0056



Delivering debt recovery and outsourced solutions to reduce costs, improve performance and increase productivity

 Debt Recovery	 Customer Care	 Receivables Management	 Business Support Services	 IT and Application Services	 Software Solutions
--	--	---	--	--	---



01527 386 610
controlaccount.com

ciconi Celebrating 35 years
in direct mail

**Our mission is simple –
to provide mailing services
in a more excellent way.**



At Ciconi, we specialise in end-to-end campaign management, from design to print and mail out. Our dedicated team genuinely cares, focusing on innovation and expertise to ensure our clients' direct mail campaigns continuously improve and succeed.



ISO 9001,
ISO 14001 &
ISO 27001
certified



Dedicated team to
serve clients to the
highest standard
of quality and care



One-stop shop
for all direct
mail and
design needs



Environmentally
conscious – only
using certified
materials



Charity donations
of £2.50 per 1,000
mailing items
sent with us



WOULD YOU BENEFIT FROM A PAYROLL HEALTH CHECK?

The payroll landscape is one of regular change, where the consequences of compliance risks can be adverse. The payroll department must ensure that an employer's statutory and contractual obligations are fulfilled. IPP Education (IPPE), a subsidiary of The Chartered Institute of Payroll Professionals (CIPP), helps ensure organisations have robust payroll processes and routine compliance checks in place - critical to ensuring non-compliance risks are eradicated.

Why is a payroll health check important?

Maintaining best practice within payroll is essential to remain compliant but with constant changes, particularly around legislation, it would be easy to fall behind if knowledge and processes aren't up to date. The penalties if businesses fail to pay employees on time, file payroll taxes incorrectly or hold incomplete payroll records can range from being at risk of significant financial penalties enforced by HMRC, damaged reputation from negative media coverage and even loss of staff.

How can IPP Education help?

IPPE, which is a leading voice on payroll and pension matters, has an arm to its business called **Consult**, which might be able to help.

Consult prides itself on reviewing payroll operations with a 'fresh pair of eyes.'

The consultancy business recommends improvements to processes and ways of working, providing payroll, reward, benefits and human resource advice. It is completely independent of all software and service suppliers and is based on industry knowledge.

Consult has a proven track record of helping organisations in a variety of ways, such as support in making strategic decisions, streamlining and improving payroll operations, system reviews or expertise to fix a specific issue.

Natasha Taylor is the Consultancy Relationship Lead at **Consult**; "Compliance within payroll is essential, yet payroll departments are often so focussed on making sure all employees are paid accurately and on time, that they don't always have time to step back and review the way they operate.

"Sometimes, the department is aware that something needs to be investigated, but finding the time, resource or expertise to effectively review and identify any issues becomes a barrier."

The benefits of a payroll health check

Consult PAYE health check has been developed to support employers in reviewing what payroll departments are doing, identify risk areas and make suggestions for improvement.

Following an extensive review of the payroll operation, businesses receive a report outlining any risk areas and recommendations. This is broken down into legislative issues, contractual issues and areas of best practice.

This type of health check helps prevent payroll fraud; identifies inefficiencies in the payroll process; identifies errors and provides solutions and strengthens financial controls. Further benefits include:

- Identifying errors and providing solutions for rectification
- Curtailing both financial and regulatory risks
- Reviewing employee data
- Payroll analysis

Once **Consult** has provided solutions to strengthen the business, there is an opportunity for the business and its people to be certified with the only payroll industry accreditation - The CIPP's **Payroll Assurance Scheme**.

Payroll accreditation

The **Payroll Assurance Scheme** is the prestigious gold standard for both people and payroll processes and is the much-coveted award in the payroll industry.

As the only voluntary accreditation on the market and developed in partnership with HMRC, the scheme is designed to identify risks to a business arising from skills gaps or inadequate processes and is a huge accolade for payroll staff, once accreditation has been achieved.

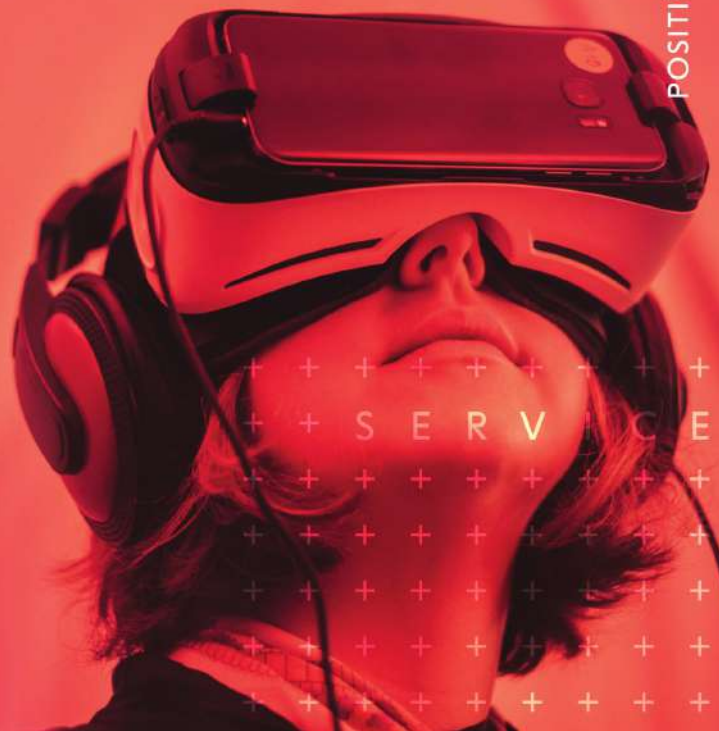
Mitigate payroll compliance risk by accrediting your processes and qualifying your people. To find out more about Consult, visit www.ippe.org.uk/consult

Energy as a service

We'll employ our years of collective experience and expertise in the energy markets to help you gain control of your energy supply. We'll remove the stress of procuring the most cost-effective utility prices, and help you balance your budgets, manage your bills, invoicing, contracts and suppliers.

bepositive@zenergi.co.uk
023 8028 6300

zenergi.co.uk



POSITIVE + ENERGY



Revolution™ Upgrade Kit Multi-Space Pay Station



SMARTER PARKING for SMART COMMUNITIES.™

Do you want to reduce your costs whilst growing your revenue?

Find out more by contacting us:-

hello@ipsgroup.com

01302 230555



IPS Group UK is the trading name for International Parking Systems (UK) Ltd.



MANAGING RISKS THROUGH EFFECTIVE PROCUREMENT PRACTICES

By Prachi Misra
Engagement Manager,
McKinsey & Company, London

Risk is an inseparable part of any organisation. Alignment of relationship between risks, growth and return can maximise benefits for the organisation. The management of risk involves its continuous monitoring, observance and assessment of changes in contours of existing risks and management of changes in risk profile of a transaction on an ongoing basis. Procurement function is a strategic and most important function for an organisation for its sustenance and profitability. The potential exposure of risks from the breach of contract, liability, delays in completion, force majeure events, natural calamities, warranty issues, patent and intellectual property rights, etc. if not properly addressed can land the company in extremely difficult situations. The major sources of risks are inherently embedded in the ground on which project is to be set up especially in case of hydropower project where geological conditions play a major role. In addition, the political environment, social environment, access and approach to site, macro-economic policies of government especially in relation to taxation and prices of input materials, foreign exchange and above all the expected behaviour of contracting parties form the

major potential sources of risks. This article identifies probable models of risk behaviour of an organisation and corresponding types of contract which could be adopted such as Item rate contract, Lump sum contract, Cost plus contract and EPC. Prudence lies in sharing the risk and assigning the risk to a party who is best able to manage it. Risk Management techniques have been suggested for different type of contracts as well for different uncertainties which are normally encountered and threaten the performance of contracts.

Risk- A Prelude

After taking over as Chief Executive Officer (CEO) of British Petroleum in 2007, Tony Hayward declared that safety was his top priority. He made rules that employees use lids on coffee cups while walking and refrain from texting while driving.

Three years later, on 20th April 2010, the Deepwater Horizon oil rig exploded in the Gulf of Mexico, which was termed as one of the worst man-made disaster in history. A U.S. investigation commission attributed the disaster to management failures that crippled "the ability of individuals to identify the risks they faced and to properly evaluate, communicate and address them".

“ In the context of an organisation, risk can be defined as the effect of uncertainty on objectives or in other words risk is the possibility that an event will occur and adversely affect the achievement of objectives. ”

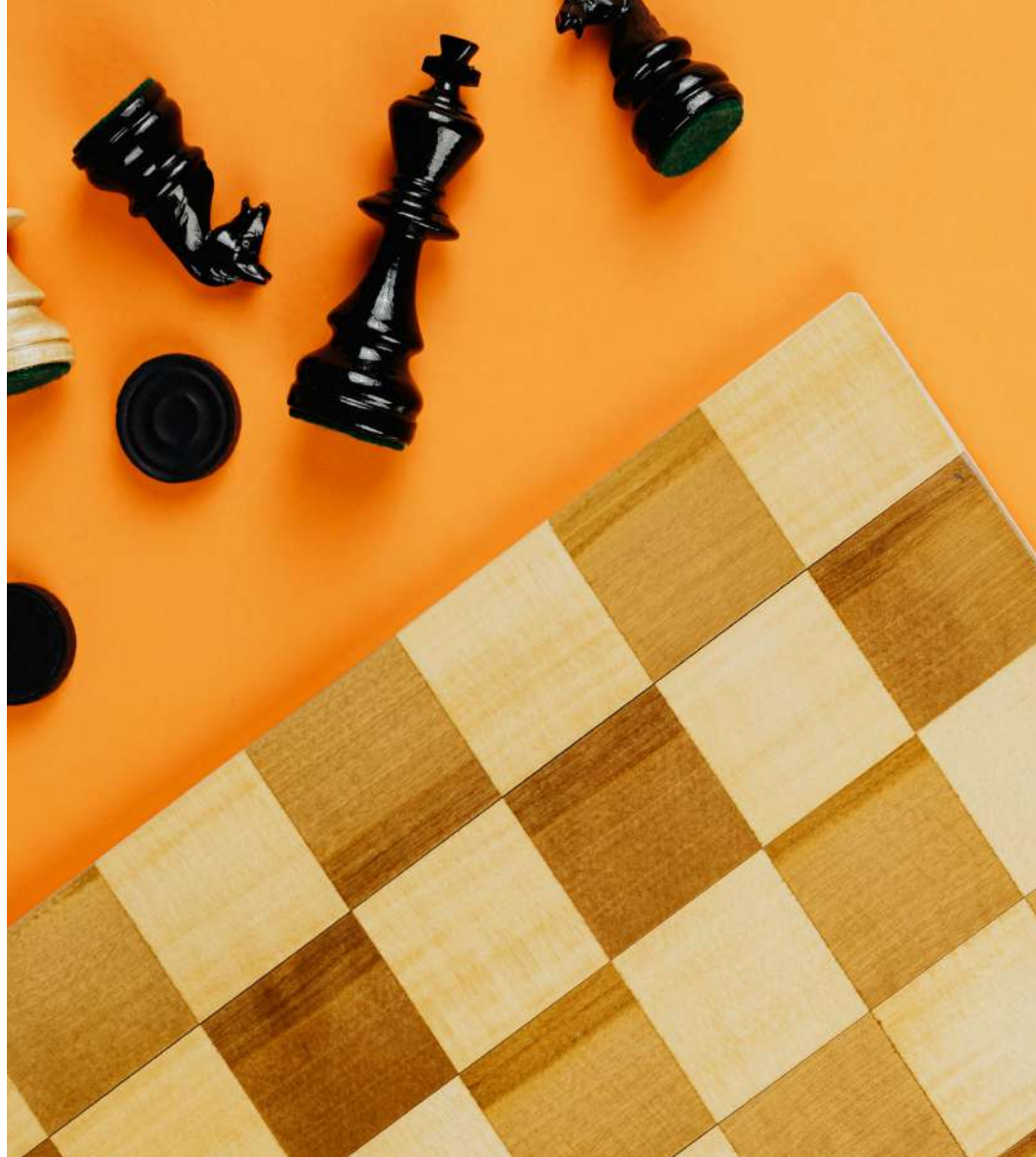
In the context of an organisation, risk can be defined as the effect of uncertainty on objectives or in other words risk is the possibility that an event will occur and adversely affect the achievement of objectives. The perception of risk varies amongst stakeholders. It is important that their perception of risks as well as their perception of benefits be identified, documented and underlying reasons for them are well understood. The risks can be broadly classified into three categories:

- Preventable: mostly internal and can be avoided or controlled.
- Strategy risks: which the company accepts according to its risk appetite with an aim to generate superior returns.
- External risks: which are beyond the control of the company e.g. natural and man-made disaster, major macro-economic shifts, geo-political, environmental changes, disruptive technologies etc. These external risks could be partly controllable or even uncontrollable.

There are several ways to classify the risks. However, risk management should not be treated as a compliance issue as the rule-based risk management will not diminish the likelihood or impact of a disaster. In many of the organisations, it is observed that it is very hard to talk about risk and there exists a strong tendency among executives to avoid or discourage even thinking about risks leave alone discussing the same. We discount the uncertain failure while pursuing "can do" attitude and do not spend time and money to avoid or mitigate risks. The fact remains that risk management is not a natural act of human behaviour and we incubate the risks by tolerating minor failures and ignoring early warning signals. Another observed behaviour is that we do not discuss the failures truthfully and toe the line which is supported by the leader or group and while doing so, the information is presented in such a manner that it supports the line and all that information which is expected to contradict is suppressed. In this endeavour what happens is that we put more resources on the failed courses of action and increase our commitment ultimately leading to disaster.

Risk Management – An Overview

Risk being an inseparable part of any business must be managed either by accepting it or eliminating it or avoiding it or reducing its impact or sharing it. It must be clearly understood that managing risks is different from managing strategy as the risk focuses on threats and failures rather than opportunity and success. However, sometimes the risks can be used as an opportunity too by maximising the upside while



“ The fact remains that risk management is not a natural act of human behaviour and we incubate the risks by tolerating minor failures and ignoring early warning signals. ”

minimising the downside. The business risk management should calibrate and align the relationship between risks, growth and return, although growth and return may appear to be opposite attributes to risks. A successful risk management in my opinion is one where all these opposing attributes can find a soothing shelter and a resilient organisational set up would try to seize the opportunities hidden within risk events.

The risk management process comprises of:

- a. Identification of risk
- b. Identification of causes/ sources of risk
- c. Identification of consequences of risks
- d. Identification of likelihood and probability of risk
- e. Identification of severity of risks
- f. Ranking of risks

followed by identifying responses to the risks and the actions to be taken to manage such responses through delineating the responsibility of a business unit.

The management of risk involves its continuous monitoring, observance and assessment of changes in contours of existing risks and management of changes in risk profile of a transaction on an ongoing basis.

and services in the right quality and quantity at the right time and right price. At the same time, public procurement process should emphasise on equity, fairness and transparency. Risk management should begin at the start of the bidding process when decision is taken on type of tenders to be invited and important terms and conditions to be incorporated in the bidding document. While formulating and embedding risk management tools in procurement, one must never lose sight of facts that entire contractual processes should be in accordance with the applicable law.

Sources of Risk in Power Projects

The major sources of risks are inherently embedded in the ground on which project is to be set up especially in case of hydropower project where geological conditions play a major role. In addition to it, the political environment, social environment, floods and earthquakes, access and approach to site, macro-economic policies of government especially in relation to taxation and prices of input materials, foreign exchange and above all the expected behaviour of contracting parties constitute the major potential sources of risks. The projects involve procurement of works, goods and services. The basic law of contracting for all this remains the same but they differ in terms of treatment given to payment, acceptance criteria, quality assurance plans, transfer of ownership, insurance, performance guarantee/warranty, IPR and variations or change proposals. In the succeeding paragraph, various risk models and suggested risk management methodologies which should be inbuilt in procurement process are discussed.

Contract Types for Procurement

Normally for procurement of works, goods and services the following types of arrangements are adopted:

- i. Item rate contract: These contain Bill of Quantities which are also called Schedule of Quantities or Schedule of Rates; Technical specification for each item of Works/Goods/Services and bidder is asked to quote price for each item.
A variation clause is provided to share the risk. In case of item rate contracts like items of goods to be procured or item of work to be executed, sometimes the owner himself provides estimated rates for each item and asks bidder to quote percentage above or below total price thus arrived.
- ii. Lump sum contracts: For entire Works/Goods/Services a lump sum price is quoted which is valid for given scope of work, However,

Procurement Function

The organisations of modern era are interdependent and depending upon the nature of business or purpose of incorporating an organisation, the objectives are decided. However, most of business organisations aim to maximise their bottom line while observing their corporate social responsibility, ethics and corporate governance. The bottom line is directly influenced by the expenses incurred by the company in procuring the resources may be works, goods or services.

As such the procurement function is a strategic and most important function for an organisation for its sustenance and profitability. The potential exposure of risks from the breach of contract, product liability, public liability, limitation of liability, errors and omissions, delays in completion, force majeure events, natural calamities, warranty issues, patent and intellectual property rights etc if not properly addressed can land the company in extremely difficult situations.

The objective of procurement is that one should pay the least cost and should get the best. The procurement function should make available the needed works, goods

“ Risk management should begin at the start of the bidding process when decision is taken on type of tenders to be invited and important terms and conditions to be incorporated in the bidding document. ”

to take care of identified variation in major parameter of a structure, a suitable amount for payment or recovery is provided.

- iii. Cost plus contract: The bidder is allowed a certain percentage to cover his overhead and profits over and above the actual expenses incurred on performance of works/ manufacture and on delivery of goods.
- iv. Engineering Procurement & Construction (EPC) contracts or Turnkey Contracts – as the name implies the contractor is responsible right from Planning and Design of structure and associated equipment till the Completion of project and Delivery of the desired output.

Except in cost plus model, the rates could be fixed i.e., no price variation or escalation is payable or they could be subject to price variation according to certain agreed methodology.

Risk Models

The risk models can be designed on either the following philosophies, as the risk must be appropriately managed.

Entire Risk to the Owner

This is basically a Cost-plus type contracts. If the Contractor treats the project as his own and makes efforts to reduce the cost, this may ideally become least cost option and both parties may be in a win-win situation. However, in practice it does not happen. In such a case, the Contractor may not try to increase efficiency or productivity by employing innovative methods as the Contractor is assured of reimbursement of all the expenses and also, he may not be responsible for timelines too and as such this type of model is rarely followed. This can however be

adopted for Research & Development Projects or for Development of new Products.

No Risk to Owner

This is a typically a case for Lump-sum Contract or Turnkey or EPC type of contract where Design, Engineering, Procurement and Construction is the sole responsibility of the Contractor and the Contractor is paid the stated sum in the contract. However, even in Lump-sum contract, the contractor is paid extra, or cost is reduced for variation beyond a certain limit specified for certain components of the structure e.g., variation in depth of foundation for bridges due to change in level of foundation rock. In these types of Contracts, Owner provides certain inputs and asks the Contractor to deliver him the final output desired by him. In case of a Hydroelectric project, the Owner may guarantee the discharge, levels at inlet and outlet and ask the Contractor to deliver him a Project of specific generating capacity. The main feature of Turnkey contract is that the total amount payable to the Contractor has a ceiling i.e., contract value plus a contingency, where contingency is expressed as a percentage of contract value. Contingency is meant for covering variation in quantities and new items arising out of detailed design or changes in design, geological variations and site conditions. The bidder prepares BOQ, containing items of work, technical specifications, quantities as estimated by bidder and unit rates quoted by bidder for delivering the desired product. As such, no rates are to be determined for substituted and new items. These contracts may also provide a Schedule where the items to be executed under abnormal conditions are identified with their unit rates but without quantities. In such cases, the disputes are normally limited to issue of extension of time, prolongation

“ If the Contractor treats the project as his own and makes efforts to reduce the cost, this may ideally become least cost option and both parties may be in a win-win situation ”



costs but in case contractor encounters highly adverse geology or adverse site conditions and the cost increase is beyond the affordable capacity of Contractor, the project will suffer in addition to litigation. On the other hand, if certain unforeseen events, which the Contractor has accounted for in his bid do not take place, it would mean a wind fall to the Contractor. To take care of this aspect, the payment for items identified therein should be made at the quoted rates therein for actual quantities executed subject to ceiling provided in Contract. In real life, these models are modified, and they do not really remain as no risk to Owner. It is normally a costliest model as far as Owner is concerned and it may be preferred in cases where the Owner does not possess capacity and capability to design and engineering and project is expected to encounter high uncertainty. This model would succeed where reliable and adequate investigation results are available so that Contractor is able to frame his bids based on dependable data.

Limited Risk to Owner

These are typically item rate contracts. The Owner is responsible for investigations, design and engineering of project. This is theoretically considered as most economical option. However, the risk element and uncertainty involved sometimes make it the costliest option. In item rate contracts, the contractor quotes that rates for various items for the given quantity and the rates hold good for some stipulated variation limit say $\pm 25\%$, beyond which different methods are applied for determination of rates of the deviated quantities. The contractor's risk is limited to the quantity stipulated in Bill of Quantities plus the variation limit specified therein. Once this limit is exceeded, the entire risk gets transferred to the owner. One option could be to make the quoted rates applicable for all deviations in the quantities. In this approach, if the rate quoted by Contractor for such an item is abnormally high and the deviation is on the positive side, the owner ends up paying very large amount. In case the contractor rates are on lower side, the contractor may not ultimately complete the work on some pretext or other and the work will linger or shall be abandoned and finally the entire project will be subjected to contractual dispute. In case of fresh and substituted items, the Contractor must be paid on freshly determined rates. Many disputes emerge on the issue of settlement of rates as both parties are not able to agree to mutually acceptable rates. There are certain contracts where decision on rates determined by the Engineer-in-Charge is stipulated to be final and binding on the contractor and beyond the purview of Arbitration clause but it has been observed that on one pretext or other and some technical reasons, the settlement of these rates falls in the lap of Arbitrators. Non settlement of rates ultimately causes



both time and cost overrun in contracts in addition to disputes, litigation which prolongs for long time which results in heavy cost of adjudication to both the parties.

Management of Risks

The risk is normally considered in terms of Financial Risks though there can be other type of risks too especially for listed companies like Reputational Risk and it could be very important for survival of company as the company may not be able to raise finances for its future projects and the Government may not entrust them new projects or in the event of the company not able to complete the infrastructure projects in hand, the creditors may seek the liquidation of company in case of default in payment of interest or principal of debt lent by them. So, it is very important that the risk is managed. This management is applicable to both Owner and Contractor. The ideal situation is where one party is not allowed to gain unfairly at the expense of other. One school of thought is that the entire risk should be borne by the Owner as it is, he who selected the Site. However, the Owner may make all attempts to transfer the risk to contractor through fixed price contracts. It is never a good idea to keep burden of entire risk on one party and therefore the golden axiom to manage the risk is to assign the risk to a party who is best able to manage it. The contractor can reduce his risk by estimating financial implications of all the possible risks and including its cost in his quoted bid. The estimation of bid amount by the tenderer will depend upon the information supplied to him by the Owner and acquired by him from his own sources which could be investigation of site and secondary data. Probably the risk could be zero in case the contractor possesses all the information while submitting his bid including interpretation thereof, but it is a hypothetical situation and superhuman prescience.

Often, the Contract provides that the Contractor is supposed to have visited and carefully examined the site surroundings, to have satisfied himself of the nature and conditions of transport system in all its aspects, extent of availability for all types of materials, sub-soil water and variations therein, climatic conditions and other similar matters affecting the works and the contractor shall be responsible for all the risks and liabilities arising therefrom. The Contracts also provide disclaimer clauses to the geological inputs and geological conditions provided by the Owner. However, these do not help the Owner as one should understand that it is the Service Receiver or Purchaser or Owner of an asset who has to pay for the entire cost, the Contractor or Supplier or Service Provider will include the cost of all the inputs in his quoted rates and as such, transparency will only help the Owner in achieving least cost.

To understand the implication of such disclaimer clauses, it would be worthwhile to refer a case decided in



“ The ideal situation is where one party is not allowed to gain unfairly at the expense of other. ”

Australia, mentioned in the book titled “Tunnelling Contracts and Site Investigations” by P.B. Attewell, which inter alia states

The Contractor was provided by the employer at the pre-tender stage with a document called “Engineering Site Information”, which provided basic information on the soil conditions and which also contained a disclaimer of liability. The Contractor claimed that the information so provided was false, inaccurate and misleading and the clays at the site, contrary to that information, contained large quantities of cobbles.

The High Court of Australia held that “The basic information in the site investigation document appears to have been the result of thorough technical investigation on the part of the employer. It was information which the contractors had neither the time nor the opportunity to obtain by themselves. It might even be doubted

whether they could be expected to obtain it by their own efforts as a potential or actual tenderer.”

In another case relating to change in subsurface conditions, the same book as referred above authored by P.B. Attwell describes that “The employer’s tender documents stated that the ground conditions at the site comprised a mixture of Northamptonshire Sand and Upper Lias Clay. Tufa was found in areas of the site as work progressed, and as a result the foundations had to be re-designed and additional work carried out. The Court of Appeal held that the contractors were entitled to recover some compensation for breach of an implied warranty by the employer that the ground conditions would accord with the hypothesis upon which they had been instructed to design.”

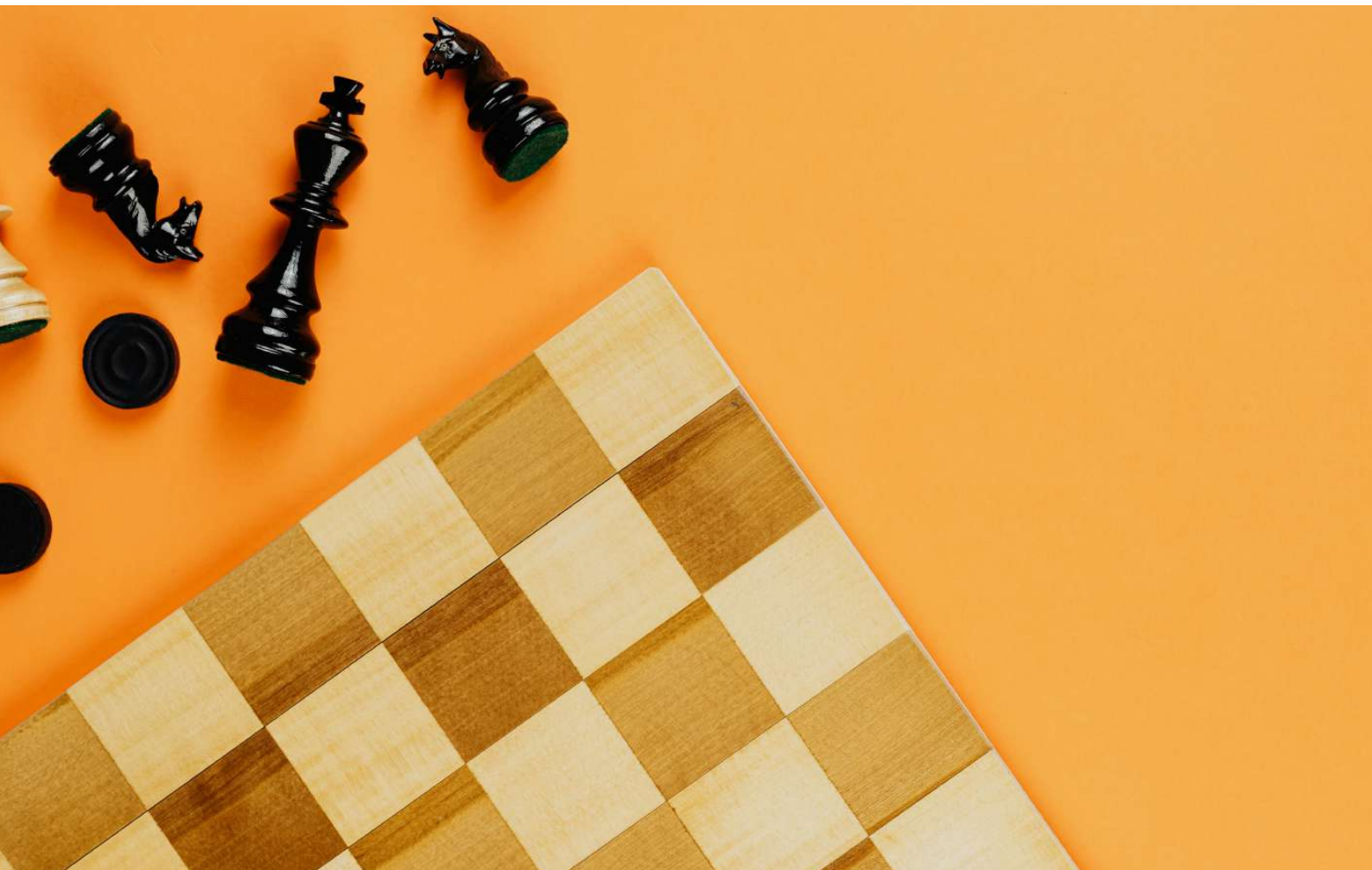
Geological Baseline Report (GBR) is a tool to resolve the disputes and determine the claims entitlement of the contractor. This is a mechanism which does not make the contractors responsible for unlimited risks arising from unforeseen ground conditions. It is however difficult to develop accurate and quantitative baseline as variability in geological formations and inaccessibility to site are the hard facts of life. One should also recognise that each baseline presented in the Geological Baseline Report may give rise to claim in case of variation from the data supplied in GBR. It saves the owner from the claims of contractors on account of differing site conditions as the contractors cannot claim that they were not aware of the conditions existing at site, if the same has been mentioned in GBR. At the same time,

“ One should also recognise that each baseline presented in the Geological Baseline Report may give rise to claim in case of variation from the data supplied in GBR. ”

in case the owner tries to provide the GBR in such a manner that unreasonable risks are also shifted to the contractor, the purpose of GBR will be lost. Another situation has also been reported where the contractor tries to invent some explanation as to how a particular variable has impacted his cost and therefore it is important that only those properties of soil/ rock are provided which are relevant to contractor to execute his work e.g., excavation, temporary and permanent support system.

In the light of above discussions, some of the steps that can be taken to manage risks in procurement process and administration of contracts are listed here under: -

- i. Disclaimer clauses should be avoided. It is good idea to share the risks. The contract must allocate the risks and provide for Risk Registers. In the bill of quantities of item rate contracts, keep even those contingency items, whose occurrence has less probability. When a claim is to be decided, a comparison will have to be done between the actual ground conditions vis a vis the ground conditions mentioned in GBR. So, it is important that those baselines are selected and quantified for inclusion is the GBR, which are measurable or verifiable. However, it should be kept in mind that GBR is not a panacea.
- ii. Owner to provide Realistic completion time with Construction Sequences. The bidder should be asked to provide his construction program in the form of bar chart as well as critical path thereon with linked resources of man, machinery and material. A construction program without linked resources is meaningless.
- iii. A sufficiently detailed tender drawing should be included as it becomes a potential source of dispute and often affects cost and time substantially during execution.





“ Risk Management can be done through effective procurement processes by including GBR, detailed tender drawings, risk allocation registers and price variation linked with minimum wages in the bidding document ”

- iv. While evaluating delay claims, “as-planned CPM schedule” should be compared with “as-built CPM schedule”. CPM analysis allows both parties and dispute board/ arbitral tribunal to discern between critical and non-critical delays or concurrent delays while conducting analysis of delays.
- v. At the beginning of the project, introduce the provision of Dispute Avoidance Board (DAB).
- vi. A number of disputes have arisen on account of abrupt and abnormal increase in minimum wages and the price variation clause normally provides for compensation of price variation on account of labour based on Consumer Price Index (CPI) whose rate of variation is not always in sync with minimum wages. In order to mitigate this risk by both the parties, 50% of labour component should be compensated based on an

increase in minimum wages and 50% based on CPI. In Case Contractor wants only CPI, write clearly in the contract that no payment or recovery for increase or decrease in minimum wages by any authority shall be done by the owner.

- vii. While framing the Insurance clause, provide a reasonable amount of deductible to be incorporated in Insurance policy and that losses up to this level in each case shall be borne by the contractor. The amount for which insurance is to be obtained should also be clearly specified in the contract. It shall enable the contractor to decide on premium and include the cost thereof in his prices properly.
- viii. The additional cost payable to the contractor in case of delays on account of reasons attributable to the owner should be clearly provided in the contract document.

- ix. A risk allocation register should be part of contract which should identify various risks, party to whom these are allocated and extent of sharing between parties.
- x. The major taxes and duties included in the rates quoted by the Contractor should be disclosed by the tenderer so that any increase or decrease therein can be properly compensated or recovered by the Owner.
- xi. Various disputes or claims of the Contractor/ Supplier/ Service Provider should be documented and every organization should have a procurement development group responsible to be repository of all such claims/ disputes, their resolution whether amicably or through adjudication by Arbitral Tribunal or Court and such lessons learnt should be incorporated in the future bids to be invited by the owner.

Risk Management can be done through effective procurement processes by including GBR, detailed tender drawings, risk allocation registers and price variation linked with minimum wages in the bidding document. In order to improve the terms and conditions of the contract, organisations are advised to create a development group in the procurement department to maintain repository of claims & disputes and constantly work on their refinement. These steps will ultimately lead to cost cutting, smooth execution of tasks, timely completion of works/ deliveries and result in increasing profitability of the company.



NOW MAKING PAYMENTS IS FASTER AND EASIER THAN EVER BEFORE

Our innovative, completely digital International Student Pay (ISP) platform leverages capital markets trading technology to deliver market-differentiating foreign exchange solutions for academic institutions.

With ISP, international students can quickly and easily make payments in their local currency*, from anywhere in the world.

Visit cibccm.com to learn more.

CIBC provides access to all developed market currencies and select growth market currencies. The CIBC logo and "CIBC Capital Markets" are trademarks of CIBC, used under license. All other trademarks are owned by their respective trademark owners.

LEADERSHIP
PROJECT MANAGEMENT
TEAM DEVELOPMENT
STRATEGY
HR

YOUR TEAM ARE VALUABLE GIVE THEM THE TRAINING THEY DESERVE

 Orri Medical Training
Enabling General Practice
www.orrmedicaltraining.co.uk



Let's equip tomorrow's engineers with the skills needed today

The rapid growth of robot-based automation across all manufacturing industries means equipping young people with the skills needed to program and operate robotic equipment has never been more necessary. That's why we offer our Education Package, designed to enhance students' learning and training opportunities.

To find out more, **scan the QR code**. Alternatively, email robotics@gb.abb.com or call **01908 350300** ref. 'Education Package'.



PROCUREMENT SERVICES FROM IN-TEND



Training | Consultancy | Seminars
Delivered by In-tend

Bid Writing Services -

From providing guidance on a complex tender to drafting, editing and reviewing your technical submission. Our team of procurement professionals have expertise spanning both public and private sectors offering bid writing assistance to suppliers tackling those complex tender submissions helping you to get your bid back on track.

Consultancy -

Have you identified that completing and submitting tenders is not as efficient or successful as it should be within your organisation? Whether you require a library of high quality responses or are looking to up-skill your bid writing team, we can offer practical advice to ensure your bid is the best it can be to set you apart from the competition.

Supplier Training and Seminars -

In-tuition have a range of topical seminars designed to give you an understanding of procurement and the knowledge to compete for opportunities. Aimed at those firms who are new to public sector tendering or have had limited success, our courses will give you the knowledge to improve your bid writing and turn past tender losses into future wins.

Virtual Meet the Buyer Events -

We run various events that welcome public and private sector buyers, along with suppliers and bring the two parties together; providing ideal networking opportunities. This allows businesses who are wanting to work with the public sector to showcase and discuss their products or services directly to buyers.

Contact Us

0114 407 0056

procurementservices@in-tend.co.uk





ADVERTISE IN

in-procurement

Give your business a higher profile

Would you like to give your business or organisation a higher profile?
Want to reach a public and private sector audience?
Then advertising with us is for you!

In-procurement is posted out by name and job title to 3,000 public sector buyers across the UK including Colleges, Councils, Universities, Housing Associations, NHS Trusts, Police and Fire and Rescue Services.

Whether it's a quarter, half, full, back or inside cover, the choice is yours. We offer discounts for block advertising and have a variety of options available depending upon your target audience. We look forward to hearing from you!

For further information please call
+44 (0) 114 407 0056 or email:
publications@in-tend.com