



White Paper 2021-12

How to Change the Main Contractor on a Problematic Project

Struggling projects sometimes require a change of the main contractor. This is feasible although it will have consequences on the overall project performance. However, having the possibility of this choice requires a number of precautions from the project onset. In this White Paper we investigate in detail under which conditions swapping the main contractor can be possible and beneficial.

Dealing with a major contractor performance issue

Sometimes a contractor will deliver a much weaker performance than expected. Consequences can be significant in particular if there are possible interface issues with other contractors (who will of course claim for delay, possible disruption and change of sequence and thus additional cost waiting for the last contractor to deliver).

Apart from visible accidental issues, reasons can be either:

- The contractor is not competent for the scope,
- The contractor has not mobilised its best resources for the project, or is too busy and spread out thin (capacity issue),
- The contractor is playing some strategy to get more revenue from the project.

In case the contractor is not competent, this shows a failure of project definition and contractor qualification. There is no other solution than to replace it or to descope the part of the work on which the contractor is not relevant. There is no other way and any level of incentive will not miraculously make the contractor competent!

In case the contractor is competent but not mobilising its best resources, or playing some contractual game, this is an issue that needs to be taken up by governance. It can often be resolved by accepting some delay or extra cost, which at least can then be forecast. In extreme cases where the contractor tries to leverage the fact that it is the only viable solution for the owner, developing a plan to descope to another contractor – as a minimum as a threat – can be the only solution.

Unfortunately, in real life, poor performing contractors often end up being paid more than good contractors, at least once for a particular project, but it may be the only way for the owner to get the project finished. It is not moral, but on the long term the reputation of those contractors will catchup with them.

Why the owner must always keep options open and avoid being taken hostage

In some instances, the contractor will try to take the owner hostage by pushing it in a situation where the owner has

no other choice to proceed with the project than to go along with sometimes unreasonable demands from the contractor. The rationale is often that the pain for the owner in terms of lack of production and overall costs (such as interface costs with other contractors) will be much higher than the contractor requests so that it will comply. There is always some tension regarding possibly legitimate claims from the contractor related to project execution changes, however an escalating hostage situation can also happen in case of severe performance issues.

Descopeing a contractor is a rare occurrence but may be necessary depending on the circumstances. We have witnessed successful occurrences

For the owner, such a hostage-taking situation is to be avoided. Therefore, it must be in a situation not to be overly dependent on the contractor, and always keep options open as soon as there are hints that the situation may deteriorate. In addition to the moral aspects, giving in to the demands of the

contractor is in no way an assurance that the project will be finalised properly and it is only encouraging this kind of behaviour.

Switching major contractors in the midst of project implementation

From time to time, it is thus necessary for the owner to descope some part or an entire contractor remit and transfer the scope to another more competent or available contractor in the midst of project execution. This is a major event that has to be prepared carefully, if possible, by a dedicated discrete taskforce operating in parallel to the project implementation team.

This decision will require a lot of effort and be necessarily overall more expensive and time consuming than the original plan. However, it is sometimes the only way to complete the project in an acceptable span of time and budget.

This transition can only happen at certain definite milestones of project execution which correspond to a transition between activities. The descopeing must be carefully defined. For example, let the initial contractor engineer and procure, but replace it for the actual construction; or replace it at the end of engineering and hire a contractor for material procurement and construction. In projects where seasonal aspects impact construction it is even possible to swap contractors between construction seasons.

How to be in a proper situation for potential contractor de-scoping

In order for the owner to be in the best negotiation position in this occurrence, certain conditions need to be fulfilled:

- All contracts must include a termination for convenience clause that allows the owner to terminate at any time without justification, and even possibly a clause allowing deletion of any part of the scope,
- The owner must have in its own systems all documents and deliverables of the contractor to be replaced (hence the importance of one's own document and correspondence control – never rely on the contractor for this aspect),
- The owner must have the hand on project control to be able to simulate the impact on schedule and cost forecast,
- The owner must have an operating procurement function that is able to develop an invitation to tender for chosen alternate contractors and run the full cycle up to readiness for award.

Those aspects have to be setup properly from the beginning at bidding stage, and it shows how particularly dangerous it can be to delegate to contractors, core aspects of document control and project control.

The owner has to avoid hostage-taking situations.


We have witnessed such events of contractor switch in the midst of implementation which went quite favourably for the owner in the end. Therefore, such solutions can be implemented successfully and can certainly be included as part of feasible strategies. However, substantial effort from the owner is required to make such switches successful. It is an event where manpower reserves in the owner team or organisation come handy, and this is also a condition for success.

Summary

Descoping a contractor is a rare occurrence but may be necessary depending on the circumstances. We have witnessed successful occurrences, therefore it needs to be considered as a viable strategy. Certain conditions need to be fulfilled, in particular a good grip of the owner on its documentation and project control, so as to be able to pursue the project in good conditions. In general, it is important for the owner, from the beginning, not to place itself in a position to be taken hostage by the contractor. While de-scoping and re-awarding part of the scope will generate substantial work and have consequences on the project, it can be better than sticking with the original plan and this should always remain in the mind of the owner as an option.

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