

Defining Contract Management

Government must anticipate the contract management needs over the contract period. The main aspect to be emphasized under 'contract management' is that this vital activity must be defined, allocated and agreed well before contract signing. This is because it involves allocation of tasks and more importantly allocation of considerable management and monitoring costs and resources which will be incurred over the concession period.

Contract management must therefore be flexible. That is it must try and foresee changes which can be covered in broad terms over a long period into the future. Government must anticipate the institutional needs for it to effectively undertake contract management at an early stage and set up a contract management unit.

PPPs are more complex and operate for longer periods than traditional contracts. Therefore, there is need for an increased emphasis on project and contract management under the PPP framework.

Issues Addressed by Contract Management

The contracting agency's role continues on contract signing and it is obligated to monitor the concessionaire's activities over the concession period to ensure compliance. It is also obligated to ensure that its own obligations are implemented in a timely fashion to both avoid any penalties that may arise and to ensure the project is implemented efficiently to plan.

The contract basis for a PPP infrastructure project is the concession agreement. This agreement governs the relationship between the Contracting Authority and the Concessionaire from contract award/signing/financial close, through the design and construction phases to the expiry of the terms of the concession.

The implementation of Contract Management is intended to ensure delivery of cost effective, reliable and timely services at an agreed price and to agreed quality standards consistent with legal standards, financial probity and management accountability.

The concession contract sets out the contractual obligations for the concession period, which can be for 20, 25, 30 or more years. These obligations cover all parties to the contract and change is inevitable over such a long period. The need to prepare flexible Contract Management conditions within a Concession Agreement has been found to be important to cope with changes.



Public Private Partnerships in Scotland, Evaluation of Performance, CEPA, March 2005.

The contracting agency should only require sufficient data to monitor the project. Excessive data collection imposes unnecessary burdens on the private sector and if the data is analyzed, also on the contracting agency.

The contract will have clearly stated the concessionaire's obligations and defined the service's characteristics and quality. Effective Contract Management depends on getting the contract right. In general a good PPP contract stresses the contracting agency as a customer buying and receiving services or outputs from the producer/seller i.e. the Concessionaire.

Risk must still be managed as must change that is inevitable over time, such as technical developments.

Contract Management activities

Contract Management is an activity to ensure that the respective roles and responsibilities set out in the contract are fulfilled to ensure service delivery combined with value for money. Contract management is about Whole Life Performance and continuous monitoring of concessions and contracts. Its aim is to ensure that the concessionaire complies with contract provisions throughout the life of contract. Performance monitoring is a specific activity within Contract Management.

Contract Management is divided into 4 phases;

- Pre Construction, generally from Contract Award to Financial Closure
- Construction
- Operations and Asset Management
- Asset Transfer or Re-bidding Stage.

The goal of these phases is good governance and accountability, so that private sector works continuously in the public interest and it involves a series of checks and balances implemented through a rigorous set of oversight procedures comprising guidelines, rules and approvals.

Developing these tasks requires the Government to undertake two distinct but overlapping tasks;

- Preparation, planning and agreement to the Contract Management Plan before contract signing
- Implementing the Contract Management Plan

Contract Management covers the following key provisions:

- Monitoring compliance in all phases (of all partners)
- Managing the Agreed Risk Allocations (so that unplanned risk transfers do not occur)
- Management of Change (that will inevitably occur over 20-30 years)
- Dealing with Under Performance (of any partner)

Contract Management starts with well designed contracts during project preparation/ procurement and includes agreement during the Negotiation process. Contract Management continues over the life of the project, with the effective management and monitoring of critical project functions through an appropriate Contract Management plan and through an effective institutional structure.

It should be noted that it is usual to prohibit transfer of Concession Agreement or share inclusion in Business Entity as holder of Concession Agreement before Infrastructure Provision is commercially operational.

The Contract Management activities should also allow for mutually acceptable changes in the Concession agreement.

It must be stressed that the Contracting Authority must manage its own activities and although it monitors the Concessionaire's activities, it does not manage the work of the Concessionaire which must retain full management authority.

Therefore, the Contracting Authority should not interfere with the Concessionaires day-to-day and management activities.

However, the contracting agency's responsibilities and duties will still remain extensive but they will be different from their public procurement responsibilities. In particular, the contracting agency must ensure that there will be in place effective systems for performance monitoring, quality management and management information. During project operations, the contracting agency must also undertake spot checks to ensure these systems are actually in place and working.

Preparation for Contract Management

The preparation for Contract Management includes:

- Developing Contract Management rules such as:
 - Escalating system of deductions from payments for underperformance
 - Which party pays the monitoring costs
 - Payments only made for the services contracted (where payment is via the Government)
 - Monitoring and control of the contract
 - Other
- Guidelines for contract and performance management including PPP review assessment including;
- Contract Management Implementation
- Post Contract Award/Pre Construction
- Construction
- Operation

Finance will be particularly vital where Government support is provided to the project. MOF will set down conditions for such support and the Contracting authority will need to liaise with MOF on related issues including financial monitoring and auditing.

Asset management is the strategic business process approach to managing the long-term maintenance of highways. The benefits of developing and applying preventative maintenance techniques to avoid quantifiable deterioration of assets leads to significant cost savings and efficiencies and is being increasingly applied to all highways, PPP or non PPP.

Residual Value Asset monitoring: At the end of the operational period, the assets are transferred back to the contracting agency. There is therefore a need to monitor the condition of assets and agree in the Concession Contract the condition of assets at contract end.

Contract Management Criteria for Toll Roads

The criteria generally incorporated into the Project Agreement to facilitate contract and performance management will include:

- Performance Criteria; Capacity and service standards, which for a road project will include number of lanes, widths, hard shoulders, junction characteristics etc.
- Safety; Minimum design and specifications.
- Asset Condition; Minimum standards.
- Payment and Penalty Mechanisms; This will include penalty provisions.
- Monitoring and Auditing; Traffic flows, speed, pavement condition and condition of signs and lighting etc.

Construction Management will include:

- Design Review; establishing compliance.
- Statutory processes; ensuring their completion.
- Contract Formalization; Ensuring Securities and Insurances are in place.
- Workmanship and Materials; Management of quality control.
- Commissioning; Satisfactory completion of construction, noting of defects, safety review and implementation of recording systems.

The Operational Stage will include:

- Implementing the Monitoring Plan.
- Ensuring availability of Facilities including toll booths and other factors which may affect safety and traffic flow.
- Performance Standards.
- Repair and Maintenance Standards.
- Other Contract Obligations.
- Managing any changes such as excess traffic, new standards etc.
- Stakeholder Management.

Concession end activities will include:

- Assessing the condition of the assets
- Management of re-bidding
- Handback of facilities (if included in contract)

Financial Aspects of Contract Management

At an early stage the contracting authority must establish a budget for its proposed Contract Management activities and allocation of cost agreed in the Concession Agreement.

It is the responsibility of the Contracting Authority to estimate realistic financial and resource costs related to contract management and performance monitoring. Bearing of these costs will be agreed within the concession agreement.

The cost implications of Contract Management and Monitoring must be agreed in the contract. In general each side should bear its own costs.

Where the authority needs independent advice, surveys, dispute resolution and surveys, these should be paid by the contracting authority, although it may have workload and cost implications on the concessionaire.

The financial costs of the contracting authority should be realistically assessed bearing in mind the high (technical as well as management) levels of government staff that will be needed and the requirement for independent and specialist advice that will be needed on an ongoing basis.

Institutional Aspects of Contract Management

An appropriate institutional structure such as a Contract Management Unit (CMU) should be established within the contracting authority with a professional contract manager at its head with an established hierarchy to avoid duplication and confusion. The concessionaire should be made fully aware of the structure of the CMU and its optimum interface points with the CMU.

The contract manager should have clear authority and clear reporting lines within the contracting authority.

The resources required for Contract Management will depend on the size and complexity of the project. The staff/human resources needed will vary over the life of the concession. Typical disciplines include:

- Design and construction
- Business and Product Assurance
- Facilities Management
- Safety and Regulatory responsibilities
- Legal
- Financial

It is also suggested that the proposed Contract Management activities are independently checked at the outset and audited from time to time to ensure their adequacy. Specialist consultants will likely be needed to do this and other ad hoc tasks on a regular or intermittent basis as required.

Appropriate training must be provided for all staff involved in Contract Management and some courses should be organized jointly for the contracting authority and the Concessionaire. The principle is that the contracting authority should be an active and intelligent customer—a buyer of services and not a seller of contracts for goods and services as under public procurement. This requires a substantial change in mind sets which can only be achieved through training and on-the-project experience.

The contracting authority must also be both prepared to expand its activities due to under performance of the concessionaire and conversely the contracting authority must have sufficient resources to ensure delivery of key enabling services by the contracting authority to the Concessionaire.

It should also be emphasized that an efficient concessionaire will be monitoring the contracting authority in order to ensure the Government also fulfils its contractual obligations.

The implementation of Contract Management is intended to ensure delivery of reliable, value for money and timely services at an agreed price and to agreed quality standards consistent with legal standards, financial probity and management accountability.