

## To become ‘commercial’, public procurement must confront its contradictions

### THE LEADING EDGE

Governments the world over say they want procurement to become “more commercial”. They call for greater value for money, faster delivery, and more innovative partnerships with suppliers, yet in general they are not confronting the policies and practices that will continue to frustrate those ambitions.

Public procurement is designed for stability, predictability and compliance. These are admirable traits when applied to short-term commodity acquisitions or in environments of certainty



and predictability. But the world we inhabit is anything but certain. Supply disruptions, inflation volatility, political realignment, and environmental shocks are examples of a market environment which demands adaptability, speed, and shared risk. The system, however, remains structured for control and for public perception. So while commercial practices acknowledge and adjust to altered market conditions, the public sector remains constrained and finds itself tinkering at the edges of meaningful change.

In the US, after decades of intervention, it has resulted in a

highly sophisticated regulatory and organizational framework which on one level creates admirable capability, but on another it operates as a procedural straightjacket.

### **The root distortions**

A few policies, originally created to protect taxpayers, are representative of the forces which today undermine public value and frustrate ‘commercialism’.

#### **1. The constraints on negotiation and renegotiation.**

In a world of uncertainty, this is not sustainable. It acts as a constraint on substantive up-front dialog and frequently leads to the imposition of standards and templates which generate price uplifts and impose terms unsuited to the requirements. (The NCMA ‘Most Negotiated Terms’ study in 2024 indicated an incremental cost impact equivalent to \$100bn on current Federal spend.)

Then, the inability to flex terms post-award, even when market conditions or policy objectives shift, creates rigidity, delay and further cost escalation driven by a culture of ‘claims’. It assumes that requirements, pricing, and delivery conditions can be perfectly defined upfront, which decades of WorldCC data show is untrue. In our 2024 Benchmark Report, 82% of public sector respondents said that “change in scope or specification” is a frequent cause of contract value erosion.

#### **2. The obsession with transparency of cost and margin.**

It sounds fair, but in practice this intrusion

into corporate finances suppresses innovation and drives defensive behavior. Suppliers learn to build in buffers, to mask risk rather than share it. Government and the market engage in an elaborate dance where truth is often suppressed and nothing is quite as it appears. Commercial markets – while far from perfect - thrive when there is open conversation and outcome-based value exchange, not forensic dissection of internal cost structures. This obsession with cost and margin generates an enormous workload and distorts relationships, making them exercises in bookkeeping. There are far better mechanisms to ensure value, such as simple monitoring of corporate reporting and rights of audit, plus a more dynamic approach to monitoring market norms in pricing and provisions to enable renegotiation. This is precisely where AI can and should be deployed. Commercial enterprises also care about value for money: none seek to follow the methods used in Federal acquisition.

Sole-source acquisitions for government-unique requirements, such as defense, homeland security, and intelligence, may require deeper transparency and regular review to prevent mission and value degradation, especially within long-term programs. Without traceability, cost savings and margin growth can remain hidden, eroding value over time. These funds could otherwise be redeployed toward infrastructure improvements (CAPEX) or additional units of critical supplies. Moreover, commercial practices are not immune to profit gouging: consider TransDigm’s excess profits of up to 4,436%

on military spare parts or insulin margins that have ballooned well beyond inflation since the late 1990s. Such practices exacerbate public budget pressures, fueling fiscal crises like debt ceiling battles that force trade-offs between essential programs, sometimes even diverting R&D funds to cover operational shortfalls.

### **3. The philosophy of risk transfer.**

Public buyers often accept that risk should sit with “those best able to manage it,” but in practice contracts are drafted to transfer risk, not manage it. This limits competition and contributes to higher prices and a fragile supply base. When risk becomes punitive, capable suppliers exit or adjust prices and behavior accordingly. For example, NCMA and WorldCC research on supply relationships clearly shows a correlation between risk transfer and reduced trust and transparency. Those suppliers that remain focus on compliance and their own risk avoidance, not performance.

For the Federal buyer too, this risk transfer approach impacts their focus. They become risk monitors, rather than risk managers, thereby avoiding many of the essential conversations and feeling unempowered to work collaboratively and creatively through problems. And problems there will be – resolving them lies at the heart of good commercial management.

In reality, “risk transfer” is often an illusion. Exchange and delivery risks are always shared; shifting cost risk merely degrades future relationship value. What

most contracts actually transfer is liability, a poor substitute for performance when the stakes involve national security or life-critical needs. The ability to sue a counterparty does not compensate for the loss of timely delivery. Effective risk management requires shared responsibility and proactive collaboration, not punitive clauses.

### **4. The right of competitive challenge to awards.**

Designed to ensure fairness, this process too often delays delivery, deters bidders, and reinforces a culture of risk aversion. Officials, fearing challenge, make decisions by rulebook rather than judgment. Suppliers may be reluctant to divulge their best ideas or latest innovations for fear of them being shared or entering the public domain. The overall policy environment encourages an adversarial atmosphere that distorts true market competition and damages the performance of entire sectors. Again, this blunt instrument is an outdated model and the time it absorbs would be better spent on alternative methods, such as more robust and independent audit and market engagement.

### **The tyranny of perception**

Individually, these policies constrain discretion. Collectively, they distort the market. They remove the incentives and flexibility that underpin commerciality. In most cases, this focus on control stems from past experience and fear - of criticism, headlines, and political fallout. Public perception and reputation management are necessary drivers of policy, but the methods

deployed in past decades are not suited to today's very different market environment and acquisition models. We are stuck in an environment where government and public officials equate visible control with accountability. It's an approach where the actual outcomes often damage reputation through delay, cost overrun, and compromise.

WorldCC's Voice of the Supplier research shows that 68% of public sector suppliers view "fear of scrutiny" as a leading cause of slow decisions and poor collaboration. When every action is judged not by outcome but by an outdated audit model, agility and adaptability disappear. The system becomes anything but 'commercial'.

### **Ripple effects across the market**

These distortions don't end with government. Efforts to impose unnatural controls over negotiation, cost, and risk allocation cascade through the supply chain, distorting margins and normal commercial behaviour. In sectors such as construction, defence, and infrastructure, these effects are visible and damaging.

In the US, federal contracting data show that over 60% of small business contractors exit public markets within five years, citing "unreasonable compliance burdens" and "imbalanced risk terms". Similar patterns appear in UK and European infrastructure sectors, where aggressive fixed-price contracting has hollowed out supply capacity and driven consolidation. When risk transfer becomes risk dumping, competition and capability erode - and public value goes with it.

### **The illusion of control**

Commercial markets are dynamic ecosystems: price signals adjust, relationships evolve, and competition thrives through learning and differentiation. By contrast, public procurement attempts to freeze the system by fixing terms, processes, and even relationships in time. It confuses fairness with sameness, and control with competence.

The result, as WorldCC data repeatedly shows, is at best performance stagnation and in many cases performance decline. The indicators suggest that average value erosion in public contracts is moving above 10%, against an improving supply-side norm of 5.6%. In major acquisitions, the level of erosion is much higher. Cycle times remain among the longest of any sector and supplier satisfaction with public buyers is the lowest recorded in our studies. They largely feel that the public sector talks reform, but in reality nothing materially changes.

### **What must change**

If we are serious about commerciality, reform must go deeper than new templates or technology platforms. It means confronting the contradictions at the system's core:

- **Replace punitive risk transfer with shared governance.** Build frameworks that enable continuous adjustment and learning, supporting transparency, open dialogue, and collaborative problem-solving. Recognize that liability transfer is not

the same as risk as risk management, especially when delivery failure has national security or life-critical consequences.

- **Shift from blanket transparency to trust with accountability.** Evaluate and reward suppliers on outcomes delivered, not by dissecting spreadsheets. At the same time, acknowledge that certain sole-source or mission-critical acquisitions require traceability to prevent value erosion and profit gouging. Use audit rights and dynamic market monitoring, augmented by AI, to balance trust with control.
- **Re-empower commercial judgment.** Move beyond rigid rule compliance to measured discretion, supported by meaningful auditability and accountability mechanisms. Public buyers must feel empowered to manage, not just monitor, risk.

- **Embed adaptive contracting principles.** Allow renegotiation and flexible mechanisms when circumstances change, ensuring resilience rather than fragility in the supply base.

The lesson from markets and from research across thousands of organizations is clear: performance improves when relationships are managed for mutual success, not procedural compliance. Until the public sector confronts these root distortions, “commercial procurement” will remain an unrealized aspiration.

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