FM PROCUREMENT
Contract Performance - Nature or Nurture?

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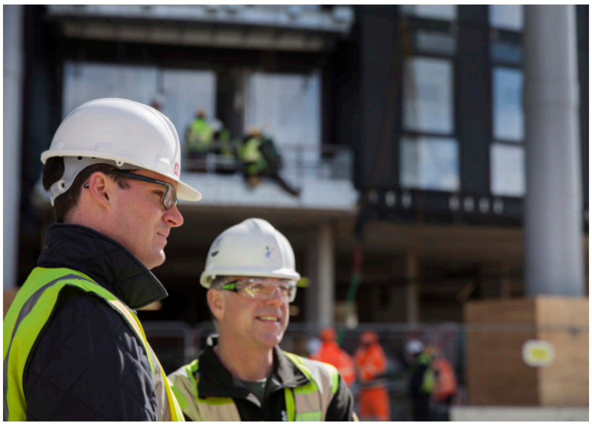

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INTRODUCTION

There are many reasons why an FM contract may or may not ultimately provide the service and outcomes expected by the client. This short paper assesses the extent to which these are born of Nature, ie is it in the DNA of the contract as 'designed' during the procurement phase, or born of 'Nurture', ie how the contract is managed and operated by both supplier and client.

This paper considers some of the most common factors which are likely to contribute to poor performance where one or more are present. Following an examination and discussion of each of these issues, guidance is provided on how to turn around poor performing contracts and to ensure that future contracts have success built into their DNA! In conclusion the paper considers the effects of both nature and nurture and makes the case for why the often heard phrase 'the best contracts are those left in the drawer' is not valid.

THE TWO SIDES OF THE DEBATE

Figure 1: Below summarises the factors affecting contract performance discussed in this paper.

NATURE FACTORS (PROCUREMENT PHASE)

1. Intended relationship undermined by contract wording
2. No awareness of, or conflicting organisational objectives
3. Misalignment of organisational culture & values
4. Poor specification of requirements
5. Poor definition of standards & KPIs
6. No, weak or inappropriate incentives to perform
7. Inappropriate or grey areas in risk transfer
8. Under priced in bid stage
9. Contract value ratio to supplier turnover
10. Inadequate or no involvement of the FM team
11. Inflexible contract

NURTURE FACTORS (OPERATIONAL PHASE)

12. Poor Mobilisation
13. Suppliers not delivering on bid promises
14. Poor Management Information
15. Ineffective contract management
16. Poor individual client / supplier relationships
17. Changes to key personal (Supply Site)
18. Alignment of relationship sought & contract provisions

Over the following pages for each factor we have introduced the issue, identified risk mitigation measures to prevent the issue occurring in new contracts being procured, and issue resolution measures where the issues are already being experienced in live contracts.

The risk mitigation measures generally represent recognised good industry practice for FM procurement. The issue resolution measures are practical steps to re-align contract performance with requirements/ expectations. If contract performance is irrevocable then the 'nuclear option' of termination and re-procurement is usually the action of last resort, and subject to contractual provisions.

NATURE ISSUES

NATURE ISSUES (IE PROCUREMENT/CONTRACT RELATED)

1 - ALIGNMENT BETWEEN RELATIONSHIPS SOUGHT AND CONTRACT PROVISIONS

Partnering and collaboration are words increasingly used in the context of service contracts, and in the right circumstances both contracting parties stand to gain from this approach. However where the original intentions of the nature of the relationship are undermined by the drafting of the contract, this can lead to a mismatch in expectations and behaviours leading to a view of a poor performing contract.

Risk Mitigation:

- Identify and agree with key stakeholders (including senior FM team) the nature of the relationship sought with the FM supplier.
- Carefully consider all contract provisions with a view to how they portray the relationship sought by the client.
- Particular attention should be paid to anything which exposes the supplier to risk, for example termination clauses, unrealistic performance levels and 'hair trigger' KPI failure/financial deductions thresholds.
- Contract length is another indicator as to the type of relationship sought. Suppliers are much more likely to view a contract term of 5+ years as a collaborative relationship and will be more willing to invest in their solution, than for example a two or three.

Issue Resolution:

- Review any conflicting contract clauses/wording and seek to agree amendments.
- Address in re-procurement.

2 - NO AWARENESS OF, OR CONFLICTING ORGANISATIONAL OBJECTIVES

Objectives vary both between each unique client organisation and each unique FM supplier, and may change over time. The contract between two parties might be seen as underperforming by either party to the contract where each party is unaware of the other's organisational objectives, or where there is clearly a conflict between the two.

This can often been seen in the poor execution of contractual gain share mechanisms where the client's objective is to continuously look to make savings on overall contract prices. Here the client objective often clashes with the common FM supplier objective of increasing turnover, an objective both at the corporate and individual (account manager) level. The commonly reported lack of use of gain share mechanisms points to a conclusion that 'in general' FM suppliers' turnover objectives override the potential gain in contract profitability.

Risk Mitigation:

- Ensure that key client objectives for the contract are accurately conveyed in procurement documentation
- Require bidders to state how their corporate objectives align with the clients and/or how they will meet client objectives and how conflicts will be overcome
- Ensure that key client objectives are adequately addressed in the evaluation process, criteria and weightings
- Consider if the contract and schedules are appropriately drafted to incentivise collaboration toward the achievement of client objectives.

Issue Resolution:

- Take the opportunity at the next contract management meeting and/or annual review meeting (with more senior stakeholders) to discuss and understand each party's objectives for the contract.
- Take actions as necessary/possible to resolves any misalignment of objectives.

3 - MISALIGNMENT OF ORGANISATIONAL CULTURE AND VALUES

Alignment of organisational culture and values is a critical element to a successful relationship between the two parties. Misalignment of values is likely to lead to strained relations at the individual level between client and supply side managers, as each tries to achieve its organisational objectives through the framework of its organisational values.

Risk Mitigation:

- Ensure that value alignment forms part of the supplier selection process.
- Look for evidence of real world examples of values in action.

Issue Resolution:

- No intermediate options other than re-procurement.

4 - POOR SPECIFICATION OF REQUIREMENTS

A specification that does not accurately and unambiguously reflect the internal client's and/or FM's requirements and expectations leads to misalignment of supplier delivery and pricing which causes friction in the relationship. This can be exacerbated where output specifications are used, especially for the first time when moving from a more prescriptive contract model.

Risk Mitigation:

- Ensure robust project governance and stakeholder engagement through the development of the specification.
- When using output specifications, use practical examples detailing how the specification might be responded to in supplier bids, and ultimately delivered on contract award, including impacts on pricing.
- Please see our knowledge paper: FM Procurement - Specification Writing Guide which includes a more detailed look at preparing FM specifications.

Issue Resolution:

- Redefine the specification using the change control process, mindful that this may involve a re-price!

5 - POOR DEFINITION OF STANDARDS & KPIS

Performance may be seen as poor where standards are set at the wrong levels (unrealistically high or too low) and where KPIs are not measuring the correct aspects of the service. This can lead to circumstances where a supplier is passing all KPIs but the perception of performance is still viewed as poor! The perception of performance may also be seen as poor where KPIs are badly written and unmeasurable with suppliers reverting to their own 'preferred' or 'standard' measures.

Risk Mitigation:

- Clarity of standards in specification.
- Detailed SMART KPIs in contract at ITT/RFP stage of procurement process.
- Please see our knowledge paper: FM Procurement - Contract Performance Provisions which includes a detailed look at writing SMART FM performance measures (KPIs).

Issue Resolution:

- Negotiate a reset of standards and KPIs considering impact on incentivisation / risk profile.

6 - NO WEAK OR INAPPROPRIATE 'INCENTIVES' TO PERFORM

In an ideal world, the supplier should not need an incentive to perform they should just do the job they are being paid to do. In reality, an incentive to perform can help ensure this happens. This can be the carrot or the stick approach or a combination of both.

The Financial Carrot – Additional payment linked to meeting or exceeding standards. The Financial Stick – Deductions linked to performance below expectations. If not well considered these incentives can actually be part of the cause of poor performance or undesirable behaviours.

The Non-Financial Carrot – Linking contract extension to performance over the term of the contract. The Non-Financial Stick – Escalation processes up to and including termination.

Risk Mitigation:

- Include some form of incentivisation appropriate to your organisation and contract.
- Ensure calibration of risk profile for financial incentives.
- Please see our knowledge paper on 'FM Contract Performance Provisions' which provides a detailed look at preparing FM contract performance regimes.

Issue Resolution:

- Likely to be difficult to negotiate into a contract once signed!

7 - INAPROPRIATE OR GREY AREAS IN RISK TRANSFER

The risks of the management and delivery of FM services should ideally be held by the party to the contract best placed to manage each risk. In the case of financial risk transfer through fixed pricing, consideration is required as to whether bidders have sufficient information to make an informed and reasonable assessment of the cost.

Where risk transfer is deemed appropriate, if the procurement documentation does not provide absolute clarity on price and quality risk allocation, this may allow the supplier wriggle room to justify increases to fixed price services, or additional variable costs to the client. This can create a perception of under-performance or the contract not providing value for money.

Risk Mitigation:

- Clearly defined price streams applied to each service and sub-service.
- Price streams selected with due consideration of data availability. Please see our knowledge paper: FM Procurement - FM pricing strategies to deliver best value.
- A defined contractual approach to due diligence and price variation where appropriate.

Issue Resolution:

- Grasp the nettle and resolve ambiguities once and for all rather than keep having the same debates.
- Change contract documentation to reflect agreements using change control processes.

8 - UNDER PRICED IN BID STAGE

Bids may be under-priced for a number of reasons including a lack of a robust supplier bid governance process, a deliberate supplier ploy (particularly if they see opportunities to increase prices if appointed – see above), part of a strategy to increase turnover or gain a prestigious client, or a genuine belief that efficiencies can be driven out during the contract term.

Whatever the reason, if the bid has been under-priced, then the supplier is likely to do all they can to recover to a profit making position. This can lead to poor performance of services through choking off of resources or through undesirable commercial behaviours to increase income. When considering options for resolving this issue, consideration should be given to the fact that the price may be higher anyway if re-procured at the same standards.

Risk Mitigation:

- Consider development of 'Should Cost' models (an independent cost estimate using a combination of benchmark and first principles costing techniques) as part of procurement.
- Issue a robust and comprehensive Price Book for completion by bidders and closely scrutinise tenders to ensure that everything a supplier says they will do is reflected in the price
- Reserve the right to exclude price outliers

Issue Resolution:

- Escalate performance issues in line with contract provisions
- Enact poor performance redress provisions in line with the contract (mindful of public sector procurement provisions where relevant)
- Accept reality of underperformance, possibly resetting standards.
- Reset pricing with independent verification (mindful of public sector procurement regulations).

9 - CONTRACT VALUE RATIO TO SUPPLIER TURNOVER

The ratio of contract value to turnover is important as it signifies how important you as a client are to the success of the supplier, which can be a factor which affects supplier behaviours.
Too high a ratio and the supplier is likely to be over reliant on a few contracts with a higher risk of the business folding, have resource challenges as they try to expand the business with less resource flexibility across contracts, have limited opportunity to introduce innovations from other contracts, and is less likely to provide economies of scale.

Too low a ratio and your relative importance as a client is diminished, thereby reducing leverage when it comes to issues relating to performance.

Risk Mitigation:

- Consider development of 'Should Cost' models (an independent cost estimate using a combination of benchmark and first principles costing techniques) as part of procurement.
- Issue a robust and comprehensive Price Book for completion by bidders and closely scrutinise tenders to ensure that everything a supplier says they will do is reflected in the price
- Reserve the right to exclude price outliers.

Issue Resolution:

- Escalate performance issues in line with contract provisions
- Enact poor performance redress provisions in line with the contract (mindful of public sector procurement provisions where relevant)
- Accept reality of underperformance, possibly resetting standards.
- Reset pricing with independent verification (mindful of public sector procurement regulations)

10 - INADEQUATE OR NO INVOLVEMENT OF FM TEAM

The involvement of stakeholders from the team ultimately responsible to their internal clients for the delivery of FM services and for the management of the contracts is imperative. A lack of involvement heightens the risk of a misalignment between internal client and FM team expectations and contract specification. It also increases the risk of appointing a supplier with little understanding of the FM team culture and individual personalities, resulting in poor relationships between client and supplier.

Risk Mitigation:

- Ensure key FM personnel are stakeholders in procurement process.

Issue Resolution:

- Redefine the specification using the change control process, mindful that this may involve a re-price!
- Consider facilitated collaboration workshops.

11 - INFLEXIBLE CONTRACT

An inflexible FM contract does not adequately recognise that over the contract term the context in which FM services are provided and therefore the contractual requirements will change. If the contract is seen as being inflexible, then the performance of the contract will be seen in a negative light.

Risk Mitigation:

- Include an FM specific change control procedure within the contract, ideally in a stand-alone contract schedule.
- Ensure the contract makes appropriate provision for the handling of price changes when they are allowable and how they are to be calculated.
- Ensure the contract pricing schedule is set up in a manner that provides transparency of cost build up by building and by service.
- Ensure the roles and responsibilities in updating contract documentation to track changes to requirements, standards and pricing are clearly set out, ideally in a stand-alone contract management schedule.

Issue Resolution:

- Negotiate a change control procedure and add to the contract - this can be seen as beneficial to both parties.

NURTURE ISSUES

NURTURE ISSUES (IE CONTRACT DELIVERY & MANAGEMENT)

1 - POOR MOBILISATION

Mobilisation sets the scene for the contract term and poorly mobilised contracts can take a long time to recover from, if at all. Key issues affecting long term contract performance include poor set up of Helpdesk and CAFM system and processes, performance management systems and reporting requirements.

Risk Mitigation:

- Use a separate mobilisation contract schedule with detailed requirements.
- Require detailed resource allocations and methodology within bid submissions.
- Allow appropriate/reasonable mobilisation time.
- Include exit requirements in contract(s) to smooth transition between incumbent and new supplier.
- Link payment to mobilisation milestone/deliverables sign off.

Issue Resolution:

- Audit mobilisation milestones achievement/deliverables.
- Implement improvement plan.
- Escalate as required.

2 - SUPPLIERS NOT DELIVERING ON BID PROMISES

This has two dimensions. The first is linked to under-pricing discussed above, and the second is simply the gap between the sales pitch (driven by incentives and pressure for success) and the reality of the art of the possible (as determined by the supplier delivery team). A disconnect between the two, can lead to newly awarded contracts being 'chucked over the fence' for delivery teams to work out how to make it work!

Risk Mitigation:

- Incorporate supplier Service Delivery Plans into the contract and define the hierarchy of requirements.
- Assess the extent to which supplier delivery teams are involved in the bid process.
- Include an audit schedule within the contract, including independent audit provisions.
- Ensure contractual performance provisions are well considered to give the necessary tools to leverage improvements – please see our knowledge paper: FM Procurement – Contract Performance Provisions'.
- Create a schedule of deliverables including for the critical mobilisation period.

Issue Resolution:

- Create a schedule of deliverables.
- Audit and implement an improvement plan.
- Escalate as required.

3 - POOR MANAGEMENT INFORMATION

Good data management and reporting should be the life blood of any successful FM contract. Even where the contract is clear about reporting requirements, the execution all too often falls short. Contractual requirements are often not fully met, or the added value of interpreting the data and looking for patterns and trends is simply not provided. This curtails the opportunity to continuously improve decision making and service delivery.

Risk Mitigation:

- Include a reporting schedule in the contract.
- Seek similar reporting examples from live contracts as part of procurement process.
- Seek live demonstration of reporting capabilities as part of procurement process.

Issue Resolution:

- Audit of contract and bid deliverables in relation to management information.
- Implement improvement plan.
- Escalate as required.

4 - INEFFECTIVE CONTRACT MANAGEMENT

There is a common misconception that 'the best contracts get put in the drawer and forgotten about'. This approach may be understandable (if not advisable) with a poorly procured contract where operational teams just want to get on and deliver a service. However in many cases it is likely to lead to questionable value for money, a poor outcome when under scrutiny of audit and difficulties when it comes to re-procuring the contract.

Risk Mitigation:

- Client FM team involved in the procurement process (see above).
- Utilising intelligently designed procurement documentation such as service matrices and price books that are not used as 'point in time' procurement tools, but can go on to be used pro-actively as contract management tools.
- Contract specific training as part of client side mobilisation.
- Set up of contract management and administration processes as part of client side mobilisation, including performance monitoring.
- Inclusion of performance monitoring regimes.

Issue Resolution:

- Contract specific training for client and supplier staff.
- Client and supply side teams to read the contract/contract management guide, noting aspects not understood or believed to be unworkable.
- Seek to agree changes to processes and mechanisms where deemed ineffective.

5 - POOR INDIVIDUAL CLIENT/SUPPLIER RELATIONSHIPS

Whilst ensuring alignment of organisational culture and values is important during the procurement phase, it is up to the individuals on the ground to then demonstrate those values and to foster collaborative relationships with their counterparts. Personalities of key individuals inevitably come into play here and where there is a clash, it is likely that the perception if not the reality of poor performance will be in evidence.

Risk Mitigation:

- Ensure FM Team involvement in procurement process to begin to build relationships (see above) assuming the supplier also involves operational personnel in the process.

Issue Resolution:

- Ultimately for senior client and supply side managers to identify issues and resolve.
- Consider facilitated collaboration workshops.

6 - CHANGES TO KEY PERSONNEL (SUPPLY SIDE)

Most FM contracts of a reasonable value will have someone in the supplier team who is fundamental to the successful performance of the services, through their experience and knowledge of the client and the contract. When this key person leaves, this can lead to deterioration in contract performance.

Risk Mitigation:

- Include provision for changes to key personnel in the contract including defining key personnel and succession and handover planning.
- Ensure contractual requirements relating to data and management information reporting are complied with during mobilisation with good documentation, processes and protocols.

Issue Resolution:

- Negotiate inclusion of key personnel provision into contract or an informal agreement.

7 - CHANGES TO KEY PERSONNEL (CLIENT SIDE)

Outgoing client side personnel should have been involved in the procurement of the contract and therefore understand how and why the various provisions and requirements within the contract are there. Incoming personnel will not have this background and may have their own view of how FM services/the contract should be managed. This can lead to changes being made to the scope, standards and overall approach to the contract, without this necessarily being managed appropriately through contract change control processes. This in itself can lead to complications when assessing contract performance further down the line, or when re-procuring the contract.

Risk Mitigation:

- Not applicable.

Issue Resolution:

- Where possible arrange for detailed handover of the contract between outgoing and incoming personnel.
- Ensure that change control protocols are followed and documented.

IN CONCLUSION

As is likely with the original Nature vs. Nurture debate, the reality is that both have a part to play in the performance of an FM contract. However perhaps in this rerun of the debate in the context of FM contract performance, it is clear that the DNA of an FM contract, the quality of the contents of the contract and how it is procured are critical to the future success of the contract.

That said, good client/supplier relationships at senior and operational levels along with a pragmatic approach to resolving issues arising from a poorly procured contract can go a long way towards getting a poor performing contract back on track. However, it must be recognised that some of the issues described in this paper can be difficult (but not impossible) to rectify in a live contract.

An often heard phrase is ‘the best contracts are those left in the drawer’. In the ever changing context within which FM services are delivered and managed, client changes in required scope and standards, supplier innovations in service delivery, this phrase couldn’t be further from the truth, particularly in all but the very simplest of FM environments.

The contract being left in the drawer is the sign of a poor contract. A good FM contract should meet client requirements at the point of procurement but be flexible to accommodate changes and provide a framework for long term viability and performance. These changes should be managed and recorded through the change control mechanisms set out in the contract. A good contract, managed well should be a living breathing document that is updated with the changing needs of the client and the innovations of the supplier. This should not be seen as an administrative burden, but simply good practice contract management and governance. This approach will also make re-procurement of the contract at the end of the contract term all the more simple.

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