



Brian Farrington Limited Procurement and Business Solutions People

January 2004 Newsletter – Happy New Year!

Raising the standards.

Here we are at the beginning of 2004 and procurement has still not fully exerted its influence in many organisations. In our professional work, time and again, procurement was either excluded from the decision making process, or got involved too late. There is a lack of commercial acumen in technical functions and with key decision makers, including Boards of Directors.

We have developed a briefing for these people and it does have an impact. We have recently used it on an assignment where we helped recover a commercial position on an IT contract. Confidentiality prevents the actual detail being disclosed, but we can point in some directions. The supplier had to write source code, but the software was owned in North America. We asked our client if this issue had been raised. No, was the answer. No agreement had been made on the licensing agreement, or on Escrow. Our client was very frank and accepted that these issues were unknown to them. The price had not been broken down in such a way that the charges could be understood. When we challenged this we were told that the budget was sufficient to pay the supplier. That is not what we want to hear!

We don't know what we don't know. This is stating the obvious, but procurement should have the answers and be guiding the commercially disadvantaged through complicated issues. We must keep trying and demonstrate that, given the opportunity we can actually make valuable

contributions. If we can help you sell the function at a higher level, please give us a call and we will support your in-house marketing activity.

The Buyer's Obligations.

During the past year we have dealt with a number of contractual disputes on behalf of our clients. In some instances the buyer's obligations have not been fully recognised. Contracts create obligations, both ways. It is unrealistic to believe that the supplier can perform their part of the bargain without something from the buyer's organisation.

Some examples will illustrate the problem. Very early in the contract the supplier needs information from the buyer. It may be forecasts of demand, product drawings and other intellectual property, details of IT systems that the supplier must interface with, meetings with key personnel and decision makers, supply chain information and so on. The late provision of these factors will impede the supplier's ability to perform.

The buyer who negotiated and set up the contract often fades into the distance when contract management kicks in. The lack of contract handover and briefing is, in some instances appalling. We urge buyers to examine contracts to identify the areas where there is an obligation to be met and ensure that it is done. By the way, payment on time is the buyer's obligation. If you make a late payment you are in breach of your own contract.

How was your 2003?

We trust that you have had an excellent year that delivered all your personal and business wishes. Or was it slightly different?

Realistically there will have been frustrations. Perhaps we should concentrate on professional issues. We keep hearing about the lack of influence that procurement has. Will it ever change? In this regard we would like to promote far more purchase research activity. Keeping on top of professional developments is a difficult task. Two suggestions, particularly for our public sector colleagues. Please access the reports emanating from the Audit Commission and the National Audit Office. They are an excellent read and always raise procurement issues. There is an excellent source of contractual information. This emanates from The Court Service web site. Here you can find the judgements from the High Court and Court of Appeal. It really is quite incredible what kinds of disputes find their way into court. Fine points of contract law are there and they are directly relevant to the buyer's task in managing contractual risk.

So there is one possible New Year's Resolution, read some of these reports and use them to make a change in your organisation.

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The newsletter will also be placed on our website www.brianfarrington.com on the first Monday of every month.