



# The impact of contracts on project behaviour and outcome

25th Annual Conference held on 19th–20th September 2007  
at Latimer Place, Chesham, Buckinghamshire

Summary

## Introduction

The era when the best thing to do with the contract was to 'leave it in the drawer' is past. Major projects need to be underpinned by contracts that reward individuals and organisations for adopting the right behaviours for hitting project goals and for working as a team when problems arise.

Through presentations and discussion, this year's Annual Conference examined the issue of how contracts can impact on project behaviour and outcome. Examples of innovations designed to integrate the contract with good management in all its aspects were set out and discussed, and their application to various project sectors examined. There was a review of the relevance of legal input to the design of contracts and the 'bespoke' versus 'off the shelf' argument.

Following their presentation, each speaker posed a series of questions for further discussion. Working in small groups, delegates had the opportunity to debate and report back on the issues raised.

## Keynote address

The keynote address on the opening evening of the conference was given by His Honour Humphrey Lloyd QC, a former judge of the Technology and Construction Court in London. He suggested that most problems with contracts come down to human behaviour, and looked at what affects that behaviour.

Drawing on his experience, His Honour provided numerous examples of where projects had gone wrong because of bad behaviour by one or more of the people involved rather than because of the contract itself.

He looked at the issues that have a detrimental effect on behaviour and project outcome: top of the list was the awarding of competitive tenders on price alone, as this usually created problems. The importance of agreed ethical standards, and the question of trust as the cornerstone of relationships and the bedrock of any successful contract were looked at in some detail. His Honour stressed the need for clarity about the function and purpose of the contract. For instance there should be a clear distinction between the parts of a contract that are purely legal and those which are day-to-day management elements, so that the former can be put 'into a drawer' and hopefully never taken out.

## How to improve project outcome with the right contract

The first presentation on Day 2 of the conference was given by Dr Martin Barnes, President of the Association for Project Management (APM). As the 'architect' of the [New Engineering Contract \(NEC\)](#), Dr Barnes described the background as to why he decided that reformed contracts could influence behaviour – and hence the outcome of projects – and how the NEC sets out to achieve this.

Under the traditional contract, relationships between people were set up in a way that was counterproductive. With the new, reformed contracts (of which the NEC is a good example) Dr Barnes explained how contracts are not just legal documents, but an agreement between buyers and sellers in a huge supply chain to manage the division of the work in a way that is characterised by collaboration. This is done by focusing on achieving the client's objectives for the completed project, and rewarding good work by the contractors with profit.

Dr Barnes outlined the key features and benefits of the NEC model, for instance in controlling the function of the project in terms of scope, cost and time and ensuring that risk allocation is clear and appropriate, particularly in relation to those risks associated with changes or variations in the work. Another important feature is the way in which claims and disputes are dealt with.

First published in 1994, the NEC model was initially used on civil engineering, building and IT projects, and the supply of trains for the railway services. It has since been broadened to include professional services contracts and is employed in 20 countries around the world. Two years ago the Office of Government Commerce (OGC) recommended it for all publicly funded projects, and it has been used on such projects as the Channel Tunnel Rail Link (now High Speed 1), and is being used for the 2012 London Games projects.

## What's best for the project?

Freshfields Bruckhaus Deringer provided a lawyer's perspective on key contractual issues for supply chain management, and looked at how contracts can encourage behaviours which lead to the best outcome for a project.

Some of the essential requirements for a successful project outcome were outlined:

- Strong project/contract management: project management must be integrated with the contractual approach
- Co-located/integrated project teams can help project control
- Partnering and alliancing: including risk sharing and the use of target price incentives, which can be usefully enhanced with a regime of key performance indicators (KPIs)
- A clear, well-structured and well-communicated procurement strategy

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The major projects industry has moved increasingly towards output-based projects, where all levels of the supply chain are empowered to put forward their best proposals. A clear client brief, with early involvement of contractors is important, as is consistency in contract forms. The New Engineering Contract (NEC) should be used across the supply chain to encourage standardisation and to help contractors understand each other's responsibilities.

Other significant factors for project success include effective interface management at all levels throughout the chain of relationships between client, main contractor and subcontractors, and it was explained how some projects manage this better than others. The presentation drew on examples from a study of high profile projects such as Terminal 5 (T5), Network Rail and the West Coast Main Line. It was noted that the most critical considerations for project success involved keeping the project objectives in mind and maintaining visibility of influencing factors at different levels of the supply chain.

## Alliance contracts and project behaviour

Kellogg Brown Root (KBR) outlined how KBR's Defence Services became involved in the creation of successful and innovative alliance, joint venture and partnering contracts.

The Allenby/Connaught project is a 35-year PFI programme to provide living and working accommodation for 18,000 army personnel around Aldershot and Salisbury Plain, and involves a very complex contractual framework. The conference heard how two apparently insurmountable problems in the programme were overcome by the Ministry of Defence (MoD) and KBR working together with a common vision and alignment of objectives in a collaborative, rather than an adversarial way.

One of the problems involved a tight timescale to complete a build programme for a regiment returning from Germany. The essence of the problem revolved around the lack of skilled labour in the UK, and the need to recruit from non-UK countries; because of the need for security clearances, programme slippage was likely.

The high level of collaboration between the MoD leadership team and KBR resulted in a solution to the problem, through rearrangement of the build programme and a change to the contract documentation. It was a good example of leadership behaviour established during contract negotiations facilitating a positive environment and platform for recovery.

## Can a contract really transfer risk away from its rightful owner?

This presentation, from NUKEM, started by looking at major infrastructure developments where government has attempted to transfer ownership of risk from the public to the private sector with varying degrees of success. Citing the construction of the Channel Tunnel, the privatisation of the railways and the operation of electricity generating stations as examples, the conference heard how lessons had been learned, and the nature of contracts changed as a result.

Some of the questions critical to the nuclear decommissioning programme, in which NUKEM is a key player in the supply chain, were considered. The Government accepts ownership of the liabilities of the cost and technical risk of decommissioning through its agency the Nuclear Decommissioning Authority (NDA). A contracting strategy has been formulated, whereby the Site Licensing Company (Tier 1 contractor) manages the site overall, with Tier 2 contractors doing the decommissioning. There was a detailed look at the new contractual structure, and how and why it has had the effect of Tier 1 contractors attempting to transfer some technical risk – risk that belongs to the NDA – to various levels in the supply chain.

## Peak performance and success

The final presentation was given by Robin Sieger, international best selling author and corporate success strategist. He considered what is meant by success, and examined the impact people can have on their organisations if they adopt or work towards the following principles for success:

- Define your goal
- Create a flexible strategy
- Have confidence
- Overcome fear of failure
- Motivation
- The need to be appreciated
- Celebrate success

These guiding principles were explored in depth, using personal experiences and thought-provoking stories to drive home their message. Delegates were asked to consider a number of issues, for instance the concept of leadership, the role of belief and attitude when it comes to changing behaviour, what motivates people and the importance of communication.

## Conclusion

The questions posed at the end of each presentation provoked some in-depth discussions, adding useful points of view to the individual topics. There is every possibility that a contract can be capable of operating satisfactorily and encouraging the right behaviours for success. At the end of the conference, the main message to emerge regarding the relationship between contracts and behaviour was 'Do what you say you are going to do.'

## Participating organisations

Advance Consultancy Ltd  
Arup  
Atkins plc  
BAA plc  
BAE SYSTEMS, Submarines  
Balfour Beatty plc  
Bircham Dyson Bell  
Bovis Lend Lease  
CH2M HILL  
CJ Associates  
Denton Wilde Sapte  
Department for Transport  
Ernst & Young LLP  
Freshfields Bruckhaus Deringer  
Henley Management College  
Imperial College London  
John Laing plc  
KBR  
KPMG LLP  
London Development Agency  
Major Projects Association

Mott MacDonald Group Ltd  
National Audit Office  
Network Rail Infrastructure Ltd  
Nuclear Decommissioning Authority  
NUKEM  
Olympic Delivery Authority  
PA Consulting Group  
PCL Ltd  
PricewaterhouseCoopers  
QinetiQ  
Risk Solutions  
Rolls-Royce Marine  
Scott Wilson Kirkpatrick & Co, Ltd  
Sellafield Ltd  
Shadbolt & Co LLP  
Sieger International  
Taylor De Jongh Inc  
The Nichols Group  
Transport for London  
Westfield Shoppingtowns