

Operational Taskforce Note 2: Project transition guidance

March 2007



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EXECUTIVE SUMMARY

Operational Taskforce Note 2: Project Transition Guidance

Research commissioned by the Treasury concludes that public authorities are experiencing good overall performance and high levels of satisfaction in PFI projects. 96 per cent of projects surveyed report that overall performance is at least satisfactory, and 89 per cent state that services are being delivered in line with the contract or better. Some contract managers however identified concerns with the transition to the operational stage. This note is therefore designed to provide practical advice for PFI projects moving from procurement to service delivery. It is aimed at public sector project managers (responsible for the project in procurement) and contract managers (responsible for the project in operation).

Adequate Resource and Planning (chapter 2)

Authorities need to start planning and budgeting for the operational stage at Outline Business Case (OBC). This should be updated as the procurement progresses to Final Business Case (FBC). The primary consideration of Authorities should be:

- the need to ensure that during the procurement, the project is not just concerned with reaching financial close, but that there is also sufficient focus on planning for the project's operation. Signing the contract and the completion of the facilities are milestones and measures of success, but it is the provision of service over the life of the contract that is central to the satisfaction of users;
- that contract managers should be appointed during the procurement, not after contract signature. Lack of involvement in the procurement may mean that operational issues are not identified in time for service commencement;
- ensuring the involvement of the contract manager in formulating the payment and performance mechanisms, and undertaking a trial run before the project becomes operational;
- viewing contract management as an activity that is integrated into the procurement of the project.

Information on the cost to the Authority of monitoring the contract should be included in its affordability model. The Project Review Group, as part of its review process, will expect Local Authority projects to have fully considered this guidance when developing an Outline Business Case.

Setting up Contract Monitoring and Management (chapter 3)

The Authority should collate the key documents relating to the project in a portfolio of contract management documentation. This should include a partnership agreement setting out a shared vision for success. It should also consider including:

- a risk register;
- a communications plan;
- a note on the governance structure;
- a transition plan;

- a contract administration manual;
- a contingency plan; and
- an information strategy.

The success of the operation of the project will, in part, depend on the accuracy, clarity and transparency of information exchanges between the public and private contractor. The likely changes of personnel over the duration of a PFI contract mean that such auditable information exchanges are particularly important.

Communication and Relationships (chapter 4)

There is a clear correlation between regular communication involving the Authority and the Contractor, and satisfaction with the project. Regular meetings, transparent and shared information, joint planning days, partnering workshops, and training days all assist this process

Further Advice and Assistance

For further advice and support in project transition, or any other operational PFI issues, the Treasury has established an Operational Taskforce currently run by Partnerships UK, available to provide free assistance on 020 7273 8356 or email: operationaltaskforce@partnershipsuk.org.uk. Departmental Private Finance Units should also be able to assist projects.

INTRODUCTION AND SCOPE

SCOPE OF OPERATIONAL TASKFORCE NOTE 2

1.1 Operational Taskforce Note 2: Project Transition Guidance is designed to support public sector contract managers in managing the transition from the procurement phase of a PFI project to operation. It has been prepared by Partnerships UK, on behalf of the Operational Taskforce. The Treasury announced the creation of the Operational Taskforce in the policy document PFI: Strengthening Long Term Partnerships published in March 2006¹. The Taskforce aims to provide guidance and assistance to the public sector in managing operational PFI projects.

1.2 This guidance is generic in nature, in order to cover the broad range of PFI contracts. It divides the process of project transition into the following stages:

- Resource planning for contract monitoring: pre contract award – chapter 2;
- Setting up contract monitoring and management arrangements – chapter 3;
- Communications and relationships – chapter 4.

Who should read this guidance?

1.3 This guidance is intended for Authorities who are putting together their Outline Business Cases (OBC) and who are currently undertaking PFI procurements. Advisers to the Authority, and Contractors are also recommended to take note of its contents.

Scope

1.4 This guidance supplements advice on the transition to the operational stage that can be found in Standardisation of PFI Contracts 4 (SOPC 4) and sector specific contracts. It is recommended that Authorities refer to this guidance throughout the procurement and transition process. The Project Review Group, as part of its review process, will expect Local Authority projects to have fully considered this guidance when developing an Outline Business Case. Further advice can be obtained from the Operational Taskforce and departmental Private Finance Units. Project and contract managers may also be interested to reference contract management guidance issued by 4ps². Operational Taskforce Note 1 provides best practice on benchmarking and market testing³.

What is the transition period?

1.5 The transition period is the period post contract signature when the project is relatively immature, and the Authority is setting up and using its operational management and monitoring structures for the first time. This guidance suggests how Authorities should prepare for their contract management role before the procurement phase has finished, and advises on the preparations that should be made before service begin to be delivered.

The project and contract manager

1.6 This guidance refers to the roles of project manager and contract manager. For these purposes, the project manager is the person responsible for procurement of the asset up to financial close. The contract manager is deemed to be the person responsible for the running of the project, once in operation.

¹ PFI: Strengthening Long Term Partnerships, HM Treasury, March 2006.

² A Guide to Contract Management for PFI and PPP projects, 4ps, 2007, available at www.4ps.gov.uk.

³ Operational Taskforce Note 1: Benchmarking and Market Testing Guidance, HM Treasury, October 2006.

The importance of operational contract management

1.7 Effective contract management is essential to a successful project. An explanation of effective contract management is contained within *the Strategy Plan for Contract Management* for the Allenby Connaught Ministry of Defence project signed in 2006.

Box 1.1 Purpose of contract management

Contract management is the process that enables parties to a contract to meet their obligations in order to deliver the objectives required by the Contract. It also involves building a good working relationship between customer and provider. It continues through the life of the Contract and requires the parties to be proactive, to anticipate future needs as well as managing immediate situations that arise.

The primary aim of Contract Management is to ensure that the needs of the Services and Capital works programmes are satisfied, the Authority receives what it is paying for, within the boundaries of the Contract whilst achieving value for money. This means optimising efficiency, effectiveness and economy of the service or relationship described by the Contract, balancing costs against risks and actively managing the customer-provider relationship. Contract Management also involves aiming for continuous improvement over the life of the Contract.

Effective contract management will:

- optimise the performance of the project;
- support continuous development, quality improvement and innovation throughout the life of the contract;
- help to ensure best value;
- provide effective management of commercial risk;
- provide an approach that is auditable;
- support the development of effective working relationships between both parties;
- encourage effective and regular communication;
- be flexible in order to respond to changing requirements; and
- demonstrate clear roles, responsibilities and lines of accountability.

Failure to implement adequate contract management could result in:

- an Authority paying for services which are not being received or are not being performed satisfactorily;
- the contract not performing as anticipated, thus jeopardising benefits;
- changes to the balance of risk negotiated in the contract; and
- an Authority being unable to recognise Contractor failure.

SUCCESSFUL CONTRACT MANAGEMENT

1.8 Contract managers are there to make sure that the works and services that the Authority has procured are delivered. It is important that Authorities do not view

contract management as a stand-alone activity that is detached from the procurement of the project. Signing the contract and the completion of the facilities are milestones and measures of success, but it is the provision of the services over the life of the contract that is central to the satisfaction of users. Key actions for the contract monitoring team are to enforce payment regimes, react to the results of customer surveys, look for continuous improvement in the service and carry out their obligations for performance monitoring. The planning and preparation for the operational phase should be undertaken throughout the procurement.

2

RESOURCE PLANNING FOR CONTRACT MONITORING: PRE CONTRACT AWARD

BUDGETING

Budgeting for Contract Monitoring at OBC 2.1 Authorities should start to plan for the contract monitoring phase of their project during the development of the Outline Business Case (OBC). The OBC will set out in detail the scope, cost, affordability, risks, procurement route and timetable for the project. The OBC should also cost a realistic estimate of the need for contract monitoring during the construction stage, through to the end of the operational period.

Budgeting for Contract Monitoring at FBC 2.2 Authorities will need to revisit and refine estimates of contract monitoring at Final Business Case (FBC) stage, in the light of any self-monitoring arrangements actually agreed with the preferred bidder. They should provide full details in the FBC as to how the contract monitoring will be delivered. This should include information on:

- arrangements for staffing and resource monitoring during the construction phase;
- arrangements for day to day contract management;
- staffing responsibilities during operation;
- skills and experience of the monitoring team;
- governance arrangements for the construction and operational phases;
- role of users, other stakeholders and their interface with the contract management team;
- the communications strategy;
- information on staff transfer arrangements;
- arrangements for the Authority's internal auditing of the project; and
- review of services specification and arrangements for either market testing or benchmarking.

A TRIAL OF THE PAYMENT AND PERFORMANCE MECHANISM

2.3 Authorities should budget for and undertake a trial run, or operational test, of the payment mechanism and performance monitoring system during the procurement phase in order to test the mechanisms in a live environment. This will allow the Authority and the Contractor to identify potential problems in advance of the contract becoming operational.

PLANNING THE STAFFING FOR OPERATION: THE PROJECT MANAGER AND THE CONTRACT MANAGER

The Project Manager 2.4 Past studies of PFI projects have highlighted a problem maintaining continuity of staff. Continuity is important for knowledge retention and to preserve good relationships.

2.5 Authorities need to ensure that during the procurement phase, the project manager is not just concerned with reaching financial close, but that there is also

sufficient focus on how the project will work in operation. It is advisable that the project manager remains employed during the construction and interim services phase so that a structured handover can be affected from the project to the contract manager

The Contract Manager **2.6** Contract management requires a range of abilities. When devising the person specification for such a position, Authorities should consider the following skills.

- **Communication:** relationships are likely to breakdown when parties do not understand each other's position or where poor communication has led to misunderstanding.
- **Negotiation:** agreeing the costs of variation and working through the benchmarking and market testing exercises are occasions that the contract manager will need to negotiate with the Contractor. The contract manager will also need to negotiate internally with other members of the Authority for example with staff over changes in service provision.
- **Financial:** research into PFI has identified that many Authorities regarded their payment mechanism as complicated. The contract manager will need to understand the mechanism.
- **Change management:** the operational phase will mean a new way of working for many Authorities as they will now procure services rather than deliver them.
- **Analytical skills:** the contract manager will need to analyse the contract management portfolio and reflect the provisions in practical monitoring processes.

2.7 Authorities should plan for change within the team, and appoint a contract manager as part of the procurement from at least the time of appointment of the Preferred Bidder. With the introduction of the Competitive Dialogue, it is sensible that the contract manager is appointed prior to the end of the dialogue stage. Whilst the project manager will continue to be responsible for the procurement and the negotiations, the contract manager will be concerned with the details that will affect the operational phase. For example, ensuring that the procedures to affect small works changes are effective. A key role for the contract manager during the procurement phase is to set up the contract management arrangements (see Chapter 3).

2.8 The contract manager should be involved in the negotiations with the Preferred Bidder on relevant technical schedules, such as the performance measurement system. If the contract manager is not appointed until after the contract is signed, there is a danger that the procurement team will not have the opportunity to pass on information as to why particular positions were negotiated, and what impact these will have on the contract. Further information on the role of the contract manager is provided in Annex A.

Planning the Staffing for Operation: The Authority Team **2.9** There is no formula for calculating the size of the Authority team. Surveys of operational projects carried out by Partnerships UK in 2004 and 2005 identified significant variations in the amount of resource allocated to contract management and monitoring. This ranged from a proportion of the time of a single person to a large, dedicated team. The Authority will need to consider:

- whether a single manager is required for groups of assets, or whether the contract would be better served by having a manager for every asset within a grouped PFI project;
- where in the organisation the contract management function will be placed;
- whether there are certain times during the contract life that additional resources may be required, for example during first months of operation in order to deal with any snagging issues, or prior to benchmarking or market testing;
- whether the project manager should be encouraged to stay in place for an agreed period after contract signature, and the need to budget for this;
- the appropriate level and role of support staff;
- the extent and circumstances which may require specialist advice from internal departments or advisers. For example, an Authority may need personnel advice from its human resources department.

USE OF ADVISERS

2.10 Authorities should consider whether they are likely to need the services of the advisers employed during the procurement, post contract signature. An optimal method of ensuring that this option is available at a cost effective rate is to include the possibility of procuring further services in the original specification. Discounted rates for on-going support should be sought when Authorities are procuring consultants in open competition. It will be difficult to forecast far in advance how much external support will be needed, but Annex B provides an indication of the work that could be required post project signature. If the project is procuring post signature support, the contract should be reviewed on a regular basis, preferably at no more than four yearly intervals. Estimated costs for external advisers should be factored into the Authority's forecast contract management estimates. The Authority should not appoint an external consultant as a project or contract manager. The procuring Authority should develop and retain these skills in house, in order to derive long term value for money as an intelligent client.

2.11 There may be instances where it is appropriate for a joint appointment to be made with the Contractor, for instance an Independent Certifier. In such cases, the costs should be shared and factored into the estimates included in the OBC. The duty of care and management responsibility for such jointly appointed personnel should be carefully drafted.

Box 2.1 Preparing for Operation - Checklist

- Review the requirements of the contract.
- Decide upon the structure of the Authority's contract monitoring team.
- Assess the internal resources available including resources from other parts of the Authority.
- Clarify roles and posts.
- Estimate salaries for each post.
- Review the impact of the contract on users of the service. What monitoring role, if any, will they have and who will pay for this time? Has this been factored into the budget calculations.
- Make provision for additional resource for limited periods over the life of the contract so that the Authority can respond to issues when they arise.
- Make provision for the training needs and succession planning of the contract monitoring team during the transition period.
- Budget for carrying out shadow running of the contractual structure before contract is operational to test its efficacy outside of a live environment.
- Estimate cost of support from external advisers.
- Include option of support post contract signature when appointing external advisers.
- Review initial assumptions in the OBC for the FBC and provide fuller information on how the contract will be monitored post contract signature.
- If in doubt over preparing for contract management, contact the Operational Taskforce, or departmental Private Finance Units.

3

SETTING UP CONTRACT MONITORING AND MANAGEMENT ARRANGEMENTS

A PORTFOLIO OF CONTRACT MANAGEMENT DOCUMENTS

The Role of the Contract Management Portfolio

3.1 The Authority should collate all central agreements relating to the project in a contract management portfolio. The portfolio should set out how the Authority will fulfil its role in managing the contract and monitoring performance. These documents will provide information to the monitoring team on the processes that need to be followed to fulfil the Authority's obligations. Box 3.1 below suggests what should be included within the contract management portfolio. It may be that not all of these documents are necessary for every PFI project. However, contract managers should consider keeping together a portfolio of documents related to the agreement. They should be drafted by the contract manager and are procedural rather than legal documents. Given the long duration of most PFI contracts, change of personnel is inevitable. These documents will help to make sure that there is consistency in contract management, even when personnel change.

Preparing for Service Delivery

3.2 The Authority should prepare its contract management portfolio far enough in advance of the commencement of the transition period, to allow the necessary governance arrangements to be put in place and for recruitment and training of the contract management team. It is suggested that the documents should be drafted before the FBC is submitted and completed no less than three months before service delivery. If this is not done, the Authority could cause the Contractor delay. The Contractor will have their systems in place and will assume that the Authority has done the same. If there is a construction phase prior to service delivery, the contract management portfolio should include a transition plan that will need to be completed prior to contract signature.

Box 3.1 Documents Suggested for Inclusion in a Contract Management Portfolio:

- a partnership agreement;
- a risk Register;
- a communications plan;
- a governance structure;
- a transition plan;
- a contract administration manual;
- a contingency plan;
- an information strategy.

3.3 Box 3.1 is an indicative list rather than a checklist and Authorities should consider which of these would add value to their project. The sections below set out what each document contains in more detail.

A PARTNERSHIP AGREEMENT

3.4 *Purpose:* The Government believes that the relationship between the public and private sector in a PFI project must always ultimately be contractual, but should be overlaid with partnership working to ensure that operations are effective. There is a genuine benefit in ensuring that the public and private sector have a clear understanding of how they should work together and communicate in order to manage the project effectively. The Government encourages projects to develop a partnership agreement, or shared vision document that sits outside the PFI contract. The document should spell out in some detail how the contract will be managed in practice.

3.5 *Useful documents:* The OBC and the procurement documents will set out the objectives of the project. Authorities will need to consider how objectives will be measured.

3.6 *Areas to consider:* It is important that both public and private sector parties are aligned in accepting the objectives and values of the project. The contract manager should consider holding a joint workshop or away day with the Contractor prior to contract signature to put together a list of mutually understood objectives. It would be desirable for the project manager to attend such an event.

RISK REGISTER

3.7 *Purpose:* The register allows the contract team to anticipate and assess risks that may affect the service delivery described in the contract.

3.8 *Useful documents:* The project will have a procurement risk register. This will need to be updated to exclude risks that fall away at contract signature and include the risks during the construction and operational phases.

3.9 *Areas to consider:* The risk register should set out potential threats to the project, the probability of them occurring, and the impact which they might have. Each risk should have a named individual responsible for its management and mitigation. The risk register should be a live document; new and emerging risks should be added and it should be reviewed regularly to make sure that it is relevant. An assessment of the resources that will be needed to manage these risks should also be made and monitored. Authorities should consider the case for a shared risk register with the Contractor so that both parties can discuss mitigation.

COMMUNICATIONS PLAN

3.10 *Purpose:* Well-managed stakeholder communications are essential for a successful project. Authorities need to make sure that stakeholder expectations are realistic. Consultation and communication with users also provides evidence as to whether the service is meeting its original objectives.

3.11 *Useful documents:* The project will have a communications plan for the procurement phase. This should be updated to cover the construction and operational phases. Chapter 4 of this guidance provides more detail on how to prepare users for service delivery.

3.12 *Areas to consider:* PFI projects are likely to have a large range of users who will change over the life of the contract. It is essential that the communications plan includes the opportunity to update and train users to make sure that their expectations

remain realistic and that they understand the project's objectives. Before the project becomes operational, both parties should repeat the exercise of re-stating the mutual objectives, and an unambiguous description of success. Projects may also wish to consider how they will communicate the success of the project to the wider community.

GOVERNANCE STRUCTURE

3.13 *Purpose:* Governance arrangements show where accountability sits in the Authority, set out responsibility for decision making, assists in dispute resolution, and provide support to the project team.

3.14 The project should have a governance structure in place for managing the procurement phase of the project and it should be reviewed before contract signature. The governance structure should be reviewed and adjusted to suit the changing demands of the project as it progresses.

3.15 *Areas to Consider:* Authorities should produce a combined governance chart showing the Contractor and the Authority's arrangements so that it is clear which decisions can be made at each level. Authorities should produce clear terms of reference for each tier of governance. These should include:

- composition roles and fit with the Authority's governance structure;
- frequency of meetings and numbers of members required;
- requirements, constraints, interfaces and dependencies;
- responsibilities, ensuring that each level of governance is clear, with no overlap;
- accountability within the Authority; and
- reporting mechanisms.

TRANSITION PLAN

3.16 *Purpose:* To identify the tasks which need to be undertaken prior to service commencement, the public sector resources required to perform them, and any consequent training needs.

3.17 *Useful documents:* At the time of the appointment of preferred bidder, Authorities should receive a project plan from the Contractor up to service commencement.

3.18 *Areas to consider:* Authorities should make sure that the project plan post Preferred Bidder includes work to be undertaken to prepare for the transition period. The plan should include dependencies, timescales and resources and should be updated regularly. In their report on contract management, the CBI advocate shared project plans between the private and public sectors⁴. The transition plan should link to the communications plan to make sure that the timing is appropriate and that stakeholders are prepared for the changes.

3.19 It is essential that the Contractor is not delayed by any actions on the part of the Authority. The contract sets out processes and timescales for actions by the Authority,

⁴ *Realising Best Practice on Procurement and Contract Management*, CBI, November 2006.

and there is a need to have the appropriate staff in place and systems up and running to comply with these obligations.

Box 3.2 Transition plan

The transition plan should cover:

- details of Authority resources, internal and external – who and when they will be in place;
- establishment of the helpdesk;
- a list of contact details for the key personnel within the Authority, key stakeholders, Contractor and subcontractors as appropriate;
- where appropriate, consultation with staff about their transfer under TUPE;
- finalisation of the contract management documents;
- a familiarisation programme for users so that they understand the services they can expect;
- post contract signature start up meetings;
- identification of any milestones; and
- timing for the trial running of the payment mechanism and performance monitoring systems.

CONTRACT ADMINISTRATION MANUAL

3.20 Purpose: An easy to use manual that sets out the obligations of each party and the processes which need to be followed. Since the contract is a legal document, the contract administration manual should explain the key contractual provisions and processes in plain English. The manual should set out who does what, when, how and where. This will enable accountability to be checked against the risk register.

Useful documents: The principal document is evidently the contract itself. In addition, SOPC 4 deals with events that may occur during the construction and operational phases of a project⁵. Operational Taskforce Note 1 sets out information and procedures for undertaking both benchmarking and market testing exercises⁶.

Areas to consider: Partnerships UK's research into operational projects found that 78% of the contact managers surveyed agreed that the payment mechanism supported the effective contract management of the project⁷. The contract manager should know exactly what needs to be done when and how, and what happens if there is any failure to meet contractual requirements. The contract manager needs to identify both the risks and obligations of all parties. The contract administration manual may well be the most appropriate place to document the ways in which such obligations fit with the governance arrangements. At a minimum, the manual would be expected to provide information in the following areas:

⁵ Standardisation of PFI Contracts 4, HM Treasury, March 2007.

⁶ Operational Taskforce Note 1: Benchmarking and Market Testing Guidance, HM Treasury, October 2006.

⁷ Report on Operational PFI Projects, Partnerships UK, March 2006.

Processes:

- how to monitor compliance with contract conditions;
- procedures to follow when faced with key contractual issues such as market testing or benchmarking, variations, poor Contractor performance, and disputes;
- how to monitor and manage financial issues, such as indexation; and
- contingency plans in case things go wrong.

Performance monitoring:

- the payment mechanism, its overview and principles and how to make deductions;
- performance monitoring, points systems and recording the obligations of the Contractor;
- the helpdesk, how it works, key contact details and procedures;
- establishment of milestones and key deliverables.

CONTINGENCY PLANNING

3.21 *Purpose:* A contingency plan should be developed as part of the contract management manual. This plan covers what happens if the Contractor fails in their duty to deliver the services, whether as a result of an external emergency or due to issues within the Contractor and subcontractor group.

3.22 *Areas to Consider:* The plan should not be over complicated or long because if it does need to be implemented it is likely to be during a period of pressure. The contingency plan should highlight remedies to potential problems. It should further consider how staff and resources could be mobilised at short notice, and the steps needed to return the project to normal monitoring after any event. The plan should also consider any consents which maybe needed and from whom.

INFORMATION STRATEGY

3.23 *Purpose:* The Authority can make decisions about the state of the project only if it has access to adequate information about performance. The contract manager will need to set out how the monitoring team will capture and interpret the performance information supplied by the Contractor.

Useful documents: The contract, Office of Government Commerce's (OGC) ICT Model Services Agreement 2006 where relevant⁸.

Areas to consider: The contract will set out the key information that needs to be collected as part of the bid submissions. The Contractor's proposals should include examples of how bidders propose to provide this information – for example, how they will log helpdesk calls and provide a record of progress in resolving issues. The reporting documents which the Authority will receive from the Contractor should include:

⁸ Please see Partnerships UK's website: www.partnershipsuk.org.uk

- performance management information;
- achievement of milestones against timetables;
- user feedback; and
- action taken to address problem areas.

3.24 It is important for the effective operation of the contract that the Authority receives regular performance reports from the Contractor. Authorities will need this information in order to assess performance, calculate penalty points and make deductions from the Unitary Charge if appropriate. The contract will also allow for the Authority to carry out audits.

USING THE CONTRACT MANAGEMENT PORTFOLIO TO IMPROVE PERFORMANCE

3.25 The success of the operational phase will depend on the accuracy of the information recorded, and it is therefore important that information is maintained in a user-friendly, transparent format to enable easy access and retrieval. The contract manager should also make sure that there is an information strategy and that the information relating to the project is collected, maintained and organised for easy retrieval and periodic review. The contract manager should identify:

- the method of delivery of reports, their format, compatibility, how they will be updated and any document management system which should be put in place for the life of the contract;
- the frequency of reporting;
- who is to provide the analysis of the information and how the information can be compared over time;
- methods of ensuring that the quality of reporting is maintained; and
- how the reporting framework will have sufficient flexibility to cope with new information requirements.

3.26 It is sensible to have shared access to important management information. For example, the contract, records of agreements and information on variations might be held on a secure shared website to avoid ambiguity as to their content and status at any point of time.

3.27 The Authority contract management team should look to support users who are involved in contract monitoring, for instance school head teachers. Users should be provided with guidance regarding the standards and the quality of the service they can expect to receive. This will include providing clear user guidance, and service handbooks. There should also be a clear process by which users can report service deficiencies, through a help desk or similar mechanism.

3.28 It is essential that both parties sign off these documents as being the accurate record of what has been agreed. The Authority will need to agree with the Contractor who should have access to what information. As a general principle the Government attaches real significance to transparency within PFI. All information regarding operational performance should be made available to on-site contract monitoring teams. SOPC 4 contains wording on information sharing provisions.

MANAGING STAFF

Long Term Partnerships **3.29** The duration of a PFI contract will create continuity challenges. The initial contract management team is unlikely to be in place at the end of the contract and it is very likely that the Contractor's team will also change. The understanding and acknowledgement of each party's objectives and constraints is essential for the success of the contract monitoring. Relationships are key. Succession planning, information capture and handover between incoming and outgoing personnel is essential. The Authority should establish a succession plan for key personnel such as the contract manager. It may be helpful, where possible, to limit concurrent departures and try to maintain a mixture of new and experienced personnel.

Handover From the Project Manager to Contract Manager **3.30** The Government recommends that there is a period towards the end of the procurement where both the project and contract managers are in post. Research carried out by Partnerships UK found that projects which had a formal handover at the beginning of the operational phase, had higher levels of overall satisfaction⁹. Authorities are advised to carry out a formal handover between the project manager and the contract manager to cover areas such as:

- key documents for example bid documents, the contract, Final Business Case, agreements with users if applicable, and others described in box 3.1;
- budget;
- consortium makeup;
- contact lists.

TRAINING

3.31 It is recommended that an induction course is held for all staff in the Authority's monitoring team, and users in contracts who have a performance monitoring or reporting role, which covers areas such as:

- differences between PFI and non-PFI contracts and their monitoring;
- managing risk;
- how to monitor availability;
- how to monitor performance;
- problem resolution;
- reporting information from the Contractor;
- contract management; and
- involving and working with service users.

3.32 This should be run when the contract documentation is in place so that the use of the documentation is an integral part of the course.

3.33 Since contract management staff may not have used a payment mechanism before the Authority, possibly through their consultants, should provide training on its

⁹ Report on Operational PFI Projects, Partnerships UK, March 2006.

use and further how to put in place a contract monitoring recording system. Authorities should consider holding training sessions testing procedures against an instance where the Contractor fails to provide the services agreed. Examples could include, courses of action if the Contractor fails to provide a meal specified in the catering requirements, or if the waste bins in a facility are not emptied.

3.34 Authorities should also ensure that other appropriate training is provided for contract management staff and recognise the importance of their role. Training may be needed to develop more generic skills, for example managing relationships, communication, negotiation, as well as PFI specific skills such as benchmarking and market testing and performance monitoring.

3.35 The National School of Government currently run a range of course relating to contract management, further details of which can be found on their website¹⁰.

Review and Audit of Arrangements

3.36 Authorities should ensure that their proposed governance and contract management arrangements are robust and that they are reviewed by the internal audit function. For some projects it is mandatory that Authorities submit these arrangements for external review. For projects in England and Wales, the Office of Government Commerce's (OGC) or, for Local Authorities, the 4Ps Gateway programme has a Gate 4 review covering the *Readiness for Service* of a project. For projects in Scotland, the Scottish Executive has instigated Key Stage Review 3 which is a similar process covering the arrangements for the period immediately after contract close. The OGC Gateway 5 reviews and forward looking operational reviews will be appropriate at various stages during the operational phase.

¹⁰ For more information see www.nationalschool.gov.uk

4

COMMUNICATIONS AND RELATIONSHIPS

Communication Between Contracting Parties **4.1** Good communication is essential to effective contract management. Partnerships UK's review of operational projects found a positive correlation between regular communication and satisfaction with the project¹¹. The contract may set out the type of meeting that needs to be held and the frequency of structured communication between parties. Where it does not, these will need to be agreed with the Contractor. During the construction phase, there should be regular project meetings to make sure that the construction programme is on track to deal with design and development issues and requests by either party for variations.

Senior Management Support **4.2** Both the Authority and the Contractor should identify a senior manager in each organisation who can make key decisions about the project. A recent CBI report on contract management recommends that "all projects should have a project sponsor at the highest level to provide strategic vision and point of accountability through the whole life of the contract"¹².

Peer Meetings **4.3** To ensure that good relationships are maintained, a number of contact points may be needed. However, it is important that channels are properly managed so that the responsibilities of parties are not confused and a clear decision-making process is adhered to. Records of agreements and commitments should be circulated to both parties for approval.

4.4 Setting out clear roles and responsibilities will ensure that individuals carry out their new roles effectively. The escalation paths should also be understood and used so that issues are resolved before resorting to formal dispute resolution. The relationships between all parties should create an understanding of the importance of project performance within the framework of contractual rights and responsibilities.

BUILDING GOOD RELATIONS WITH THE CONTRACTOR

4.5 The partnership is intended to be long term and it is therefore important that a strong relationship is built and maintained between all the parties. However it should be considered that personnel on both sides are likely to change during the project's life, so contract managers should not rely on individual relationships.

4.6 Key factors of an effective working relationship include:

- understanding of and respect for each party's point of view;
- shared knowledge and objectives;
- sound understanding of the contract and contractual documents;
- good flow of information and open channels of communication;
- a willingness to resolve issues within both organisations;
- effective decision making processes; and
- desire for the project to succeed.

¹¹ Report on Operational PFI Projects, Partnerships UK, March 2006.

¹² Realising Best Practice in Procurement and Contract Management, CBI, November 2006.

4.7 The key relationship will be between the public and private sector contract managers. If this relationship is not constructive, a change of personnel maybe necessary.

4.8 It is essential that the Authority, the Contractor and users continue to build a strong relationship throughout the operational phase. Authorities could consider holding events such as annual joint planning days, partnering workshops and training sessions with their Contractor and sub-contractors

Enforcing the Contract

4.9 The Government believes that the contract should be enforced, that Authorities should make payment deductions where they are necessary, and that the relationship between the two parties should be mature enough to withstand this. Research on operational projects by Partnerships UK found that where Authorities exercised their rights to make deductions because of poor performance, there was a subsequent improvement¹³.

COMMUNICATION WITH USERS

4.10 All projects have a range of users and stakeholders, consultation and communication with them should continue throughout the project's existence. User satisfaction surveys provide a very useful role in monitoring and developing performance, however the Authority should not solely rely on them. As part of its mobilisation for the post procurement phases, the communications strategy should be revisited and revised to reflect the new phases of the project, documented in the Communications Plan.

Box 4.1 Ongoing review of communications strategy

Contract managers will should check regularly:

- whether there are any changes in identity and contact details of stakeholders;
- whether the needs of any stakeholders have changed;
- who should be consulted about what;
- if there is any need for stakeholder training at various stages in the project;
- whether the stakeholder representation governance structure continues to be appropriate;
- whether the information feedback arrangements continue to be relevant and whether there should be modifications; and
- what discussions have been held with stakeholders to discuss and agree arrangements.

Working with Users

4.11 For many projects, the most effective method of monitoring performance is to ensure that the users or recipients of a service are aware of the service that they are entitled to receive, and know what procedures to follow should the Contractor fail to respond to the service requirements. It is important that the reporting procedures are followed and that all requests for service are routed through the correct channel.

¹³ Report on Operational PFI Contracts, Partnerships UK, March 2006.

4.12 The standard or scope of some services will differ from that, which has previously been provided. Users, who in certain instances may also have managerial roles, may be unaware of the standard of service to which they are entitled. Users will also need to understand the difference between a service specified in terms of inputs for example, the number of times that a cleaner appears each day, and outputs - the facility is clean.

4.13 It is important that service users have confidence that their experiences and concerns are brought to the attention of the contract management team. A PFI contract can frequently be a more formal mechanism of service delivery than users may be used to. Regular meetings should be held between user representatives, the Contractor and the Authority contract management team in order to maximise the service specified. Although the contract is between the Authority and the Contractor, users should not be excluded from inputting into the management of the contract.

COMMITMENT TO WORKFORCE PROTECTION

4.14 Whilst PFI has the potential to bring improved value for money in public services with greater quality and innovation, this should not be achieved at the expense of staff terms and conditions. The Government continues to pursue a strategy for enhancing worker protections and ensuring fair and reasonable treatment in PFI projects based on:

- being open with staff;
- protecting terms and conditions for both transferees and new joiners; and
- protecting staff pensions.

Box 4.2 Relevant legislation, directives, regulations and guidance

- Revised Transfer of Undertakings (Protection of Employment Regulations) April 2006.
- Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1794) as amended (which implement European Community Rights Directive (77/187/EEC as amended by Directive 98/50 EC and consolidated in 2001/23/EC).
- Code of Practice in Workplace Matters in Public Sector Service Contracts (March 2005) which will form part of the services specification and conditions except where Best Value Code of Practice on Workforce Matters in Local Authority Service Contracts applies or other conditions have been announced.
- HM Treasury guidance note (June 2004) A Fair Deal for Staff Pensions – Procurement of Bulk Transfer Agreements and Related Issues”.
- Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (2000) and annex A Fair Deal for Pensions.
- HM Treasury statement A Fair Deal for Staff Pensions (1999).

A

CONTRACT MANAGER: SUMMARY OF ACTIVITIES FROM CONTRACT SIGNATURE TO OPERATIONAL PHASE

This list summarises the likely tasks that will be required during the construction phase, interim services phase. Some tasks will not be relevant if there are no interim services or there is no specific construction period.

Some of these tasks may be undertaken by the project manager or delegated to members of the contract manager's team. There must be a clear delineation of responsibilities if the role is split in this way and there could be some duplication, for instance joint attendance at meetings. The list assumes that all of the contract management documentation set out in section 3 of this Guidance has been completed prior to contract signature.

TASKS RELEVANT TO CONSTRUCTION

- Report as required by governance structure on progress of the project and highlight any issues or risks and update the risk register.
- Check and organise technical advisers to help check Reviewable Design Data (RDD).
- Supervise and manage the RDD process on behalf of the Authority.
- Monitor the detailed design progress through the scrutiny of drawings and attendance at Contractor's design meetings.
- Ensure design issues are identified and dealt with at early stages.
- Ensure and arrange stakeholder involvement.
- If there is a requirement for change, manage the Authority Change Order process, raising Authority Notices of Change (ANCs) where necessary obtaining specialist help for assessment of cost put forward by the Contractor.
- Negotiate with the Contractor on areas in Contractor's Proposals/Authority Requirements which are not completely clear (as detailed design is developed there are likely to be grey areas which the Contractor may have a different view to the Authority on what should be provided).
- Attendance at Contractor's progress meetings, RDD meetings, Authority Notice of Change (ANC) meetings, sign off meetings.
- Manage Authority involvement in snagging inspections and monitor Independent Certifier reports.
- Manage and resolve information and change requests from the Contractor.
- Monitor Contractor progress and ensure action is taken if there are any delays to ensure availability on time.
- Monitor and record all written and email communication between the Authority's project and contract management team and Contractor's team.
- Ensure Health & Safety and Operation & Maintenance manuals are progressing appropriately and info is being passed as necessary to the FM

sub-contractor (NB: This is a Contractor obligation but it is best practice to monitor this).

- Liaise and organise client involvement in any publicity or other events agreed as part of the communication plan.

TASKS RELEVANT TO MANAGEMENT OF INTERIM SERVICES

- Report to as required by governance structure any service issues and risks and update risk register as necessary.
- Monitor incidents/actions (check them through the helpdesk and online access).
- Monitor response times and service failures.
- Ensure that the correct deductions are made from Authority payments for service failure.
- Attend progress meetings with the relevant subcontractor(s) and Contractor.
- Liaise with the users over any service issues.
- Attend Contractor/user liaison meetings.
- Discuss and help resolve user/ Contractor issues.
- Ensure that all user handbooks and manuals and guides are issued and kept up to date and relevant.
- Monitor and comment on subcontractor method statements.
- Monitor and authorise maintenance works through the Interim Service period as provided for within the contract.
- For projects where TUPE transfers do not take place until the commencement of full operations, monitor the Contractor's progress with the transfers.

B

EXTERNAL ADVISORS - SUPPORT POST CONTRACT SIGNATURE

GENERAL SUPPORT

Project and contract managers should use in-house support where possible. External advisers should only be appointed when the appropriate expertise is not available in-house. The external advisers during the procurement phase should be required to ensure a transfer of skills and knowledge to the in-house facility upon contract signature one of the requirements of the original assignment. Where possible, the procurement advisers should be re-engaged if external support is required, with the terms of such ad-hoc advice having been agreed as part of the original adviser procurement.

POSSIBLE LEGAL SUPPORT

- Managing disputes and implementing the dispute resolution clauses of the contract.
- Process on implementing any variations.
- Implementation of Change in law clauses.
- Contractor distress.
- Refinancing (changes to funding arrangements).
- Change of ownership of Contractor.
- Changes to nominated subcontractors.
- Relief and compensation events.
- Certification and handover.
- TUPE and employment matters.
- Benchmarking and market testing.
- Breach of contract.
- Early termination for any reason including Contractor default.
- Enforcing indemnities, guarantees and contractual claims.

POSSIBLE FINANCIAL SUPPORT

- Changing the financial model as a result of qualifying variations or relief or compensation events or changes in law.
- Benchmarking and market testing.
- Disputes relating to the payment mechanism.
- Disputes relating to the indexation provisions.
- Problems concerning staff pensions.

- Calculations of termination payments.
- Refinancing.

POSSIBLE TECHNICAL SUPPORT

- Attending construction meetings.
- Reviewing design data.
- Sign off and certification.
- Agreeing relief and compensation events;
- Mechanical and Electrical engineers - advice on mechanical and engineering design development (including Reviewable Design Data) mechanical and engineering snagging and monitoring commissioning of the systems.
- Loose Furniture and equipment advice.
- ICT advice – this ensures that the details of the ICT infrastructure are developed in line with future needs and in line with standards.
- “Clerk of works” role to monitor Independent Certifier.
- Utility advice – whilst the Contractor is responsible for the provision of utilities. Authorities may find that the network of utility providers, particularly electricity and gas is very complicated and has a ‘middle agent’. Advisers may be required to work with the Contractor and any middle agent to smooth the transition of utility provision.
- Variations and assistance with pricing.
- Market testing and benchmarking advice.

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