Contract Management

e-Governance Project Lifecycle
Defining Of A Contract

- A Contract may be defined as:

  “An agreement concerning promises made between two or more parties with the intention of creating certain legal rights and obligations upon the parties to that agreement which shall be enforceable in a court of law.”

- Contract Management is the final stage of Procurement cycle

- The Contract includes all administrative activities associated with administering a contract after it is executed, including a review of the completed contract.

- The level of contract may vary from simple to complex contract. The degree of effort put into contract management should commensurate with the value, risk and complexity of the contract.
Contract vs. Agreement

- A Contract and an Agreement:
  - These terms are often used to mean the same thing.
  - The traditional definition of a contract is: ‘a legally enforceable agreement’.
  - An agreement is NOT necessarily a contract, because it may lack one of the essential principles governing contractual relations, e.g. intention, consideration, legality.

- To be legally binding, a contract needs two essential components:
  - an agreement, and
  - Legal consideration.

- Within the agreement and consideration lies an assortment of provisions that add to the legality of a contract. These include the offer, performance, terms, conditions, obligations, payment terms, liability, and default or breach of the contract.
Reasons For Having A Contract

A Contract is necessary to ensure that the adequate safeguards are in place for the department and the vendor:

- Safeguarding the interests of the contractual relationship
- Ensuring compliance with the contract terms by the client and the vendor
- Ensuring performance of all necessary actions of the project as laid down in the RFP
- Managing and mitigating common risks
- Monitoring performance of the vendor
- Enforcing the Government’s rights when necessary (e.g. Intellectual Property Rights, Warranties etc.)
What Is The Right Time For Contract Document Preparation?

In most e-Governance projects, the contract documents are prepared post award of contract to a vendor leading to:

- Lack of clarity on specific terms and conditions of the contract during bidding processes – bids prepared based on assumptions
- Dispute/disagreement on terms and conditions of the contract between selected vendor and government (as these terms are known to vendor/government post award of contract)
- Significant time consumed in finalizing/agreeing on the terms – delaying the project and in some cases award of contract to a new vendor.

The contract should be prepared before award of the contract.
What Is The Right Time For Contract Document Preparation

- The contract document should be part of the RFP/Bidding documents issued for selection of vendor
- Countries/agencies with matured procurement processes have Standard Bidding Documents and Draft Contracts as part of the bidding documents
- Benefits:
  - Vendors and departments have better clarity on expected terms and conditions
  - Common understanding of contractual terms by all the participants
  - Necessary clarifications and corrections can be performed during bidding process - minimizing the time for contract signing
  - No scope for dispute/disagreement post award of contract
Key Challenges In Current Contracts - 1

The issues that need your attention

- Ambiguity surrounding the scope of work and responsibilities of stakeholders – flows from the RFP
- Inadequate clarity on acceptance criteria for the deliverables
- The conditions of the contract are largely one-sided (either government or vendor)
- Ambiguity surrounding SLAs – lack of measurability
- SLAs not inline with the business requirements
- Lack of approach for addressing delays from Government – loss of time, investment and efforts of the vendor
- Payment and profit risks to the vendors – significant delays in payment/tax variations can hit vendor profits significantly
- Contracts are output based and not outcome based – however, vendors have little or no control on the project outcomes
- Inadequate clarity on change control, ownership rights, IPR
Key Challenges In Current Contracts - 2

The issues that need your attention:

- Unlimited liability to the vendor
- Incomplete scope of work – scope is proposed to be finalized post contract finalisation – how effort estimation can be done by the vendor?
- Unlimited support for changes in the requirements
- Ambiguity in data digitization requirements – requirements not spelt clearly
- Source code requirement for COTS product!!!
- 24x7 support???
- No clarity on transaction volumes, users and data
- Unreasonable payment schedules
- Vendor evaluation and selection criteria – not inline to select the right vendor – largely based on least cost selection
Should There Be Standard Contract Templates?

Need for defining standard contract templates

- Countries/agencies with matured procurement processes have established standard bidding documents/standard contract documents based on the type of the project/work.

- Eliminates duplication of efforts/reinventing the wheel for each project by each department.

- Eliminates the scope for creating (intentionally or unintentionally) ambiguity.

- Bidders and governments know what to expect – eliminates efforts on discussions and negotiations on contract with each project by each department.

- Can be based on best practices approach addressing the common issues related to each category of project.
Defining Standard Contract Templates

- Identification of standard e-Governance project categories (s/w development/IT Infrastructure implementation, service delivery, O&M)
- Assessment of common needs, issues and risks in these categories.
- Development of standard contract templates for these project categories
- Validation of these standard contract templates with legal experts and industry representations
- Finalise the contract conditions and approach for using draft contracts
  - What sections can be changed
  - What sections should not be altered
- Make standard contract templates available for all the departments
- Capacity building on using the contract templates
- Enforce adoption of these contract templates
Key Contents Of Contracts For e-Governance Projects - 1

Most of the Project Specific Information can flow from the RFP Document and shall include:

- Scope of services/work for the vendor
- Deliverables
- Project Locations
- Project timelines/project schedule
- Project Duration
- Acceptance criteria for the deliverables
- Payment schedule
- Obligations/Responsibilities of the Department
- Service Levels/Performance Indicators
- Penalties/Incentivisation measures (if any)
- Scope change management approach etc
Key Contents Of Contracts For e-Governance Projects

General conditions/Terms/Contents of the contract

- Definitions of Terms used in the Contract
- Conditions precedent to contract signing
- Applicable Law governing the Contract
- Currency of the contract
- Language of the contract and administration
- Authorised representatives of the department and vendor
- Arbitration and courts for dispute resolution
- Conditions on Taxes and Duties applicable for the contract, change in tax and duties and impact to project cost
- Approach for modifications or variations to the contract
- Force majeure
- Conditions for suspension and/or termination of contract
- Liabilities of parties
- Dispute resolution approach
- Exit management