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How to Adapt to an Increase of Compliance Assurance from Public Owners

We observe through our interventions an increase in compliance assurance from public and semi-public owners. This implies more formality in demonstrating compliance to requirements and the approval of possible deviations, as well as delays regarding the treatment of contractual claims. This compliance activity is not always properly planned and implemented, making it an increased burden on the teams.

In this White Paper we discuss the reasons for this evolution and what needs to be anticipated to minimise the impact on project execution.

The reasons for the increase in public actors' compliance assurance

Societal evolution requiring more accountability from public and semi-public institutions is the underlying reason for a significant increase of compliance assurance activities by the project owners. This increased assurance activity is however sometimes compounded by bureaucratic developments and the expectation by owner staff to avoid any possibility of blame. This leads to significant efforts to document decisions, develop and formalise objective assessment criteria for all important decisions to be taken on projects (from contract awards to the acceptance of changes, or any decision impacting schedule, cost or quality). This in turn often creates additional delays in taking decisions because of the need to document them and to ensure that the decision file is watertight and can support audit scrutiny; in addition, decisions are often expected to be taken as a group during steering committees to ensure proper alignment.

In the following it should be noted that this observation of an increase of compliance assurance and its consequences happens in public and semi-public owners irrespective of its level of technical and project management competency.

While there had always been a substantial difference in actual bidding and contract management approaches by public and semi-public owners in particular with regard to competition rules, an evolution towards increased compliance requirements is quite noticeable in the last few years in developed countries and marks an increased difference with private owners in the way projects are run. Compliance requirements do increase as well for publicly listed private owners but are generally not significantly affecting project execution.

Contractors that deal with both private and public owners need to account for increasingly different ways of working, leading to different approaches to cost and schedule management during the course of project execution, in particular with regard to performance issues and claims.

In some instances, too rigid (or the absence of active) contract management by public owners in a context of fixed price contracts may even result in contractors pulling back their bids during bidding stage, or contractors walking away from projects because of the inability to get compensated for what they believe are legitimate compensation events.

How to be prepared for higher compliance assurance

Increased compliance assurance leads to three main operational consequences during project execution:

- Documentation requirements increase in terms of quantity and quality, which requires some resource planning and organisational adjustments,
- Owner scope and specifications content and quality become even more important to ensure that contracts effectively reflect the need. Decisions on the right approach often results in delays in bringing projects at bidding stage. Specifications often result in a stricter and less flexible work framing for the contractor,
- Project decisions at owner level are often taken more slowly because of the need to get proper alignment, endorsement and compliance checks on owner side.

Increased documentation requirement

The documentation requirement should not be an issue if properly anticipated and budgeted for, although too often this aspect is underestimated at bid stage by contractors that may not have fully integrated the new levels of compliance assurance in public clients. The associated additional time for document production and review also needs to be included in the baseline schedule.

Stricter specifications

The two other aspects are more problematic because they reduce flexibility in dealing with unexpected events or deviations from the project plan, whatever the cause. As a consequence, and particularly in large projects - where

Compliance requirements for public owners have increased significantly over time and this has led to substantially increased hurdles for the proper execution of those projects

unexpected events can be expected-, this tends to significantly lower actual project performance and even increase the odds of dramatic project failures.

One particular issue to note is that because of increased compliance requirements, even lump-sum contracts may end up with much increased administrative burdens. The owner may also expect to check utilisation of resources and the actual execution of the contract thereby increasing its insight and in effect burdening the contractor with an excessive level of control far beyond what is customary for a lump-sum arrangement.

Longer decision-making

The fact that owner decision-making is delayed and often convoluted is an essential factor leading to lack of performance. Decision-making needs to be timely in projects; this is not always recognised by owners but is absolutely a major issue of concern in public owners. In the absence of decisions, the contractor could take the risk to proceed. However, it is not encouraged to do so since increasing compliance requirements do increase the contractual and legal risks associated with this option. Alternatively, the project stalls waiting for owner direction, and the contractor will claim for an extension of time.

In order to prevent those situations to happen to the maximum extent possible, owner major input and decision points need to be carefully identified in the contract and schedule, and those milestones need to be anticipated as much as possible. More minor technical inputs from the owner, including document review and comment, also need to be managed using clearly defined timeframes for such review cycles.

Experience shows however that delay in reverting for comments and in decision-making is a major hurdle for compliance-driven public owners.

Societal evolution requiring more accountability from public and semi-public institutions is the underlying reason for a significant increase of compliance

The need to prepare in advance

For all the aspects mentioned above, it is essential for the contractor to plan and prepare in advance a strategy to support compliance. This includes particular attention to agreeing with the owner how compliance is expected to be proven and setup the required systems and processes for timely collecting all the expected documentation and proofs. A requirements management system can often be a good solution to support those needs.

In addition, specific cost and schedule management strategies must be put in place, which may require a specific way of setting up project schedules so as to accommodate the specific compliance needs, for example in terms of owner response time on certain aspects.

All those aspects must be considered and strategized at the start of the project.

Summary

Compliance requirements for public owners have increased significantly over time and this has led to substantially increased hurdles for the proper execution of those projects. Increased documentation requirements, less flexible specifications and most importantly, longer and delayed decision-making, do affect projects. Those issues need to be taken into account and anticipated during project planning; however, they still may significantly affect projects particularly when unexpected events happen that require to rebaseline the execution plan. Contractors for public owners need to be fully aware of this trend and its implications and anticipate accordingly at project setup.

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