Working with the Term Service Contract
Promoting best practice in Facilities Management

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Workshop Agenda

- Introductions and agenda
- Overview of Term Service Contract (TSC)
- Key observations
- TSC strengths
- Common issues and themes
- Making it work – issues and solutions
- Conclusions
• NEC trainers & consultants
• Ross involved in development of NEC3 contracts
• Used TSC since it was published in 2005
• Extensive experience of drafting TSC contracts
• More importantly, who are you?
• Are you clients, contractors or consultants?
• What is your experience of TSC and/or TSSC (the short contract)?
Overview of TSC

• History
  – first published in 2005
  – originally considered as Option G of ECC
  – still on first edition of TSC, unlike ECC and PSC
  – has its use exceeded expectations?
  – few alternative forms - ICC Term Version, JCT Measured Term Contract (2011), GC/Works/7, Term Partnering Contract (TPC)
  – endorsed by BIFM in 2013
Overview of TSC

• Current use
  – public sector: central and local government, education, health, housing associations
  – regulated industries: aviation, nuclear, water
  – charities
  – private sector?

• Value
  – from £100k (usually TSSC) to £50m+ per annum
  – over £2bn in London housing maintenance contracts
Overview of TSC

• Duration
  – up to 4 years when used as a framework
  – up to 15 years when set up as main FM contracts
  – commonly between 5 and 10 years

• Range of use
  – building, engineering and grounds maintenance
  – highways maintenance
  – property management
  – total facilities management
Overview of TSC

• Range of use
  – British Museum
  – DfT Highways Maintenance Efficiency Programme
  – Department of Finance and Personnel NI
  – Lincolnshire County Council
  – Liverpool John Moores University
  – Magnox
  – Mersey Care NHS Trust
  – Ministry of Defence, Defence Infrastructure Organisation
  – Ministry of Justice
  – National Library of Scotland
  – Sellafield
  – Springfields Fuels
Key observations

• use heavily weighted towards public sector
• Service Manager usually part of the client organisation
• do see inappropriate use of TSSC and TSC
• cost model in Option A or C is frequently amended: why is this?
• low levels of contract management
• annualised budget regimes for many Employers
• multitudes of monthly invoices
• 10% mark-up: the accepted norm?
TSC strengths

• Arise from normal NEC strengths
  – programming and planning – but rarely adopted fully
  – concentration on making decisions in a timely manner
  – sorting issues and problems proactively rather than reactively
  – a clear definition of roles
  – flexible: encourages wide use across the whole spectrum of hard and soft FM services
  – driving improvement in industry!
Common issues and themes

- The differences between the TSC and ECC not widely understood by industry
- Its very flexibility means that it is a generic contract – and considerable attention is needed to operational detail
- A lack of engagement in advance with the way it works financially
- Impact on operational delivery not fully appreciated prior to procurement
Common issues and themes

• Contract training often comes late in the day
• Confusion on the order process
  – instructions vs Tasks
  – the lack of any order process
• Similar issues with change management
  – compensation events vs variations
• Mix and match of prices and costs
• Use / misuse of performance specifications
• Plethora of Z clauses!
Making it work – issues and solutions
Making it work – issues and solutions

- Contract strategy – Options A, C and E
- Practical issues with Secondary Options
- Communication
- Instructing work
- Assessing amounts due
- Managing variations rather than compensation events – or are they the same?
- Assessing the cost of change
- Terminating for poor performance
• How it works will often depend on specification
• Output performance specification leads towards lump sum, fixed price view
• Input specification, with call off orders, leads to remeasurement approach, with no guaranteed total of the Prices
• How can you evidence good value with the quantity of work undefined?
• How do you incentivise the Contractor under an Option A contract?
• Do we need to?
• Are KPIs the answer?
• Remember, no penalties
• Is the definition of Defined Cost adequate for multi-million contracts?
• Is there a place for a TSC “Schedule of Cost Components”?
• Difference between ECC and TSC assessment, and therefore cashflow, catches Contractors out
Option C – the Price

- Defining target can be very difficult, especially with input specification approach
- Setting the pain/gain share is even more of a “dark art” than with ECC
- Many Employers require annualisation of accounts
  - they can accept minor year end adjustments but
  - cannot accept continuous annual target adjustments
Option X1 - Inflation

- Standard NEC approach – adjust prices at time of payment
- This is not the industry standard
- Most favour shared risk with prices on the Price List adjusted annually
- Real difficulty in determining the inflation index to use on long contracts
Option X2 – Changes in the Law

• For long term contracts it is always wanted by the Contractors
• Sometimes offered
• Is there a middle approach?
Option X18 – Limiting liability

• Limitation of liability almost universally requested on large contracts

• How is it set? Who determines value? What is omitted?

• Remember to link to inflation
Clause 13 – Communication
– the heart of the contract

- “Service Manager” authority may be delegated to dozens of people – if only to order work
- Need for control, documentation and clear understanding of authority
- Decision making often constrained by financial limits – who can authorise what
- How do we manage diffused decision making
Clause 27 and X19 – Instructing work

- Different ways under the contract
- May not be needed – performance specification
- Service Manager’s instruction – clause 27?
- Call centre call-off?
- Task Order – X19
- So, how is it done?
- What is needed?
- What defines the difference?
Clause 50 – Assessing the amount due

• It is the Service Manager’s responsibility but must have information from Contractor

• The Service Manager may be assessing hundreds of “instructions”

• What should be the application for payment needed from the Contractor?

• How often? In what form?
• Instructing change – can we add / omit work?
• Is the change
  – a variation to an existing instruction or
  – a compensation event or
  – both
• How is the difference defined?
• What goes wrong if it isn’t?
• Usually an issue of budgetary control
• Is Defined Cost ever used?

• Does a schedule of rates circumvent the use of Defined Cost?

• How do you assess an event if most of the work has a rate?
Clause 91 – Termination reasons

• How can you terminate for “substantially failing to Provide the Service”?
• Use of KPIs?
• Ensuring performance is both specified and measured
• Other termination reasons seem particularly vulnerable to poor drafting
Conclusions

• Its use is more advanced in some sectors of industry – can this be widened?
• There is positive feedback from industry that the TSC is an improvement
• The wide range of use presents some challenges for us to overcome
• The nature of FM work means there is always work to do – there can be no off-the-shelf product
Thank you

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