



# THE PRIVATE DELIVERY OF PUBLIC SERVICES

Report of seminar 143 held on 3rd June 2008  
at Freshfields Bruckhaus Deringer, London

## SUMMARY

### KEY CONCLUSIONS

- The PFI market in the UK is now mature, with over 600 contracts in place; the UK continues to lead the world with its experience in this field, which in turn creates opportunities overseas.
- Overall, delivery of (construction) projects has been very successful; better than the old record under public control.
- The vast majority of operational services are also good, although value for money for contracts up to 30 years is not yet known.
- It is essential that the client is fully involved – the culture within any joint public/private team is a determinant of success.
- Contracts should not always be bespoke; risks should be pre-agreed against target costs.
- Long contracts require good governance arrangements and changes in the life of these contracts have to be anticipated and planned for.
- It is necessary to spend as much time on the soft issues as on the contract itself.

Since the introduction of PFI and PPP, together with other forms of outsourcing for the delivery of public sector services, much thought has been given to the next generation of private delivery. Many large value and long-term contracts are due for extension or replacement, and this seminar provided a timely opportunity to consider anticipated changes in the way new contracts will be procured.

The UK has shown a lead in this field, and there is now substantial evidence of good and bad practice. The extensive use and variety of public service delivery contracts means that valuable lessons need to be learned in order to build on current best practice. However, many practitioners have only restricted experience, and sharing of knowledge has been limited. With presentations from both the public and private sectors – including public auditors, financial services, law, academia and private companies – and representatives from organisations covering every aspect of the private delivery of public services, the seminar provided a forum for fruitful discussion.

The seminar was chaired by Sir John Bourn KCB, Chairman of the Professional Oversight Board, Financial Reporting Council and the former Comptroller and Auditor General of the National Audit Office (NAO). In opening the seminar he raised a number of current issues, such as why it can take so long for many private delivery/public service projects to get off the ground; how risk is assessed, distributed and managed by the parties concerned; how a project is to be financed and refinanced and what information the public sector requires in order to know that its money is being well spent.

## ACHIEVING THE SUCCESSFUL DELIVERY OF PUBLIC SERVICES

Central government departments and local authorities procure a wide range of essential services from the private sector, for example defence equipment projects, schools, hospital buildings, roads, leisure centres, waste disposal, prison buildings and custodial staff. The presenter from the NAO provided a personal overview of the key factors in achieving the successful delivery of public services by the private sector under both PFI and other mechanisms in these diverse areas.

The NAO audits central government, and examining public services delivery is central to its work. It produces 60 'value for money' reports to Parliament each year, and its role in developing good practice was outlined.

The public sector, as customer, has to manage both macro and micro issues:

1. Macro issues include the need for the public sector to build market interest for services by developing a programme of projects which it wishes the private sector to supply. It then needs to consider the best form of procurement and possible standard contract models.
2. Micro issues concern optimising value for money for each project. They include the need to specify requirements correctly, running effective competitions, dealing with change and building effective working relationships during the contract periods.

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The different arrangements for delivering public services all require that:

- The public sector receives what it needs as set out in the contract
- The public sector gets value for money and makes sure the markets work properly
- The private sector receives appropriate remuneration for providing a satisfactory service and will want to bid for new work
- There is a vibrant and sustainable market where private interests are aligned with those of the public sector

Successful private sector delivery of public services requires:

- A diversity of procurement models
- The managing of macro (market) and micro (project) risks
- Seeing individual projects as part of a programme
- Ensuring that supply balances demand
- Maintaining the balance between innovation and standardisation, and institutional conservatism

## FINANCING THE GOVERNMENT'S SCHOOLS PROGRAMME

The presentation from Building Schools for the Future Investments (BSFI) looked at the history of PFI and described how the Government has moved away from large single projects into different structures for health and schools.

The structure of the [Building Schools for the Future \(BSF\)](#) programme was explained. Involving the rebuilding or renewal of every secondary school in the country, at a cost of £2–3 billion per annum over approximately 15 years, this programme is designed to improve educational outcomes and life opportunities for children and communities – it is not just about building schools. Procurement and management is carried out by [Partnerships for Schools \(PFS\)](#). Private sector bidders compete for Local Education Partnerships (LEPs), which are 80% funded by the private sector, 10% by the local authority and 10% by BSFI, the central investor.

There are 11 LEPs in place at the moment, rising to 20 in the near future. BSFI has a director on each one in order to ensure that the LEP acts to deliver programme goals and to spread best practice between the LEPs around the country.

The objectives of BSFI were outlined:

- To ensure that the LEPs deliver the programme goals
- To generate financial returns for investors
- To encourage effective relationships between the LEPs, the supply chain and the local authorities
- To identify and remove impediments to effective delivery of new projects

The structure of the [Local Improvement Finance Trust \(LIFT\)](#) for primary healthcare programmes was outlined, and comparisons between traditional PFI, LIFT and BSF discussed; the main difference between LIFT and BSF is that the latter has independent investment and procurement decisions.

Haden Building Management, part of the Balfour Beatty Group, is a leading supplier of services to over 150 schools, 3 hospitals and many other large organisations. It was explained that unlike many construction projects, which rely on detailed specification, definite timeframes and clear programmable deliverables, the output specifications for the services provided are not always obvious. For example, how do you determine if a room is clean or not?

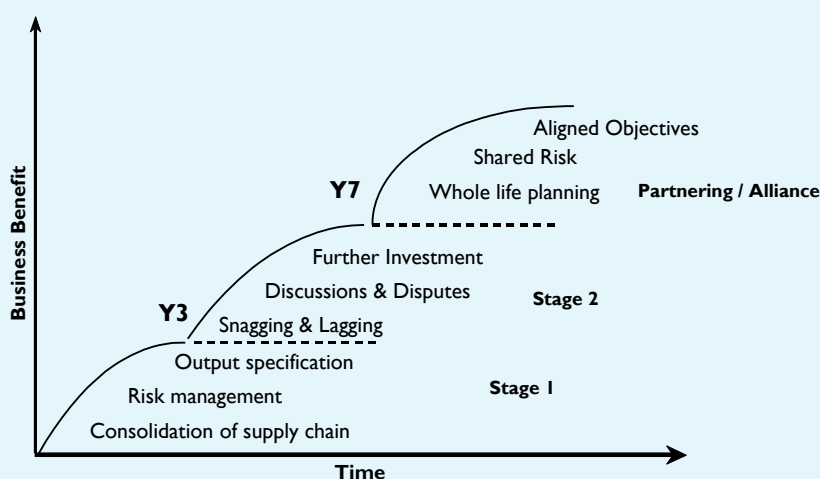
The following guidance, issued by the Treasury in March 2008, indicates the ideal implementation of a contract:

- Be clear about objectives
- Focus on whole-life costs
- Use an output specification approach
- Optimise the allocation of risk
- Rigorously identify, transfer and manage risk
- Ensure a competitive market
- Ensure sufficient skills and expertise
- Structure the procurement process appropriately
- Leave sufficient flexibility
- Ensure sufficient incentives within the procurement structure
- Allow for sufficient and robust competition
- Set an appropriate term for the contractw

This guidance involves clear objectives, output specification and the allocation of risk, but does not really take into account the intangibles in the form of working relationships. As service expectations increase, mutually beneficial relationships for all stakeholders are vital if the contract is to succeed.

This presentation outlined some of the principles required to create and develop a successful long-term relationship. Using contrasting case histories, it explored why relationships need to move away from a contractual/adversarial approach to one based on common goals and objectives, delivered in an environment of mutual trust and openness.

#### TRADITIONAL CONTRACT MATURITY MODEL



For long-term maintenance contracts it can take around seven years to achieve full alignment between both parties – and problems will occur if insufficient time is spent in the early years. The diagram shows the typical maturing stages of a contract.

The Ministry of Defence (MoD) is the third largest landowner in the UK, spending £1.5 billion per annum on property, infrastructure and land management. Defence Estates is the arm for this large expenditure, responsible for procuring private sector services and achieving value for money.

The presenter from Defence Estates looked at what lessons the MoD has learned as client, particularly as regards projects and property maintenance. Many very large contracts are due for extension or renewal, and with the commitment of increased expenditure to overcome many years of under-investment, it is an appropriate time to consider the best way to deliver these services efficiently.

Various questions were posed, for instance: 'Is the commercial sector able and willing to work in partnership with Defence Estates to improve services to military customers and their families?' 'Can contractual arrangements be better managed and drafted to encourage joint working arrangements?'

Drawing on an oversight of Prime Contracts and PFI/PPP contracts, the many challenges and lessons learned were described. Divided into four overlapping areas, each area covered a wide range of issues:

1. Commercial: e.g. the terms and conditions of commercial contracts have tended to be bespoke; there is perhaps room for considering more standardisation for MoD projects.
2. Customer: e.g. major challenges include risk to programme delivery because of time spent in obtaining approvals.
3. Industry: e.g. there are times when improvements to the standard of the end product or asset need to be made.
4. Behaviours: e.g. even if all the processes in place, if the behavioural issues are not right the project will not work. Some partnering relationships described as PPP still tend to be transactional; building trust at all levels is key, but especially amongst senior personnel.

In summarising the seminar, the Chairman noted that the private delivery of public services represents an enormous opportunity for the UK, both at home and overseas. With substantial amounts of money available for the provision of projects and services, and no limit to the demand for improved public services, there is now a great opportunity to remove the various bureaucratic, cultural and relational barriers and to unite demand and supply.

Effective relationships are essential to the long-term success of projects that may last over 30 years. In the past, people tended to have stereotyped views on both the private and the public sector sides, but increasingly it is recognised that the need to work together collaboratively and invest in building relationships at the outset is as important as the contract itself.



## PARTICIPATING ORGANISATIONS

Advance Consultancy Ltd  
Arup  
Bircham Dyson Bell  
Bovis Lend Lease  
British Energy  
Building Schools for the Future Investments LLP  
CJ Associates  
CMS Cameron McKenna LLP  
Cross London Rail Links Ltd  
Defence Estates  
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Ernst & Young LLP  
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John Laing plc  
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