

SELECTING THE RIGHT CONTRACT MODEL FOR EFFECTIVE DELIVERY OF YOUR MAJOR PROJECTS



Highlights from the Major Projects Association event held on 4th April 2019

The proposition that contract choice is a major factor in success or failure of the delivery of major projects has become a truism. The type or model of contract to be used is one of the major planks of a client organisation's procurement strategy. It defines and shapes the relationships through the life of projects, blocking or enabling productive collaboration with delivery partners.

At the extremes, supply chain organisations' exposure to the risks inherent in particular contract models has been cited as a factor in high-profile corporate failures. Such failures have a direct and highly visible impact on customers, creating huge operational and reputational risks for clients. This Major Projects Association event provided an opportunity to explore in detail this vital aspect of major project delivery.

ADAPTIVE STRATEGY

'Contracting strategy is very much more than simply the choice of contract type.'

Mark Job, Partner, Pinsent Masons LLP

Organisations cannot reasonably expect to develop their contracting strategy for a major project until they are clear what they are trying to achieve. This will define the outcomes and benefits required from the project, and consequently the behaviours needed to achieve them. Any sustainable contracting strategy will involve both mutual benefit and fair allocation of risks. The contract sets the framework that influences the behaviours needed, such as what behaviours are rewarded, what the boundaries are, and what the opportunities for innovation are.

There are several red flags for poor contracting strategy:

- The original contract strategy is ignored – very common when those managing the contract are a completely different set of people from those who established it.
- The original strategy is too complicated, uncertain or includes incentives and measures that are too distant to make a difference now.
- The organisation is attempting to contract with the wrong supply chain – contractors who are unwilling or unable to contribute to the success of the project.
- The contract is unwittingly incentivising the wrong outcome through the use of 'transactionally focused' incentives, or meaningless or inappropriate KPIs.

In many projects, the KPIs may be emergent, which means the critical path of the project is liable to change. In those cases, what is needed are agile contracts, agile contractors, agile and intelligent clients and agile investors.

'Procurement isn't something you start and finish. Throughout the project you need to go back to your promises and revisit why you decided on elements of your contracting model.'

Stuart Pountney, Commercial Director, Northern Programmes, Network Rail

BEHAVIOURS

Contracts are about behaviours: those of both client and contractors. This means that it is very important to be able to assess people on what they do and how they come together on the project. Projects should consider establishing KPIs and profit-sharing incentives to encourage and measure behaviours that will contribute to the outcomes.

'Successful projects clearly need a strong contract administrator. However, contracts are there to be led and managed and you need the right people to lead and manage them.'

Jon Mayor, Head of Capital Projects, Transport for Greater Manchester

Collaborative behaviour should be a standard and significant item on the contract agenda and major projects may benefit from the use of *independent* consultants and a formal process for measuring collaborative behaviour and alliance health.

In many cases, the project is not something that the organisation is undertaking in isolation, which means that it is part of a programme that is designed to grow and improve through time. The whole-life approach to projects sees value associated not simply with the initial capital investment but with the total capital investment, the outputs and the benefits. In that context there should be contractual incentives to enable collective learning over time and across multiple projects. Projects in the past have been successful because of good client leadership and a good culture, which has underpinned a good contract.

CRITICAL OBSERVATIONS

Relationships matter – Knowledge of the client is vital as all major projects are complex.	When Sir Robert McAlpine were choosing a partner to bid for work, they chose Amey, a design company that already had established and strong relationships with the client, Highways England.
Procurement – It’s not an event, it’s a support function.	The basis of the BT civils framework meant that BT put a procurement and an operations team member into the bid team from day one to make sure the bidder could align to the business.
Good and bad procurement dominates – ‘Quality of procurement’ is not the same as ‘form of procurement’.	The Canadian Government proved that PFIs are not inherently ‘bad’. It all depends on how you design and manage them.
Strong client leadership delivers success – Don’t be adviser led.	Private clients generally use advisers to advise. They don’t effectively abrogate the decision to the advisers.
Value is not cost – It should be defined by everyone (on the basis of each stakeholder’s perspective).	The TfL Bank Station upgrade took an imaginative and empowering view of value on the basis of the travelling users’ experience.
Badly run companies in fragile markets will not survive – Don’t be tempted to contract with them.	Carillion didn’t collapse because of adverse market conditions but because they were making poor strategic decisions.

(Tony Gates, Managing Director, Civils, Sir Robert McAlpine)

CASE STUDY

Network Rail’s North West Electrification Programme was originally set up as a ‘forced marriage’ Alliance in 2014. Within two years the programme was £200m over budget and two years late. The problems were threefold:

1. Although revisions to standards relating to clearance requirements between structures and overhead high-voltage line equipment came into force 12 months before the contract was awarded, no one in Network Rail fully understood the implications of the changes and they were not reflected in initial designs. Reworkings to the designs resulted in substantial delays.
2. When one of the main suppliers left the project because of concerns about the growing commercial risk, the original alliance delivery model was swapped for one involving multiple suppliers (a hub and spoke model). Whilst this enabled the speedy appointment of new suppliers, the original alliance team were left in place and were ill-equipped to manage the multiple relationships that were now required.
3. Assumptions were made about the likely ground conditions on the basis of relatively few surveys. A rash of subsequent piling failures meant that a detailed programme of ground surveys was necessary. This caused expensive delays.

Early contractor involvement is not a magic pill if the client does not understand the scope and the risks. It is impractical to overlay an incentive model on an existing contract, without changing the contract terms (something that is impractical in the rail industry). It is important to ensure the alliance team has the capability, skills and resources that are appropriate to the form of contract.

‘You need to invest in your contractor relationships when you don’t need them ... so they are there for that moment when you do.’

Tony Gates, Managing Director, Civils, Sir Robert McAlpine

POINTS FOR FURTHER DISCUSSION

- How do you match the form of contract you adopt to the type of project you are running, and the capability and maturity of the contractors with whom you are working?
- What value metrics can you use for assessing supplier suitability and desirability in terms such as collaboration, innovation, risk appetite/ attitude, sustainability, social value?

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