
Advances in Project Management Series¹

Thinking in Contracts: the role of intelligent procurement in projects

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Contracts, the legal documents capturing the formal agreements between people, parties or groups, are often of little interest to project managers. Devised by solicitors and lawyers, they tend to emphasise the enforcement of promise-based obligations to perform a particular duty, supply certain goods, provide a given service or commit a specific act. Contracts are typically phrased in a legal language that endeavours to identify all contingencies and deliver a legally binding and enforceable agreement.

The Sixth Edition of the APM Body of Knowledge focuses on contracts under the Resource Management section, which is concerned with the acquisition and deployment of internal and external resources required for delivering the project or programme. The APM Body of Knowledge defines contracts as the “agreement made between two or more parties that creates legally binding obligations between them ... and sets out those obligations and the actions that can be taken if they are not met” (p. 202).

Contracts are covered by contract law, governed and determined by local jurisdiction. The Body of Knowledge therefore recommends that specialist advice should be sought to interpret and understand the legal ramifications of the contract. Given that contracts are invoked when actions, goods or services are required from outside the host organisation, local legal experts need to be involved in drafting the contracts and interpreting their implications.

The fifth edition of the PMI Guide to the Project Management Body of Knowledge includes a wider knowledge area focused on project procurement management, which is defined as the “processes necessary to purchase or acquire the products, services or results needed from outside the project team”. Accordingly, procurement management is therefore concerned with establishing, maintaining and closing relationships with suppliers of goods and services for the project.

¹The PMWJ *Advances in Project Management* series includes articles by authors of program and project management books previously published by Gower in the UK and now by Routledge. Each month an introduction to the current article is provided by series editor **Prof Darren Dalcher**, who is also the editor of the Gower/Routledge *Advances in Project Management* series of books on new and emerging concepts in PM. To learn more about the book series, go to <https://www.routledge.com/Advances-in-Project-Management/book-series/APM>. Prof Dalcher's article is an introduction to the invited paper this month in the PMWJ.

Sustaining Interest

One view within the project contract community is that contracts should be completely comprehensive, encompassing all potential contingencies. When uncertain events occur, disputes can easily translate into legal teams quarrelling about interpretation, agreement and expectations. In large and complex undertakings, that can often use up valuable time and resources. An alternative approach is to develop sustainable long term relationships, supported by more flexible definitions that allow both parties to continue to operate and negotiate workable solutions. A lot depends on the context and cultural expectations of participants and the cultural and sectoral preferences enacted by an industry or an organisation in order to address the partnerships required to deliver projects.

In delivering a new vision for IT project development, The Agile Manifesto offers an interesting distinction, suggesting that experience indicates that a better way of developing software is through coming to value customer collaboration over contract negotiation. If collaboration is viewed as a long-term strategy, it can trump adherence to contracts and encourage a more flexible interpretation of objectives and duties based on the need to sustain the relationship and deliver meaningful and useful increments of value.

The key importance of the distinction offered by the Agile Manifesto is in ensuring that project managers remain part of the conversation and play a part in the discussion around contracts, expectations, vision, uses, acceptability, stakeholder engagement and relationship management. Such an approach also results in greater understanding and engagement between the different parties resulting in a greater likelihood of addressing the essential issues, delivering useful systems and ensuring success.

Repositioning contracts for success

Occasionally we consider using different metaphors or viewpoints to change our perspective or way of thinking. I have often wondered what would happen if we stopped viewing contracts as mere legal documents that can only be drafted by legally qualified experts and instead considered them as instruments for allocating risk between the two parties (still under the guidance of experts but in a better informed and more considered stance)?

Extending that thought, what would happen if we viewed contracts as a way of identifying opportunities and proposing a sharing of the spoils? Could that be done in incremental and dynamic fashion as our projects unfold?

Would we then learn to use these instruments more creatively? Would both parties aim to think creatively and endeavour to truly deliver more with less? Would our relationships become more engaging and encourage longer-term sustained collaborations?

Most importantly, would our success rate in doing project work improve? And would the number of litigations and court cases involving projects, a clear indication that current procedures are not ideal, be reduced? Indeed, could we banish litigious court cases and out of court settlements as a measure of project failure?

Towards active contract management

The good news is that there is a lot of good thinking around encouraging a more intelligent use of contracts to make project procurement more effective. This month's article "Planning for Contract Management" by Louise Hart fosters a more active approach to planning for contract management. The article draws attention to the three constituent parts of the contract suggesting that the incentives, specifications and provisions can be planned and used more effectively. Indeed, the time for planning the contract and identifying the impacts and actions is well before it is formally issued. Incentives drive behaviours, and in order to satisfy certain sets of expectations the potential impacts need to be recognised early on.

The article draws on Louise Hart's recent book *Procuring Successful Mega-Projects: How to Establish Major Government Contracts Without Ending up in Court*, published by Routledge. The book explains how to develop contracts that contain the necessary provisions for successful project management whilst excluding undeliverable obligations or perverse incentives. The value of the work is in re-thinking the role and value of contracts in the procurement process. It is also important in supporting the knowledge required for successful project delivery to ensure that projects do not end up in court and reminding us that planning for the management phase of the contract is part of procurement process.

Encouraging more agile procurement

If agile development is concerned with active and sustainable relationships, agile contracts would aim to encourage long term collaboration through planned and intelligent sharing of benefits and value over an extended period. When unexpected or uncertain events occur, both parties have an incentive to continue to co-operate, rise to the challenge and maximise the potential to deliver through shared incentives. Indeed, in such a setting the imperative to do more with less can be used as the motivation for adopting a more creative and innovative stance.

'Contract in haste, repent at leisure' is often used as a maxim to encourage deeper consideration of contracts. It can also be used to suggest taking time out to plan the management of the contract.

If both parties adopt a responsive tactic combined with careful planning, contract management can become a dynamic and flexible approach that is capable of leveraging incentives, opportunities and long-term relationships and improving the delivery and success track records of projects. To reduce the number of projects that grace the annals of failure, we may well need to become more responsive and forward planning throughout our endeavours. Above all, it might imply involving project managers and contract managers in the conversations around projects, expectations, and

achievements, before they are called upon to rescue the same undertakings when they encounter the first signs of the unexpected, unwanted, uncertain or undesired.

References:

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