



---

# TREASURY TASKFORCE

## Private Finance

---

### TECHNICAL NOTE No. 6

## How to Manage the Delivery of Long Term PFI Contracts

# CONTENTS

---

## **1 INTRODUCTION**

- 1.1 Status Of Treasury Taskforce Technical Notes
- 1.2 Purpose Of This Technical Note
- 1.3 Terminology

## **2 GENERAL PRINCIPLES**

- 2.1 Contract Management
- 2.2 Performance Monitoring
- 2.3 Effective PFI Contract Management
- 2.4 The PFI Contract
- 2.5 Stages Of PFI Contract Management

## **3 MANAGING THE RELATIONSHIP**

- 3.1 General Issues
- 3.2 Hand On v. Hands Off Monitoring
- 3.3 Who Pays For Monitoring?
- 3.4 Contract Management Structures
- 3.5 Expertise In The Contract Management Team
- 3.6 Sourcing Contract Management Expertise
- 3.7 Training
- 3.8 Dispute Resolution Procedure

## **4 STAGES OF CONTRACT MANAGEMENT**

- 4.1 Activities
- 4.2 Stage (i) - Procurement
- 4.3 Stage (ii) - Development
- 4.4 Stage (iii) - Delivery
- 4.5 Liaison Between The Authority And The Contractor
- 4.6 Continuity Of Management And Monitoring
- 4.7 Expiry Of The Contract

## **5 OTHER TREASURY GUIDANCE**

ANNEX: SKILLS AND COMPETENCES

# 1 INTRODUCTION

## ***1.1 STATUS OF TREASURY TASKFORCE TECHNICAL NOTES***

1.1.1 This note is the sixth in a series of papers issued by the Treasury Taskforce providing practical guidance on key technical issues which arise from the implementation of the Private Finance Initiative (PFI). Each note focuses on a specific area of the procurement process where experience has shown that public sector project promoters and managers value assistance.

1.1.2 It is advisory rather than mandatory, providing guidance on good practice. However, Accounting Officers may wish to take this guidance into account in accordance with their responsibilities for value for money.

## ***1.2 PURPOSE OF THIS TECHNICAL NOTE***

1.2.1 The purpose of this note is to provide generic guidance applicable to the public sector's management of a broad range of PFI projects throughout their lives:

- (i) to ensure delivery of the contracted services;
- (ii) to deal with performance variations; and
- (iii) to authorise payments of the unitary charge<sup>1</sup>, so that the value for money inherent in the deal is achieved.

1.2.2 Those involved as public sector clients should bear this guidance in mind from the beginning of their project's development.

1.2.3 There is of course considerable guidance and experience in the public sector about contract management. CUP Guidance Note No 61: *Contract Management* provides practical help and direction to those who are managing or using contracted services. Further information is also contained in Chapter 9 (performance monitoring) of the Taskforce's *Standardisation of PFI Contracts*. This note is consistent with both. Section 5 gives details of where to obtain copies.

---

<sup>1</sup>See paragraph 1.3.4

1.2.4 Whilst different types of project (ie construction projects, IT projects) have unique features that require specific forms of treatment, not least as regards contract management, the underlying principles in this guidance should apply to all contracts.

1.2.5 Further more comprehensive guidance on managing PFI contracts will be produced in due course. This will cover the special requirements of projects in individual sectors.

### **1.3 TERMINOLOGY**

1.3.1 Consistent with Section 1.2.1 of *Standardisation of PFI Contracts*, in this note the public sector party buying the service is referred to as the “Authority”, and its counterpart as the “Contractor”, with the overall scheme referred to as the “project”.

1.3.2 For the purposes of this note “Contractor” embraces all its sub-contractors and facilities managers responsible for the delivery of services.

1.3.3. The agreement entered into between the Authority and the Contractor is referred to as the “contract”.

1.3.4 The payment for the services delivered under the contract is referred to as the “unitary charge” as it should not be made up of separate independent elements relating to availability or performance.

## 2 GENERAL PRINCIPLES

### **2.1.1 CONTRACT MANAGEMENT**

2.1.1 This is the activity whereby an Authority ensures that the respective roles and responsibilities set out in the contract are fully understood and fulfilled to the contracted standard so that value for money is delivered. Where contracted standards are not fulfilled, the Authority will apply mechanisms established in the contract to rectify any under-performance.

### **2.2.1 PERFORMANCE MONITORING**

2.2.1 This is a specific activity within overall contract management. It includes the day to day process of monitoring trends, assessing whether the services contracted for are delivered to the required standard and assessing the remedial action taken by the Contractor when the performance standards are not met.

2.2.2 In this context, the comments of the Public Accounts Committee in its report 'Getting Better Value for Money from the Private Initiative'<sup>2</sup> should be borne in mind:

*Departments are accountable to Parliament not only for how they award PFI contracts but also for their subsequent operation. Both the award of the contract and the operation itself need to be transparent. Departments should not need to hide behind unnecessary secrecy about the deals.*

### **2.3 EFFECTIVE PFI CONTRACT MANAGEMENT**

2.3.1 Successful PFI deals deliver value for money in the form of cost effective, reliable and timely services at agreed prices and to agreed quality, consistent with legal standards, financial probity and management accountability, while maintaining good client/supplier relationships.

---

<sup>2</sup>23rd Report 1997-98 HC 583

2.3.2 Contract management itself is a distinct activity which follows on from the process of procurement. It should be considered fully and thoroughly planned for from the beginning of the procurement exercise. While some degree of continuity is important, new processes, systems and management responsibilities will be needed once the contract has been signed. The structure of the contract should define the basis for the future long term operational and managerial relationship between the Authority and the Contractor.

2.3.3 Preparation for this relationship highlights two principles:

- **Continuity:** early on in the procurement process the Authority should designate a contract manager and staff who will be responsible for managing the contract when it comes into effect. The “contract manager designate” may or may not be the project manager responsible for managing the procurement itself:  
and
- **Knowledge:** the contract manager will need to fully understand the business and know the project documentation inside out.

2.3.4 Recognition of these two principles is essential for effective contract management. The contract manager should therefore be encouraged to stay with the project for as long as possible, and to develop an understanding of the Authority’s expectations so as to achieve effective service delivery.

2.3.5 The overall aim should be for the Authority to work in partnership with the Contractor within a framework for that relationship which should be defined in a mutually agreed operational manual running from contract close. Succession planning by both parties is also vital.

2.3.6 Contract management and performance monitoring are closely connected and may be undertaken by the same person or team. However, responsibility for these activities may be split. For example the end user of a service (eg a headteacher or prison service area manager) may be responsible both for ensuring that monitoring takes place and authorising the payment of invoices. Commercial support may be provided separately to or jointly with the end user by specialists, eg from the Local Education Authority contract management team or the Contracts Group of HM Prison Service.

2.3.7 Where projects cover many sites or functions, local staff may act as performance monitors reporting back, possibly through their own operational lines, to a central contract manager.

2.3.8 Management and monitoring procedures should be kept simple for both parties in order to maximise present and future effectiveness of the contract. Over-complex systems are likely to be costly to run, painful to enforce and ineffective in the long run. The essence is only to monitor essentials (based on the potential significance of impact on the service and risk of occurrence of events) and to avoid being inundated with information which is not strictly relevant for the purpose of assessing service delivery.

2.3.9 As part of assessing affordability, Authorities will also need to establish early on in the procurement process realistic financial and resource budgets to cover their costs relating to contract management. Likewise, the likely responsibilities and reporting lines of the contract manager and any separate performance monitor will need to be defined at the same time.

2.3.10 Finally, it is important that the adequacy of the Authority's contract management and performance monitoring activities are independently checked or audited from time to time. Authorities should ensure that their senior management structures can take a broader and longer term view of how the relationship with the Contractor is being managed to secure continuing value for money from the contract.

## **2.4 THE PFI CONTRACT**

2.4.1 Effective contract management depends on getting the contract right. The contract should contain appropriate provisions on contract management covering what monitoring the Authority will require and by whom.

2.4.2 Good PFI contracts position the Authority as a customer receiving services. However some risks, either those retained by the Authority or due to substandard service delivery by the Contractor, will still have to be managed. There will also be a need to manage change, such as technical developments, changes in the law and revised Authority requirements.

2.4.3 The Authority may also have to increase its management and monitoring capability where there is continued under-performance by the Contractor.

2.4.4 In some projects the Contractor will be dependent on delivery of certain enabling services by the Authority. This will have implications for contract management by the Authority, not least in terms of monitoring, information flows and the meeting of key milestone dates.

2.4.5 Over time there will inevitably be the need for further consideration of the appropriate levels of management and monitoring. These levels may differ depending on the project. This may result in pressures for a shift in the overall allocation of risk. Authorities should be aware of the financial consequences if their management and monitoring processes lead to the inadvertent re-acceptance of those risks which have been contractually allocated to the Contractor as part of the PFI procurement process.

2.4.6 However, in some cases an adjustment in risk allocation may be acceptable, where in the light of experience or in order to best accommodate essential changes this will result in a better balance between risk allocation and value for money.

## ***2.5 STAGES OF PFI CONTRACT MANAGEMENT***

2.5.1 Generally speaking there are three stages in PFI contract management:

- (i) the **procurement** stage, during which the Authority should establish its contract management ground rules for the life of the contract;
- (ii) the **development** stage from award of the contract to the start of payments on commencement of delivery of the services required by the output specification; and
- (iii) the **delivery** stage covering the provision and use of the contracted services during the remaining life of the contract.

2.5.2 Each stage is considered in more detail in Section 4.

2.5.3 For convenience this note refers to development and to delivery stages (avoiding references to construction and operation) to distinguish between the pre- and post-payment/service provision stages.

Whilst all three stages are generally recognisable, they may overlap and the activities in each may vary.

2.5.4 For some contracts where existing assets are handed over to the Contractor to manage and/or modernise, stages (ii) and (iii) may overlap. Similarly in IT projects payments may start at an interim stage when partial service delivery commences.

2.5.5 Whilst during the procurement stage, procurers and bidders will each be seeking the best deal, it should be the time to lay the foundations for the future relationship with the winning bidder. This should lead to the development of proper partnership relations during the development and delivery stages to enhance prospects for the successful provision of the services over the life of the contract. Good relations between the Authority and the Contractor should foster a climate which encourages both to suggest or make improvements in the quality of services delivered. However the relationship must not be at the expense of the Authority's rights and expectations under the contract. Throughout the life of the contract the Authority has the responsibility of monitoring the Contractor's compliance with its obligations.

## 3 MANAGING THE RELATIONSHIP

### ***3.1 GENERAL ISSUES***

3.1.1. For simplicity, this note assumes that there will be a single formal point of contact for contract management and monitoring purposes between the Authority and the Contractor. It will always be necessary for contractual purposes to identify a formal point of contact between the Authority and the Contractor. In practice there may in fact be one contact dealing with formal contractual and contract management issues, and another for day to day performance monitoring to ensure service delivery.

3.1.2 Such a contact point for the Authority will be the contract manager. Throughout the life of the contract the contract manager will have the responsibility of protecting the Authority's agreed contractual position and ensuring that the agreed allocation of risk is maintained and that value for money is achieved.

3.1.3 Nevertheless, the management of the relationship between Authority and Contractor will very much depend on the nature of the project, the services being purchased and the extent to which the detail of the Authority's requirements may change over time. Particular care should be paid to the early years of the contract when the risk of problems is likely to be highest. At the outset, this may require additional resources for a limited period.

3.1.4 In practice therefore it may be appropriate to have a flexible but controlled range of contacts within the Authority and the Contractor to manage effectively the day to day delivery of the required services. It will be important to ensure that such arrangements are themselves properly managed so as not to confuse the responsibilities of the parties to the contract.

3.1.5 Thus the Authority may need to issue a document setting out its responsibilities and those of service users. This could, for example, set out the requirements for completing monitoring returns which may be needed from various performance monitors at regular intervals to enable invoices to be paid within the contractually specified period.

3.1.6 Underlying these arrangements will be specific provisions in the contract covering all the elements of service delivery and payment. These elements will include:

- clearly defined output specifications establishing the required performance levels and associated information requirements for judging service performance, which must be capable of objective measurement;
- respective roles and responsibilities in performance monitoring and information provision;
- payment for monitoring (where tasks are shared);
- reporting results of performance monitoring to the Authority and Contractor;
- dates and scope of service releases for IT projects;
- commencement of performance monitoring;
- conditions precedent for release authorisations, acceptance processes and the commencement of payments;
- payment mechanisms;
- mechanisms for benchmarking and market testing where appropriate, including the division of responsibilities and any consequences on payments;
- interruptions in service delivery/performance monitoring (due to relief events);
- handling of qualitative factors relating to contracted services;
- managing changing requirements during the life of the contract, including change of law, change of lender and change of control;
- mechanisms for problem solving and dispute resolution;
- contingency arrangements in the event of failure to commence service delivery on time or other default by the Contractor leading in either instance to early termination;

- contingency arrangements in the event of default by the Contractor's suppliers or other urgent problem likely to affect the smooth delivery of the contracted services;
- preservation of the Authority's ability to re-tender on termination of the original contract; and
- right of the Authority to audit the Contractor's systems, including accredited Quality Management systems.

3.1.7 The contract manager will therefore need to establish and maintain appropriate records and information management systems.

3.1.8 PFI contracts typically last a long time and although early termination will be an option in cases of poor performance, it will be a very unsatisfactory solution for both sides. Early termination for contractor default will reflect a major failure of all the systems put in place to ensure satisfactory service delivery. Such an event presents the Authority with a major problem of how to ensure the continuation of those services to the public. The aim therefore should be to establish a relationship in which both sides are open, share information fully and work together to solve problems.

3.1.9 It is also important to remember that the Contractor will also be monitoring the Authority's adherence to the contract.

## **3.2 HANDS ON V. HANDS OFF MONITORING**

3.2.1 The public sector has wide experience in procuring stand alone construction services, and it may be tempting to adopt a detailed hands-on oversight role in a PFI project. Such an approach must be avoided.

3.2.2 While the overall principles are the same, because of the longevity of the contract, the Contractor's ownership of the asset and the complex risk allocation between the parties, the public sector's management processes will be performed differently under a PFI contract as compared to traditional/conventional procurement. Therefore the level of an Authority's management activity may be less than in a conventional project. Authorities should recognise the importance of the long term "partnership" implicit in PFI contracts but they must avoid action that could result in risk being transferred back to the public sector.

3.2.3 The Authority should not engage in detailed management activities. However it should ensure during the procurement process that the chosen Contractor will have acceptable performance monitoring, quality management and management information systems, and cash flows during both the development and delivery stages.

3.2.4 The Authority should simply audit these systems with planned and random spot checks to satisfy itself that performance is being measured and reported reliably, accurately and comprehensively.

3.2.5 The Authority will also require financial information to reassure itself about the Contractor's continuing financial viability where this is dependent on revenue from third parties, or where the Contractor's costs are higher than it had anticipated, or where the Contractor finances the project from internal resources.

3.2.6 It follows that the Authority should not normally expect to approve, for example during the development stage, any detailed drawings or arrangements. It should only need to ensure by occasional checks that the Contractor's quality assurance system for achieving the quality of design and service standards specified in the contract is working.

3.2.7 There may be exceptions to this general rule. For example, in the case of hospitals, NHS Trusts may have a responsibility during this stage to ensure that the provision of clinical functions will not be impaired. Where the Trust has accepted such a responsibility it will be required by the Contractor to sign off on designs to the extent that they impact on clinical functions.

3.2.8 Whilst the Authority should not interfere in relations between the Contractor and its sub-contractors, it must guard against problems arising from the Contractor not having proper control of the project. There may also be a need to manage the relationship between the Contractor and other suppliers who work for the Authority outside the contract but who have an impact on it.

3.2.9 In some instances it may be appropriate for an Authority to appoint an independent professional adviser, such as a civil engineer, to confirm the Contractor's compliance with the output specification during the development stage. There may be circumstances where a joint appointment with the Contractor's financiers would be more cost effective. But if such a joint arrangement is considered it will be important to ensure that there is no potential conflict of interest.

3.2.10 Incentives and remedies must be in place to ensure that the Contractor provides accurate and timely data to assure the Authority that the contracted service will continue to be provided to the required standard. The right approach depends on the project but will always call for a constructive partnership with the Authority's contract manager playing a key role in this relationship.

3.2.11 In addition, any contract the Authority has with independent professional advisers must contain clear arrangements for reporting the results of performance monitoring to the Authority and Contractor. The contract manager and/or independent professional adviser will also need to liaise closely with any financier's representative, including sharing information and being present jointly at meetings with the Contractor. Both the Authority and the financiers have a common interest, vis-à-vis the Contractor, in the quality of the asset and the service commencing on time and continuing to be delivered to the required specification.

### **3.3 WHO PAYS FOR MONITORING?**

3.3.1 The cost implications for the Contractor of the Authority's monitoring requirements will need to be agreed in the contract.

3.3.2 Generally it will be sensible for each party to bear its own costs of monitoring. This should reassure the Contractor that the Authority will not act with too heavy a hand and will avoid any possible conflict of interest.

3.3.3 Where an Authority requires independent experts or extra surveys, for example for benchmarking exercises, value for money surveys, disputes, dilapidation and condition surveys, it should pay for them itself. These may of course increase the workload on the Contractor.

### **3.4 CONTRACT MANAGEMENT STRUCTURES**

3.4.1 The contract will define the basis for the long term operational relationship between the Authority and the Contractor to ensure delivery of the required services. The Authority must ensure that it has available sufficient resources and people with the right level of experience and authority to manage and monitor the contract and its outputs.

3.4.2 A list of the skills and competencies which should be considered for those involved in contract management is attached as an Annex. This is taken from CUP Guidance No 61: Contract Management. It will be necessary for the Authority to judge which of these, and to what level, will be appropriate for any given project.

3.4.3 As noted in paragraph 2.3.3, the Authority should establish a suitable contract management structure and appoint a contract manager, with clear objectives, well before the contract enters into force. The contract manager will act as a channel of communication with the Contractor throughout the life of the contract. Whilst individuals will change, the aim should be for continuity of contract management procedures from the procurement stage on.

3.4.4 The Contractor should be made fully aware of what structures have been established within the Authority, particularly in respect of roles and responsibilities of the contract manager and its management reporting arrangements. The Contractor will usually appoint its own contract or project manager to act as its interface with the Authority.

3.4.5 The contract manager will be responsible to the Authority and must have:

- clear delegated authority; and
- clear and recognised reporting lines to its senior management, and a specific budget for carrying out its functions. However over-bureaucratic structures should be avoided.

3.4.6 The resources to be devoted to contract management will be affected by the overall size and complexity of the project and the particular stage it has reached. In some cases it may be possible for the contract management function to be carried out by a single individual. However, it will be more common for the contract manager to be supported by, or co-ordinate, a team, consisting of a range of specialisms and with varying levels of involvement. This should result in a more efficient use of resources and expertise.

3.4.7 It should be the contract manager's responsibility to decide on the composition of the team (bearing in mind the nature of the project), how it should be used, and whether and when to call on additional expertise (within the scope of its budget). The range of expertise and skills required will vary over the life of the contract.

### ***3.5 EXPERTISE IN THE CONTRACT MANAGEMENT TEAM***

3.5.1 Membership of the team will reflect the various skills and knowledge required to effectively discharge contract management responsibilities during the development and service delivery stages of the contract. Typical disciplines that need to be represented or be available are:

- design and construction;
- business and product assurance;
- facilities and services management;
- information technology (especially for IT projects);
- statutory safety and regulatory responsibilities (eg in transport projects);
- legal; and
- financial;

as well as facilities and service users.

3.5.2 Design, construction and IT skills within the contract management team will obviously be important during the development stage, with facilities management and user expertise being more to the fore during the operational stage. However, it is likely that the full variety of skills, either on site or on call, will be important at some stage. For example facilities and operations expertise needs to be involved during the development stage to check that, in line with its contractual obligations, the Contractor is taking action to be able to provide the required standards throughout the delivery stage including its early phases.

3.5.3 The contract manager will need access to the full team from the outset, even where its services are only to be called upon infrequently. In practice, it is likely that only a subset of the full team will be active at any one time, dependent on the needs of contract management.

3.5.4 The main focus of the contract manager and his team will be to facilitate an “intelligent customer” approach and not to interfere with the way the service is delivered by the Contractor, provided the output specification is met. It will be the responsibility of the contract manager to coordinate inputs from the various team members in order to ensure effective and consistent contract management. Each member will have varying degrees of input depending on the circumstances.

3.5.5 For example, it will be important that the Authority's legal advisers, who should normally be those involved in the procurement process, are well briefed on the detail of the contract. Although they should be members of the contract management team, they may only be called upon infrequently to advise the Authority in circumstances where disputes or problems of interpretation arise with the Contractor, or where changes are being considered.

### ***3.6 SOURCING CONTRACT MANAGEMENT EXPERTISE***

3.6.1 In cases where an Authority itself maintains appropriate expertise, it may wish to source all or part of the contract management function in-house. This has advantages in helping to develop the partnership approach required in long-term relationships.

3.6.2 Where an Authority does not have such expertise it may be appropriate to buy in advice from professional consultants, either on an ad hoc basis or, more likely, under a long term arrangement. Where contract management expertise is bought in, it will be important to ensure that commercially confidential information held by the Authority is protected.

3.6.3 Where formal certification of the delivery of an asset is required for the service to commence, or for a change in the level of compensation payable on termination, the Contractor and its financiers might reasonably expect the Authority to employ an independent expert such as an engineer backed by his company's specialist resources.

3.6.4 The terms of reference, time scales and basis of fees for such advisers must be clearly defined so as to ensure that ownership of the project rests with the Authority. Any contract with independent professional advisers to provide contract management services must contain clear arrangements for reporting results of performance monitoring to the Authority (usually the person responsible for the PFI contract in the absence of a formal in-house contract manager) and the Contractor.

3.6.5 If bought-in contract management is chosen or required, decisions will be needed on the length of time the manager should be engaged. Consideration should be given to continuity (eg it would probably be unwise to change bought-in contract managers during the development stage). If however at any time the work has to be re-allocated, it is essential to provide the new manager with full access to the previous organisation's records and for parallel running prior to hand-over.

### **3.7 TRAINING**

3.7.1 Authorities should ensure that appropriate training on contract management is provided for the contract manager and contract management team members prior to award of contract and during all subsequent stages of the project.

3.7.2 Consideration should be given to the likely value for money of training in respect of managing the development stage if this is likely to be short.

3.7.3 It has been the practice in some PFI projects for such training to be organised jointly between the Authority and the Contractor. This can have the advantage of ensuring more cost effective training and reinforcing the partnership. Some training, especially on ensuring that partnership working does not blunt public accountability and the rules of propriety, may better be undertaken solely within the public sector. However the private sector does itself need to understand the issues involved.

### **3.8 DISPUTE RESOLUTION PROCEDURE**

3.8.1 A crucial role for the contract manager is to try to ensure that by preventative action formal disputes do not arise. The procedures for liaising with the Contractor and the maintenance of agreed records of performance can help to resolve problems before they escalate. However these may not always be successful.

3.8.2 As going through the courts may not be appropriate for the disputes that can arise under a PFI Contract, an alternative formal dispute resolution procedure may offer a more efficient and cost-effective method of resolving them. The contract will specify the procedure for handling disputes and *Standardisation of PFI Contracts* deals with this issue in detail. The contract manager will have an important role to play in this procedure.

3.8.3 IT and defence projects may raise specific issues in defining suitable dispute resolution procedures.

## 4 STAGES OF CONTRACT MANAGEMENT

### 4.1 ACTIVITIES

4.1 The activities listed below in respect of each stage will vary considerably in terms of their resource consequences. Not all will be relevant to all projects such as IT ones. Some activities will, by definition, only occur on infrequent occasions (eg joint inspection of repair and maintenance obligations towards the end of the contract), while others will be continuous (eg performance monitoring).

### 4.2 STAGE (I) - PROCUREMENT

4.2.1. Preparations for the long term management of the contract need to be started at the very beginning of the overall project. This is to ensure that delivery of the service specification is capable of proper monitoring over the life of the contract.

4.2.2 Although contract management/monitoring is the last stage of the overall procurement process, it is critical as it is concerned with the delivery of the contract over time. If it is to be carried out effectively it must be thought about at the outset and incorporated into the development of the project and the negotiation of the contract. This will help to ensure that service levels and value for money targets continue to be met over the life of the contract.

4.2.3 To assist this process it is essential to include (or make available) in the Authority's project team the contract manager designate, and possibly performance monitoring and service recipient expertise. These should be close to the Authority's negotiators so as to provide practical help in developing how the specifics of the service to be delivered and the monitoring system are reflected in the contract.

4.2.4 As payment of the full unitary charge is conditional upon the quality of the performance of the service, the Authority must be able to monitor the Contractor's performance against the outputs specified under the Project Agreement. A failure to match contractual outputs will affect those payments. The service output specification must therefore include monitoring requirements which the contract manager should help to develop.

4.2.5 These monitoring requirements should be based on objective and, where possible, quantifiable data, with a clear connection between the data collected, the achievement of the specification and the financial implications of poor performance. The cardinal rule is to concentrate on critical services, although the contract needs to protect the client against long-term performance that remains persistently just sub-standard.

4.2.6 The requirements, and monitoring and auditing processes to be set out in the contract, should be described in outline in the Invitation to Tender and should directly support the principles underlying the unitary charge. Authorities should encourage bidders to propose innovative solutions to these monitoring requirements which can be shared by both parties. Indeed, the content of such proposals can be a helpful measure of quality in bid evaluation<sup>3</sup>. It will be important to ensure that Contractors accept and are fully committed to these monitoring requirements.

### **4.3 STAGE (II) - DEVELOPMENT**

4.3.1 During this stage the role of the contract manager is to monitor the Contractor's progress towards meeting the service commencement date.

4.3.2 As soon as the contract is awarded, the contract manager should start to establish close working relationships with the Contractor at all levels. While not inhibiting the Contractor's ability to manage the service delivery, the Authority should be an active and intelligent customer.

4.3.3 In IT projects the contract manager may need to be involved in assuring the development of applications through to implementation and operation, the running of IT infrastructures and support functions as well as the overall project rollout to meet the Authority's requirements.

4.3.4 During the development stage the contract manager, on behalf of the Authority, should aim to do no more than monitor the Contractor's implementation procedures to ensure it will be able to deliver the services on time. This may involve inspecting and commenting

---

<sup>3</sup>see also Taskforce Technical Note No 4: How to Appoint and Work with a Preferred Bidder.

on plans, having access to the site, confirming compliance with procedures and agreeing with the Contractor that it is able to commence service delivery. However, there must be a clear limit to the extent of Authority responsibilities as involvement to a greater extent than is appropriate for monitoring purposes may lead to the Authority taking back risk it is paying the Contractor to accept.

4.3.5 The contract manager should only require sufficient management information from the Contractor to retain confidence in the delivery timetable and to ensure compliance with any residual safety issues remaining with the Authority.

4.3.6 The contract manager should be in a position to assess whether the Contractor will achieve the commencement date or might be able to commence the service earlier if the Authority wishes and can afford the payments. He will also need to confirm that the Contractor will deliver the specified outputs and continue to meet construction programme and safety requirements.

4.3.7 Subject to the above caveats, during the development or roll-out stage the contract manager may need to deal with a range of issues. The following examples are mainly drawn from contracts involving the construction of buildings:

- design of the new facility, or clarification of the service requirement, where this has not been completed in detail at contract signature, or needs to be improved as a result of service requirement developments at a later stage. (The contract manager will be responsible for receiving proposals/details from the Contractor and raising objections on behalf of the Authority where they affect the specification against which completion of the asset in line with the contract and/or pre-operations commencement tests have to be assessed);
- integration of new facilities into existing operations;
- maintaining an ongoing monitoring role during any construction work, with rights of entry onto the site, and the right to raise concerns with the Contractor as to contractual failures (including non-compliance with quality assurance regimes) whilst works are continuing;

**Example:** The contract manager should be sent copies of certificates and instructions issued under any Building Contract which are relevant to the delivery of the service, other relevant correspondence and minutes of supplier meetings, and be entitled to attend regular and special site meetings when he deems appropriate.

- delays or changes to the construction programme;

**Example:** The contract manager should receive details and be responsible for confirming, on behalf of the Authority, whether delays were outside the control of the Contractor and whether these might entitle the Contractor to an extension of time for completion of the construction works. The contract manager would in exercising this responsibility normally first advise the Authority and make recommendations for action and subsequently confirm the decision of the Authority. Knowledge of the contract is essential, particularly in relation to compensation and relief events.

- insofar as the Authority requires any variations to works during the construction period, being the conduit through which requests are made, negotiated and agreed with the Contractor, including details of design, workmanship and price and any variation to the unitary charge;
- determining when the new facility is ready for occupation and use by the Authority, and thereby triggering payments to the Contractor for services delivered thereafter;

**Example:** The contract may contain detailed “Tests on Completion” which the Contractor will have to satisfactorily meet before the new facility is accepted as ready for use. The contract manager will need to be assured by the Contractor that all tests are satisfied. Where such tests are not satisfied, the contract manager would normally advise the Authority and make recommendations for action. He will subsequently need to ensure that such action was carried out by the Contractor and confirm or otherwise to the Authority that the tests have been satisfactorily met.

**Example:** The Contractor will be responsible for providing and maintaining buildings and other assets throughout the life of the contract. The contract manager would normally only need to be assured about the appropriateness of the Contractor's quality assurance processes. However, it may be appropriate to inspect the building shortly before the expiry of 12 months from the date on which it is commissioned and handed over by the construction contractor to identify any defects which had become manifest during that period and to seek confirmation that the Contractor will arrange for those defects to be rectified. Some large projects may require more complex procedures covering bringing into use, defects correction and long-term asset maintenance.

- any building defects liability period under the contract;
- property and planning issues; and
- staffing issues not handled elsewhere by the Authority.

4.3.8 The contract manager will need to be aware of any project related risks retained by the Authority. Responsibility for monitoring and managing these risks may, where appropriate, be assigned to the contract manager.

#### **4.4 STAGE (III) - DELIVERY**

4.4.1 For the delivery stage the Authority may wish to review its contract management and performance monitoring arrangements to deal more effectively with the new circumstances arising in monitoring service delivery; not least different specialisms may be required.

4.4.2 The contract manager should continue to avoid excessive monitoring which interferes with the Contractor's flexibility to resolve operating problems as they arise (within the terms of the contract).

4.4.3 During the delivery stage the contract manager may need to deal with a range of issues including:

- definition, implementation and operation of the Authority's own direct monitoring system (such as "read-only" Building Management Systems where environmental control is critical), if necessary, in respect of any or all of the services;
- handling the "settling in" period from the service commencement date or during any transitional stage to full service commencement, where the Contractor may be afforded a degree of flexibility from the full performance regime;
- monitoring the provision of contracted services, including the availability of facilities, to assure they are in conformity with contractual specifications on performance standards, allocating performance points in accordance with the payment mechanism in the contract;
- receiving, checking and authorising (subject to the Authority's delegation of responsibilities) invoices, for the payments of the unitary charge at the frequency and within the period allowed for payment under the contract, and calculation or recalculation of the payment for services in accordance with the provisions set out in the contract;
- ensuring the Contractor's books are audited in accordance with the provisions of the Contract (see section 25.5 of *Standardisation of PFI Contracts*).
- monitoring the Contractor's approach to rectifying defects, including those where first responsibility rests with the Contractor's agent or sub-contractors;
- joint inspection of repair and maintenance obligations, either periodically and/or towards the end of the contract term in line with the responsibilities for surveys in the contract;
- monitoring compliance with any Health & Safety, Building and Fire Regulations where this is provided for under the contract;

- ensuring compliance with the Authority's policies and procedures (e.g. adherence to a No-Smoking policy where these are contractual requirements);
- monitoring (by way of sampling) the Contractor's quality management systems, where such information is required for contract compliance purposes;

**Example:** The contract manager would, where there was concern about such systems, normally first advise the Authority and make recommendations for action and subsequently confirm the decision of the Authority.

- agreeing any benchmarking or market testing arrangements and outputs, provided for in the contract, with the Contractor;
- periodic inspection of the Contractor's asset register and supplier's records of equipment (eg to check that equipment to be provided, such as IT, is actually in place);
- handling change primarily within the contract's provisions on change, and in conformity with the wishes of the Authority, (including new service requirements):
  - (a) advising the Authority on the need for options for change, assessing implications of requesting any changes and the impact on both sides;
  - (b) acting as issuer of the Authority's instructions for change;
  - (c) recipient from the Contractor of requests for change;
  - (d) administration of any general change mechanism; and
  - (e) responding to other changes such as change of law;
- advising on whether the contract as signed continues to make sense in terms of the Authority 's business objectives;

- receiving notification of any proposed refinancing arrangements, considering any implications for the Authority including the potential for sharing any gains between Contractor, financiers and the Authority, and where required, notifying the Contractor of the Authority's conclusions (see paragraph 14.6 of *Standardisation of PFI Contracts*);
- handling service users and other stakeholders - who, because public services are involved, must not feel cut off/cut out. There should be provision for them to report unsatisfactory performance firstly to the Contractor (usually an on-site representative), but then to the contract manager if performance does not improve. Such reports may be admissible as part of the formal evidence to support subsequent breach or termination procedures;
- handling relations with external pressure groups for the Authority and with the Contractor;
- maintaining contingency plans in case of major threats to the continued delivery of the specified service. Particular care will be needed over such plans where the service is central to the Authority's core business. Special concerns also arise in IT projects over step-in rights, assignment, guarantees and compensation on termination. The contract manager will need to be able to advise the Authority on such issues should the need arise;
- property and planning issues; and
- security clearances for sub-contractors.

4.4.4 There are other incidences where the contract manager is likely to have a role, and the above list is not intended to be exhaustive. For example, the contract manager may be responsible for certain TUPE<sup>4</sup> and other Authority staffing issues, approval of service subcontractors<sup>5</sup>, determination of acceptability of third party use and any payments due to the Authority thereunder, dealing with incidences of Contractor default and any allowable rectification periods such as for a relief event.

---

<sup>4</sup>Transfer of Undertaking (Protection of Employment) Regulations 1981 as amended.

<sup>5</sup>eg: in respect of Declarations of Convictions (List 99), Rehabilitation of Offenders Act.

## ***4.5 LIAISON BETWEEN THE AUTHORITY AND THE CONTRACTOR***

4.5.1 While the contract manager should be the primary point of contact on behalf of the Authority with the Contractor, it may be advisable to establish a formal liaison committee with membership comprising representatives of the Authority, the contract manager, the public sector end user or service client if separate, and the Contractor. Such a committee should meet periodically (probably every 4-6 weeks during the development stage, reducing in frequency to say every 3-6 months once the operation of the services has settled in, depending on the nature of the project).

4.5.2 Such a committee can provide an essential forum for the two sides to deal with more important problems and help the Contractor to better understand the Authority's on-going business. The contract manager should report the outcome of such meetings to the Authority's senior management.

4.5.3 During both stages such a committee is an invaluable tool to pool experience when reviewing how the procurement process, other contractual stages and the form of contract and service specification can be improved for future projects.

4.5.4 Subject to provisions on the contract, the committee may also be asked to consider and advise on arrangements for any handback at the end of the contract.

## ***4.6 CONTINUITY OF MANAGEMENT AND MONITORING***

4.6.1 PFI contracts are generally over the longer term, ie 10-30 years, and this poses continuity problems. Rarely will the initial contract management team still be in place at the end of the contract. As a consequence it is important to ensure that all monitoring procedures are documented, including any advice on conducting the relationship.

4.6.2 The Authority should consider providing reference guides to all the project's contract documents and a checklist of key stages and issues that will require action during the life of the project.

4.6.3 Where an Authority has a series of similar contracts to manage it should produce (or regularly update) a more comprehensive contract management manual.

4.6.4 In addition a succession plan for personnel should be constructed to ensure personnel do not change at the same time and the team always includes new and old hands. Contractor personnel will also change over the contract period and this may also affect the ongoing relationship.

## **4.7 EXPIRY OF THE CONTRACT**

4.7.1 The contract manager will have a role in the Authority's assessment of options as the contract draws to its natural conclusion. Such options will in part depend on whether or not there are alternative uses for the underlying assets (see Section 19 of *Standardisation of PFI Contracts*). The assessment should take place well before expiry.

4.7.2 Should the Authority decide not to walk away from the project's assets, the contract manager will be responsible for compliance with the hand-back procedures set out in the contract which may involve surveys prior to expiry and set-off of the unitary charge into a retention fund (see Section 22 of *Standardisation of PFI Contracts*). The contract manager will also be responsible for verifying the assessment of the value of the asset at the end of the contract.

## **5 OTHER TREASURY GUIDANCE**

### **TREASURY TASKFORCE GUIDANCE**

#### **GENERAL**

Partnerships for Prosperity (November 1997)

A Step-by-Step Guide to the PFI Procurement Process (April 1998, due to be replaced shortly)

Standardisation of PFI Contracts (July 1999)

Standardisation of PFI Contracts - Information Technology (due early 2000)

#### **POLICY STATEMENTS**

No 1: PFI and Public Expenditure Allocations (October 1997)

No 2: Public Sector Comparators and Value for Money (March 1998)

No 3: PFI and Public Expenditure Allocations for Non-Departmental Public Bodies (August 1998)

No 4: Disclosure of Information and Consultation with Staff and other Interested Parties (October 1998)

#### **TECHNICAL NOTES**

No 1: How to Account for PFI Transactions (Revised June 1999)

No 2: How to Follow EC Procurement Procedure and Advertise in the OJEC (June 1998)

No 3: How to Appoint and Manage Advisers (August 1998)

No 4: How to appoint and work with a preferred bidder (August 1999)

No 5: How to construct a Public Sector Comparator (October 1999)

**TREASURY CENTRAL UNIT ON PROCUREMENT GUIDANCE**

No 61: Contract Management

Copies of any of the above publications (except the guidance on Standardisation of PFI Contracts) and additional copies of this note are available from:

Public Enquiry Unit  
HM Treasury  
Parliament Street  
London SW1P 3AG

(Tel: 0171 2704558/4860/4870)

The text of this note is also available on the internet at:

<http://www.treasury-projects-taskforce.gov.uk>

Enquiries about obtaining copies of the Taskforce guidance on Standardisation of PFI Contracts should be made through Butterworths on 0171 400 2682 or on the internet at:

<http://www.butterworths.co.uk>

Advice on PFI policy can be obtained from the Treasury Taskforce, Private Finance Policy Team, HM Treasury, Parliament Street, London SW1P 3AG (Tel: 0171 270 5527).

***ANNEX***

***SKILLS AND COMPETENCIES***

---

The following competencies might usefully be found in the contract management team. It will be necessary to judge which of these, and to what level, are appropriate for each contract.

**The team may require:**

- full or part time staff;
- advice from other departments; or
- external assistance.

**Knowledge of:**

- the types of contract and contract law;
- the procurement process including specifications and contract management needs;
- the supply conditions and developments in relevant markets;
- pricing mechanisms;
- risk management techniques and contingency planning;
- the terms and conditions of individual contracts;
- the roles and responsibilities of the contract manager, users and suppliers;
- the need to seek and achieve continuous improvement;
- benchmarking techniques and their application;
- performance management techniques;
- quality assurance techniques;
- the need to forecast future demand;
- the principles underpinning government accounting and financial management; and
- relationship management.

### **Abilities:**

- to define the business needs and develop a contracting strategy;
- to identify the principal demand and cost drivers for each service;
- to produce and implement plans for managing relationships with suppliers;
- to complete an analysis of risks associated with each contract;
- to analyse the contract management environment and adopt the appropriate management style;
- to apply contract management procedures and techniques;
- to negotiate successfully;
- to control expenditure;
- to manage users and users' demands; and
- to manage relationships successfully.

### **Individual Qualities:**

- the ability to work effectively as a member of a team;
- effective negotiating and influencing skills;
- effective interpersonal skills;
- well developed analytical skills;
- a forward looking and pro-active approach;
- the ability to exercise sound judgement;
- a positive and practical attitude to change and innovation; and
- the ability to work reliably under pressure and prioritise competing demands.