



Support for Improvement in Governance and Management

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Public Procurement

Contract Management

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Introduction

When a contracting authority enters into a contract with an economic operator, the arrangement cannot just be left to run. It must be managed to enable both the contracting authority and the economic operator to meet their contractual obligations. Contracts are frequently complex, may involve multiple actors, may last a long time and may consume many resources. It is therefore vital that they are properly managed.

If an economic operator realises that the contracting authority is not monitoring progress, it may get careless and delivery will be less than acceptable, or it may create and demand variations not provided for in the contract.

The process of contract management

Contract management activities can be broadly grouped into three areas: delivery management, relationship management, and contract administration.

- **Delivery management** ensures that whatever is ordered is then delivered to the required level of quality and performance as stated in the contract. Delivery management may include checking the nature, quantity and quality of:
 - goods supplied – on delivery and also, when appropriate, at the time of manufacture;
 - works carried out – including conformity with designs and drawings, quality of workmanship and materials
 - Services performed – including checking that required services levels and timescales are met.
- **Relationship management** seeks to keep the relationship between the economic operator and the contracting authority open and constructive, with the aim of resolving or easing tensions and identifying potential problems at an early stage, while also identifying opportunities for improvement. Relationships must be wholly professional throughout and must include a professional approach to managing issues and dispute resolution.

- **Contract administration** covers the formal governance of the contract and any permitted changes to documentation during the life of the contract. This area of contract management ensures that the everyday aspects of making the contract run effectively and efficiently are taken care of.

Contract management in practice

Managing the relationship: Contractual arrangements create a relationship between the contracting authority and the economic operator. Inevitably this involves a degree of dependency. It is in the contracting authority's own interest to make the relationship work as the costs of early termination and the consequences of poor performance and unplanned changes of economic operator are highly damaging. The three factors for success are:

- Mutual trust and understanding
- Openness and excellence of communication
- A joint approach to managing delivery

This note briefly runs through contract management processes over the life of a major contract. This is a non-exhaustive, illustrative list; some processes may not be necessary for all contracts, whilst others, although important in some situations, may not be covered here, as what is relevant depends on the nature of the contract being managed.

The inaugural or initial meeting: For any major contract it is good practice to have a formal inaugural or initial meeting soon after the contract is officially awarded. This meeting is where people from both the economic operator and the contracting authority meet for the first time within the context of the agreed contract. They may have met before, but this will have been while the parties were going through the procurement process. At this meeting it is vital that both sides move from a competitive to a cooperative viewpoint – they will be working together for the life of the contract as both will want a successful outcome. The objectives of the meeting include:

- Understanding the roles and responsibilities of everyone present

- Discussing the implementation and/or project plan
- Discussing issues which impact on the operation of the contract
- Discussing control mechanisms

Although important for relationship management, this meeting must not become an opportunity to make changes to the specification or other requirements or to the conditions of the contract. Where absolutely necessary, these would be dealt with in accordance with pre-agreed procedures set out in the contract established for this purpose (as described below).

Ongoing contract management: The economic operator will perform the contract within the agreed scope. This may include the delivery of goods and materials, or the provision of services or works to the contracting authority. A vital function is to allow both parties to raise issues as soon as they identify them and for the other party to treat these issues seriously and promptly. Ongoing contract management includes the administration of a range of activities, including

- Change control
- Charges and cost monitoring
- Ordering procedures
- Receipt and acceptance procedures
- Payment procedures
- Budget procedures
- Resource management and planning
- Operational and management reporting
- Asset management
- Progress meetings

Contracting authorities are advised to have standard procedures in place for these activities and to seek advice from other competent authorities in the case of large or complex contracts for which standard procedures may be insufficient or inadequate.

Issues log: An issues log is one useful mechanism for recording and managing issues arising during contract implementation. It records issues as they arise along with the

actions taken to attempt to address them. A dispute resolution procedure must be provided within the contract for issues that cannot be resolved in this way.

Review meetings: Review meetings between the parties to the contract are another practical means of keeping control of a contract, particularly when it is complex or runs over several years. The frequency and coverage of the review meetings, if any, will depend on the nature of the contract. Review meetings are a useful means of communication between the parties to the contract during its execution, and not having them can have negative consequences. They must be well prepared, focussed and not too time consuming.

Review meetings are intended as a forum for the parties to the contract, and not for other beneficiaries or stakeholders. In some cases, such as major infrastructure projects, other beneficiaries or stakeholders may need to be consulted or informed about the ongoing delivery of the project. This process is a separate process from the review meetings.

Contract performance controls: Control is vital, but cannot be had without measurement. Therefore, clear and effective contract performance measurement is essential. Controls must be:

- Highly relevant to the essence of the contract
- Understood and accepted by the economic operator and the contracting authority
- Able to measure
- Robust in their operation
- Provide more value than costs
- Able to reflect soft and hard measures
- A source of useful information

Timely high and/or summary level reporting is much more effective than accurate late information. It is essential that the information obtained is useful, either intrinsically or because it can be processed to provide knowledge on which to base decisions and activity. Procurement officers are advised to have a small number of effective controls rather than a large number which are used only because the information can be obtained and reported.

Contract performance controls need to be considered and devised at an early stage of the procurement process, when determining needs and deciding the outcomes of a contract before it is procured. See *Procurement Brief 21 - Performance Measurement* for further discussion and examples.

Service level agreements: Service level agreements are one excellent way of ensuring control within a contract. By clearly stating the required and agreed quality and delivery requirements of services, both contracting authority and economic operator know and understand what targets have to be met in the delivery and support of services. Similar approaches can be applied to the performance of equipment or facilities where it may be expressed, for example, in terms of processing capacity, availability, mean time between failure, and consumption of energy. There should be a detailed agreement of the required service levels and thus of the expected performance and quality of service to be delivered as well as of the consequences of poor performance. These are incorporated in the contract (often in schedules) and feed into the performance measurement controls. As with performance controls, these service levels should be determined at an early stage in the procurement process, when various alternatives and their costs and benefits are examined and a decision is taken on what to require from the tenderers and, ultimately, the contractor to be engaged.

Risk and risk management: Risk can be defined as uncertainty of outcome, whether positive opportunity or negative threat. In the area of contract management, the term 'management of risk' incorporates all the activities required to identify and control risks that may have an impact on the fulfilment of a contract .

Many risks involved in contract management relate to the economic operator being unable to deliver at all or not delivering at a satisfactory level of quality.

These risks could include:

- Lack of capacity

- The economic operator's key staff being redeployed elsewhere, eroding the quality of the works delivered or the service provided
- The economic operator's business focus moving to other areas after contract award, reducing the added value for the contracting authority in the arrangement or impacting on the timeliness of delivery of goods or works
- The economic operator's financial standing deteriorating after contract award, eventually endangering its ability to maintain agreed quality requirements of goods purchased or levels of service
- Demand for the goods or services is much greater than expected and the economic operator is unable to cope
- Demand for a service is too low, meaning economies of scale are lost and operational costs are disproportionately high
- Staff at the contracting authority with knowledge of the contract who transfer or move on, weakening the relationship
- Factors beyond the economic operator's control disrupt delivery of goods or services, for example, premises cannot be accessed because of a natural disaster
- The contracting authority's inability to meet its obligations under the contract

Perceived or anticipated risks should be identified in advance when preparing the procurement and can then be dealt with in the contract documents with clear and appropriate allocation of responsibility and corresponding acknowledgment and understanding of the consequences.

One factor that can help procurement officers in a problematic case is the relationship they have with the economic operator. Where the relationship is good, open, fair and honest, an early warning of the impending risk being realised may be provided through the normal working relationships and control mechanisms. Where the relationship is poor, the economic operator may attempt to hide the problem, which then normally materialises as a greater risk.

Variations: The contract terms and conditions should include mechanisms to cope with permitted changes during the life of the contract. Currency fluctuation clauses and price

indexation clauses are common examples where the need to make a change can be foreseen and accommodated within the contractual terms.

Contracting authorities must be very careful when considering the possibility of varying an agreed contract, particularly outside a pre-agreed and transparent contractual cost variation mechanism. There is a significant danger that the variation of a contract could result in the award of a new contract, unless one of the limited exceptions applies. If the changes are material and amount to the award of a new contract, then this new award must be in compliance with the Directive. A failure to comply with the provisions of the Directive when the changes amount to the award of a new contract may be regarded as an illegal direct award.

It is in the very nature of some widely used standard contracts, particularly for works, that they have clear and comprehensive provisions allowing the contracting authority to change the nature, quantity and quality of the subject of the contract. From a contract management point of view it is advantageous to be able to address changing circumstances in a transparent, timely and efficient manner as they arise during contract execution. This is a good reason for using such a form of contract but it is then all the more important that the contracting authority has thoroughly prepared the scope of the contract and worked out a sound, detailed and robust design, so that the possible variations are minimised. If this is not possible then a different procurement and contracting strategy should be used. Failure to do so may not only lead to the procedural and legal problems referred to above but may also call into question the integrity of the parties and the procurement process itself.

Payment: Payment of economic operators is a control in itself, but the power that contracting authorities have at this stage of the procurement process must not be used to unjustly delay or withhold payment to economic operators who have completed work. To do so will damage the relationship between the economic operator and the contracting authority. Seen from a contracting authority's perspective, there are three stages to the payment process:

- 1) Receipt of request for payment

- 2) Matching and authorisation
- 3) Transfer of funds

Matching includes verification that the payment corresponds to the order and the terms and conditions of contract, and that the goods, works or services have actually been provided – as evidenced by the contract performance controls.

Close out: The objective of the close out phase is to ensure that the contracting authority is satisfied with the delivery of the goods, works, and materials and services it has purchased. Close out will frequently tie in with post contract review and continuous improvement of the whole procurement process. It may involve both the person who ran the procurement and the person who managed the contract as well as independent reviewers. It provides the opportunity to identify how well the contracting authority's contract and procurement teams have performed on the project as well as review what lessons have been learned for the future.

A contract may not necessarily be considered concluded when the actual physical work has been completed or the goods delivered. The true end of the contract may be the end of a warranty, retention or defects liability period. However, there are several stages to be covered before that point is reached. Not all of these stages will be necessary with every procurement exercise and contracting authorities must select a process which meets the particular requirements of the contract.

Concluding stages leading up to close out may cover, for example:

- **Joint inspection of the completed requirement**
- **The snagging list:** During the inspection the group will draw up a snagging list. Snags are minor deficiencies which do not have a major impact on the functionality of the finished requirement or service delivery. The snagging list is issued to the economic operator and realistic dates agreed for resolution of the snags. Examples of items on a snagging list could include:
 - Typographical errors on documents provided by economic operators
 - Windows that do not close on a building

- A list of improvements from participants on a pilot training programme
- Software screens which do not clear properly and present new data
- **Final documents complete and stored:** With any procurement, but particularly for works contracts, it is vital that complete records are kept of all the diagrams, specifications, lists, data files, drawings and documents which describe all of the requirements in the original contract and any agreed changes to them as well as the characteristics of what has actually been provided, for example, the “as-built” drawings for a works contract. There are two reasons for this: (1) the economic operator must be able to manage any actions necessary under the warranty, retention or defects liability period; and (2) the contracting authority must have a full set of information about the detailed design and specifications to ensure that it is maintained properly and if any modifications are subsequently required, full information is available on which to base the amended design. In some sectors there may be statutory requirements to maintain detailed records for the lifetime of the plant until final decommissioning.
- **Commissioning and testing completed:** Where necessary, commissioning and testing should form an integral part of the process of transferring ownership of the works (building or bridge), equipment (vehicle, computer system or photocopier) or service (vehicle or aircraft service) to the contracting authority. The purpose of this process is to eliminate initial problems in the operation of the requirement so that it is fit for the purpose for which it was originally specified. On complex projects, sometimes an independent commissioning engineer may be used to undertake this process with both parties.
- **Handover/contracting authority acceptance:** This is a formal procedure for accepting the finished requirement from the economic operator and documentation should include all the testing and commissioning data, operation and maintenance manuals and all drawings.
- **Warranty, retention or defects liability period:** The terms and conditions of the contract will include a provision for a warranty, retention or defects liability period. This period will vary with the requirement and the specification issued by the contracting authority. However it will include the replacement of faulty parts or corrective action as specified in the contractual document.
- **Issue of final certificate:** Where appropriate a final certificate confirming the final completion of the project may be issued.

- **Final accounts agreed and payments made:** Once the final certificate has been issued, there should be no outstanding payments and the procurement officer should check to ascertain that the final accounts have been agreed and all payments made. The contracting authority may wish to check that the economic operator has paid the sub-contractors.
- **Release of any performance bonds, retention monies or other forms of security**
- **Formal end of contract**

Note: Some contractual provisions such as confidentiality agreements may survive the formal end of the contract

Post contract performance review and continuous improvement

Performance review is a comparison of the performance of the goods, works, materials and services against the quoted, specified and agreed criteria. As has already been pointed out, measurement is a vital part of the contracting process, yet it is sometimes forgotten once a contract has been completed and contracting authorities have moved on to another project. With a large procurement, a post contract review is always an appropriate tool.

Continuous improvement involves looking at the procurement process and the goods, works, materials and services bought, and identifying areas for improvement which can be applied when making future procurements. The purpose of a post contract review is to assess whether the procurement has delivered the benefits for which it was first conceived. It is also an opportunity to record lessons learned, to capitalise on best practices, and to record the performance of the economic operator and of the whole project management team for future reference when another similar project may be undertaken.

Further reading:

SIGMA Public Procurement Training Manual