

Procuring Successful Mega-Projects
How to Establish Major Government Contracts Without Ending up in Court
By Louise Hart
(A book review by R. Max Wideman, FPMI)

The views expressed in this article are strictly those of Max Wideman.
 The contents of the book under review are the copyright property of the author.
 Published here December 2016

Introduction

This book, *Procuring Successful Mega-Projects* by Louise Hart is, to use a popular word these days, just fabulous. It is, as the title obviously shows, all about what we might call "Project Management Procurement". But procurement in the very different environment of extremely large projects that span decades, cost billions of dollars, is subject to high levels of political oversight. The average reader might reasonably conclude that: "My chances of ever managing such a large project, even assuming that I wanted to, is so slim that it really is not for me."

But don't be too hasty. The advice in the book is equally applicable to projects that are just large, and especially those that are for governments at any level and for large corporations. However, there is another good reason to read this book, or even just pick out chapters of particular interest. That's because it not only presents very sound advice backed by public examples, but is also laced with good old subtle British humor. We'll talk more on this later.

Indeed, the book is very thorough, with helpful tips, or very good advice, for each step of the way through the procurement process or life span. At over 270 packed pages and at least three such tips on each and every page, that's well over 800 items of useful advice over all. Who can quibble at that?

Why did Louise Hart write the book? As she says in her Preface:¹

"This book is for project directors, written by a former project director who now spends her time as a speaker and independent consultant on major projects and procurement."

And because:²

"Mega-projects descending into chaos and litigation embarrass governments all over the world, as the public sector presides over fiascos that waste billions and destroy reputations. Inquiry after inquiry finds the damaging and costly failures of major government projects can be traced back to the contract establishment process."

As the author suggests:³

"*Procuring Successful Mega-Projects* is essential reading, not just for the project director, but for everyone with a stake in the success of a mega-project: public sector executives; Ministers; private sector tenderers; infrastructure lenders; legal, financial and technical professional service providers; and procurement and project management professionals."

In short, it is for anyone who comes anywhere remotely near projects of the size that Louise Hart describes.

About the author

Louise Hart has been involved with mega-projects in Sydney and London for around 30 years. She has led major procurement for the public sector, including as Project Director for the establishment of the \$3.6 billion public private partnership for the double deck Waratah passenger trains now serving Sydney's network.

Her past roles, which span the public and private sectors, include: solicitor in international law firms in Sydney and London; adviser to the Latvian Ministry of Economic Reform; Privatization Legal Adviser for the flotation of Railtrack, then owner of Britain's rail network; and transaction manager for two major restructurings of the Channel Tunnel Rail Link project.

Book Structure

The contents of this book are set out in nineteen chapters, divided into five parts plus one appendix as follows:

PART I – INTRODUCTION

1. Introduction
2. Ending Up In Court

PART II – THE CONTRACT

3. The Project
4. The Specification
5. Risk Management
6. Performance Incentives
7. Boilerplate Clauses

PART III – THE PEOPLE

8. The Minister
9. The Agency
10. The Lawyers
11. Other Advisers
12. Governance

PART IV – THE PROCUREMENT PROCESS

13. Establishing a Fair Price
14. Putting Out the Call
15. Evaluating the Tenders
16. Negotiating the Contract
17. Bullet-Proofing the Selection Decision

PART V – FINISHING IN STYLE

18. Handover to Contract Management
19. A Final Word

Appendix: Case Study References

The number of pages in the body of the book is 295 including a very thorough index. It does not have a Glossary of Terms. The level of content in each of these chapters is surprisingly even. This reflects the careful organization of this book, as is also evident from the five parts shown above taking you through the natural life span of the total procurement process. Not surprisingly, the largest part is Part IV – the Procurement Process, which is, after all, the book's title. The book does have some figures spread

through the book but only ten of them in all.

This book, *Procuring Successful Mega-Projects* is well written in a clear style and, considering the nature of the subject, in easily digestible paragraphs. It is in-depth, yet not "academic", and therefore easy reading. Although we have not had the privilege or challenge of projects as large as those described by the author, we have managed projects large enough to recognize the situations and consequence that she describes. We highly commend the value of the advice she gives.

A quick note before you move on: In her book, Louise frequently uses the word "Agency". This term refers to the government organization, division, department, subsidiary or other large organization that has gobs of money and intends to authorize and spend it on *The Project*. In other words, she is referring to the project's sponsor.

What we liked – the humor

Procuring Successful Mega-Projects is set up as a mentor's guide for project directors, providing frank, fearless, practical advice on how to set up a major government contract that *won't* end up in court!⁴ For example:⁵

- How to develop and negotiate a contract that does *not* contain undeliverable obligations or perverse incentives,⁶ but *does* contain the necessary provisions for successful project management.
- How to navigate the pitfalls of the public sector environment, from hiring freezes and governance frameworks to the complexities of managing the relationships with the Minister.
- How to select and manage the lawyers and other advisers, build the adviser-client relationship and recognize that unwelcome advice may not be helpful.
- How to structure and follow a bulletproof procurement process that is fair to bidders and delivers great outcomes.

Although these objectives are heavy-duty subject matter, the content is made so much easier to read because, as mentioned earlier, the book is laced with a little British humor. In fact we read the book almost like a thriller waiting to see what could ever happen next.

Here are a few classic examples:

"[This book has] no bullet point summaries at the end of each chapter that save you the bother of reading the chapter at all. [In fact] The only examination you face [on the content] is cross-examination in the witness box if your project joins the long list of Government fiascos."⁷

"[On tender cancelation] The UK National Audit Office found that the Department of Transport spent £1.9 million on the tender process for the InterCity West Coast passenger rail franchise in 2012. It then spent a further £2.7 million on professional fees when the losing bidder brought the action for judicial review that led to the competition being canceled. Plus more than £40 million on compensation costs. Litigation is expensive. It soaks up management time and effort. It attracts negative media attention. It is, in short, a pain in the neck."⁸

"[On the question of incentives] Offering a price per tail for killing rats may be intended to eradicate rats, but pay enough and people set up rat farms."⁹

"[On default and Termination] The contract will have a number of clauses useful only

when the project is in dying cockroach mode, flat on its back with its little legs waving feebly in the hope of attracting a miracle."¹⁰

"[On legal advice] Lawyers are often selected primarily on the basis of their hourly rates. This is a truly dreadful idea. ... [Suppose] You are scheduled to send in the bulldozers on Friday, but aren't sure if you should [because of some endangered species. So,] if your instructions [to your lawyer] simply asks: 'What is the law on endangered species', don't blame the lawyer if the answer is unhelpfully broad and doesn't arrive until Monday. ... Any halfway-competent lawyer faced with this question, ought to respond: 'Why do you ask?'"¹¹

"[On public sector decision making] You will find that many public sector decisions are not made by anyone. They just emerge from some primordial swamp. Everyone's backside is protected because nobody can identify which backside to kick. Unfortunately, this method of rear end protection is incompatible with successful project delivery."¹²

"[On bidder selection decision] You are not the decision-maker. The decision-maker must have adequate reasons for doing something different from your recommendations, but if they have, they can. The decision may be more vulnerable to challenge ... [But] There are things you can do to protect the decision. Being bullet proof is good. Not being shot at is even better."¹³

What we liked – the serious stuff

At this point in our review we normally discuss the "Downside" of the book. However, this book is essentially about "Lessons learned", and not just that, but also how to expect them, what their impacts on Mega-Projects look like, and what you can do to avoid the same mistakes. Who can find fault with that?

So, let's get back to the serious stuff.

As the title of the book states, it is all about procurement. On smaller projects, the issue of project management procurement tends to take a lesser role, or even no role at all. On Mega-Projects, however, it is evident that "procurement" *is* the project and, as such, requires the complete and detailed attention that project management can offer. Of the many "good advices" that we flagged as we read the book, here follows a sampling picked more or less at random.

"[The contract] People seem happy to accept that there will be significant design and development required for a fleet of trains, or a bridge, or whatever the underlying project is, but somehow expect that a contract will miraculously spring into being fully formed. The truth is, contracts also need a design and development phase, which requires just as much thought as the design and development of the underlying project. There is also a tendency to think that since the final detail of the contract will have to be negotiated with the selected tenderer, it does not matter if the contract issued with the Request for Tenders is an early draft. It matters a lot. You won't enter the delivery phase with a litigation-proof contract if you don't enter the procurement phase with one."¹⁴

"[Specification Interfaces] Collaboration is a beautiful thing, but not always easy to achieve. Every interface between Government and the contractor is a potential dispute. If you can ring-fence the project away from the Agency's day-to-day operations, you eliminate the risk of Agency people in the delivery phase treating day-to-day operations

as more important than the project, without regard for the impact on the contractor."¹⁵

"[Agency Contributors] When you want people in other department to do things for you, you need to agree the scope of work with them in writing and also to provide them with sufficient context to understand the interdependencies. If a project manager delivering enabling works has no idea that delay to these works could cause the Government to be liable in damages to your contractor, you have no grounds for complaint if the works are rescheduled at someone else's convenience."¹⁶

"[Boilerplate Clauses] Contracts generally contain a lot of clauses that pop out of the lawyer' precedent bank and are slotted into every contract they produce in virtually identical terms. These clauses are known as 'boilerplate' and many clients don't bother to read them. Sometimes even the lawyers don't bother to read them. This is a mistake. The issue is not about proofreading. ... The issue is, as always, that the standard form of anything is never entirely appropriate for a mega-project."¹⁷

"[Technical Advisers and Contract variations] When you are preparing to set up the contract, technical help is primarily required with the specifications: working out what you need to ask for; how to ask for it in a way that means tenderers will understand and give it to you; and whether the bid submissions match the requirements of the specification. It is absolutely critical to get this right. Contract variations put up costs, delay delivery and diminish accountability, yet they usually result from things people could have sorted out when the specification was drafted, if only they had made the effort."¹⁸

"[Governance] Project governance is about keeping a project under control (or at least noticing when it isn't). Evaluation governance is about rendering the tendering process bulletproof, which involves keeping a clear distinction between evaluation and decision-making. A separate Evaluation Committee, normally chaired by you, produces an evaluation report, which must then go to the decision makers. ... The committees will be under the impression that they are there to see you do your job properly. This is true, but from your point of view it is more important that they do *their* job properly. ... Where physical works are being undertaken as a part of the project, include photographs in reports as evidence of progress and as a way to make reports more interesting. ... Avoid dull. If you really can't find anything interesting to put up for discussion, at least provide party pies so committee members do not feel that their time has been entirely wasted."¹⁹

In this review we have not tackled *Part IV – The Procurement Process*, which is, after all, at the heart of the book's coverage. This part is every bit as informative and entertaining as the previous sections we have commented on. After all:

"[Fair Process] Fairness is not enough. You want to procure a successful project. When you follow a fair process, and have evidence of your virtue in this regard, you are most unlikely to end up in court defending the award of contract. [But] that will be small comfort if you have awarded an undeliverable contract to a high priced incompetent. ... You have some more work to do."²⁰

Buy the book to find out what.

Conclusion

As noted earlier, the final chapter, Chapter 19, in Louise Hart's book is titled "A Final Word". In this chapter she offers her final take-aways, not just from the book but looking back over her 30 years in the

public and private sectors. That is, including the many major Government projects in various countries that have ended in acrimonious dispute because of basic failures in the procurement process.

Here are her top ten headings, each of which are more fully explained in her book:²¹

1. Be clear on the objectives
2. Leave your brain switched on
3. Find the best people
4. Identify the scope. All of it
5. Allocate risk to people who know what to do with it
6. Design the right procurement process
7. Consult. Properly
8. Insist on good governance
9. Distinguish between price and value for money
10. Acknowledge your own fallibility

To which she adds:

"But please, please, don't go out and make the same stupid mistakes Government made last time. Almost all failures are utterly unnecessary. Set up your project for success."²²

That is excellent advice indeed!

R. Max Wideman
Fellow, PMI

¹ Hart, Louise, *Procuring Successful Mega-Projects*, Gower Publishing Limited, Surrey, UK, 2015, p ix

² Ibid, back cover.

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ We cannot help but including here also, any of the unquantifiable goals of the United Nations in its Resolution 70/1 adopted by the General Assembly on 25 September 2015: "*Transforming our world: the 2030 Agenda for Sustainable Development*", that are added just to please the "green" movement.

⁷ *Procuring Successful Mega-Projects*, p4

⁸ Ibid, p9

⁹ Ibid, p71

¹⁰ Ibid, p85

¹¹ Ibid pp 125, 126

¹² Ibid, p150

¹³ Ibid, p252

¹⁴ Ibid, p5

¹⁵ Ibid, p39

¹⁶ Ibid, p110

¹⁷ Ibid, p75

¹⁸ Ibid, p141

¹⁹ Ibid, pp154, 158, 159

²⁰ Ibid, p184-185

²¹ Ibid, pp271-273

²² Ibid, p273