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**NHMF Conference 2007
Contract Management Training**

Peter Gracia
Knowles



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Introduction

- The 2007 NHMF conference brochure reflects the diverse range of topic areas today's construction professionals utilise in undertaking their daily tasks. There are sessions on topics such as:
- Benchmarking
- Gas Safety
- Contract Forms
- European Legislation etc.


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- This indicates how our knowledge touches upon technical capacity, management skills, legislative understanding, complex legal agreements and possibly most difficult of all, inter-personal skills.
- By accepting the learning opportunities presented by this conference we provide ourselves and our clients with greater choice.


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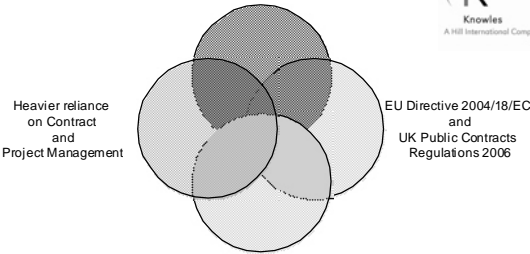
Some Headline Topics

In the next hour or so we will quickly remind ourselves about, and briefly discuss:


- Contract Forms
- Public Procurement Legislation
- Partnering
- Contract Management


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Forms of Contract adopting Frameworks or used by the Public Sector




Drive to "Partner" Courtesy of Egan, Latham, Gershon and Central Government through National Procurement Strategy



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Contract Forms

- In the past 2 years we have seen a number of industry "standard" forms being upgraded to fall into line with current (not necessarily new) industry requirements.
- The two major forms revised were the JCT family of contracts and the NEC suite which was published in its 3rd version. (Both 2005)



- These “families” of contracts introduced new forms, such as the NEC3 Term Maintenance Contract, JCT Constructing Excellence Contract (2006) and additional contracting mechanisms e.g. Framework Agreements.
- The NEC3 TSC was long awaited by many in the industry and is not the same as the NEC Term contract (which is basically a “call off” contract)




- Whilst remembering that many other forms of contract exist (PPC2000, FIDIC, PSPC, ICE, CRINE etc) the essential point is to select a procurement route (how you buy your service) that matches your requirements and use an appropriate form of contract to achieve this.
- SO WHY DO WE CHOSE PARTICULAR FORMS AND SHOULD WE ALL USE THE SAME ONE?

Public Procurement Legislation




- Our “contractual” arrangements are shaped by the requirement of public procurement legislation.
- Without some knowledge in this area we cannot deliver or plan suitable procurement routes.
- Derived from EU Directives these rules apply to all public sector clients.

We need to be aware of:




- Definitions of Works, Supplies, Services but note these are not straightforward!
- Advertising thresholds
- Clarity of selection procedures
- Rules on framework agreements
- Competitive Dialogue etc.




- DO THESE REQUIREMENTS ASSIST US IN PROVIDING THE BEST VALUE PROJECTS?
- HOW DO THEY ASSIST US IN DEVELOPING PARTNERING RELATIONSHIPS?

Partnering




Partnering is not new and it is not a procurement route!


- Our contracts recognise its current prevalence through partnering agreements (e.g. NEC X12), specific contract forms etc. whilst legislation governs the operation of its associated elements i.e. frameworks.




- For many in the public sector procurement legislation actually appears to restrict the ability to adopt more collaborative working arrangements.
- An example of this is the limitation on framework agreements to 4 years and the difficulty in developing flexible scoring methods to measure a contractors "value" to the project.



- Some elements such as Centralised Purchasing Organisations and Competitive Dialogue (used on particularly complex projects) may provide scope for additional development in developing collaborative relationships.
- However the devil is in the detail and centralised purchasing raises a number of questions fundamental to commercial use.




- DOES PARTNERING DELIVER ANY REAL BENEFIT?




Contract Management

- The management of a contract is not "project management" as such but the definitions are becoming blurred.
- There is no doubt that our contract forms, the mechanisms used in operating our relationships and legislation requires a greater degree of "project management".



- A contract manager can often find themselves using a contract that does not suit the service/supply they are tasked with delivering.
- This is a failure of the procurement process that often results from recycling of contracts i.e. "*We always use the JCT!*" or "*The organisation that wrote it says its great!*"



- When we use the NEC suite the management burden should not be under estimated.
- Similarly with PPC2 or the JCT SBC05 the requirement for "management" of the process and the project is fundamental.
- At all levels pro-activity is required e.g. compensation events, early warning etc.



- The OGC process is one that tries to ensure each party complies with its duties under the contract but also obtains its benefits.
- To undertake and complete a “project” housing maintenance professionals require a very diverse skill set indeed.
- DO WE THINK THAT SKILL SET EXTENDS TO CONTRACT (PROJECT) MANAGEMENT?

- ### Summary
- Our role as construction professionals in maintenance (the forgotten hero) or new build requires a broad range of knowledge.
 - Each of the elements covered in our brief talk interlinks and reacts with the others and no one element can be taken in isolation.
 - We need to ensure our knowledge base and that of our organisation is up to date.

- ### Contract Forms
- Perceived industry wisdom will not hold true in every project:
 - The majority of contract forms are chosen because of the users familiarity with them. Little thought is given on an individual basis to amendments, updates, changing legislation or new project requirements. We could standardise to a handful of contracts in many instances.

- ### Procurement Regulations
- EU legislation whilst preventing the development of “close” working relationships provides the greater benefit of ensuring probity.
 - To develop the best working relationships full use of the Consolidated Regulations are required.

- ### Partnering
- In many instances “Partnering” principles only provides a benefit to the client, main contractor and tenant.
 - Sub contractors frequently carry the financial and organisational burden of such arrangements.
 - This is not a sustainable approach to service delivery.

Contract Management



- Frequently contracts are managed through a process of “I think I know what that means.” e.g. EOT provisions.
- In many cases sub contractors and main contractors are using a different contract than that between main contractor and client.



- Great care must be exercised with amended versions of “familiar” contracts.
- Joint training with client, main contractor and sub contractors is a very useful initiative.
- Procurement is a “project” in its own right. Pick the right tools for the job.

Useful Links



- www.irknowles.com
- www.hillintl.com
- www.simap.eu.int
- www.cips.org
- www.oqc.gov.uk

Peter Gracia, peter.gracia@irknowles.com

B Mobile: 07834 802779