

# Trends in Complex Contracting

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- In order to appreciate my perspective it will be helpful to understand a bit about the company I work for
- Fujitsu Services is a leading European information technology services company. Its business is helping its customers realise the value of information technology through the application of consulting, systems integration and managed service contracts. It serves customers in the private and public sectors across Europe including retail, financial services, healthcare and Government. With an annual turnover of £2.46 billion (€3.59 billion), it employs over 19,000 people across 20 countries. Headquartered in London, Fujitsu Services is the European IT services arm of the US\$43.2 billion (€32.5 billion) Fujitsu Group. Visit [uk.fujitsu.com](http://uk.fujitsu.com) for more information.

# What is Complex Contracting

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- All significant commercial contracts could be said to be “complex”
- What I understand by “complex contracting” is a service contract where a customer outsources its information technology and related business processes to an external supplier for a long period of time
- This entails mutual reliance where the customer depends on the supplier for critical aspects of its business and the supplier depends on the customer for significant revenue
- This talk therefore concentrates on outsourcing contracts as an exemplar of complex contracts

# Mutual Objective for Outsourcing Contracts

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- The objective of the customer and the supplier should be to enter into a contract which supports a strong relationship between the parties that enables successful programme delivery
- This leads to a win win solution where the customer receives good service and the supplier a fair return
- It also improves the perception of customers generally as to the viability of long term outsourcing services
- Which in turn improves the opportunities for all suppliers in the market place

# Challenges in Reality

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- In real life this objective can be difficult to achieve which results in the failed projects highlighted in the press
- This often starts because the customer's requirements are vague and not thought through
- And the supplier does not fully appreciate what it is expected to deliver
- A lengthy contract is then negotiated which does not reflect the expectations of the customer or the supplier
- This often results in a contract renegotiation soon after the start – and sometimes in contract termination

# Private Sector

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- Variety of contract models
- Procurements usually shorter than in public sector
- International multi jurisdictional contracts are more common and have their own challenges
- Still seeing problems after contract let
- Governance processes are a key to good communication and here the private sector can learn from the public sector

# Public Sector

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- Use of OGC model contract is resulting to an extent in a common starting point for the terms and conditions
- However there are still industry concerns with this contract
- And in any event it is substantially expanded or ignored in many procurements
- Behavioural issues are a major problem in particular
  - seeking to transfer excessive risk to suppliers
  - contracting on lowest price basis
- Which results in little incentive to optimise performance
- There is also an over reliance by customers on external advisers

# Overall Trends

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- We are now seeing second and third generation outsourcing with transfers from incumbent suppliers
- More expertise and guidance is resulting in increasingly successful contracts
- But there are still problems particularly with transformational projects
- These often originate from poorly conceived programmes linked to unwillingness to pay a fair price
- These initial issues are then exacerbated by failure to capture “changes” properly during the project

# Process Improvements

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- Project lifecycles deserve more emphasis than just the initial procurement activity
- This means involvement of contract and legal advisers in the early stages
- And after the contract has been awarded
- Contracts need to be flexible enough to enable change to take place
- And robust enough to steer through differences
- Consider an initial contract to settle the requirements and intended solution prior to finalising the price

# Fujitsu Philosophy for Success


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- We work in partnership with our customers to ensure the success of their programmes
- We offer a transparent open book approach where our costs and margins are visible to our customer
- We are also prepared to share gains
- We will accept and manage a reasonable share of risk
- In return we seek clarity around the customer requirements
- And a fair financial return

# Conclusions

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- If you want a Rolls Royce you have to pay for it
- Open communication and common understanding are essential
- Build in and operate flexibility to change contract as technology, requirements and solutions evolve over time



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