



Department of Electronics & Information Technology  
Ministry of communications Information Technology  
Government of India



# 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