

Scottish Futures Trust

OPERATIONAL PPP CONTRACT MANAGEMENT: AN OPERATING MODEL

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1. EXECUTIVE SUMMARY

- 1.1. This paper describes the operating model that is in place for the contract management of PFI, PPP, NPD and Hub contracts in the education sector (the “**Education Contracts**”) and in the health sector (“**Health Contracts**”) in Scotland, and makes recommendations for further development of that model.
- 1.2. The model has been developed building on the support for operational contract management that SFT has been providing to procuring authorities in education contracts and in conjunction with Health Facilities Scotland (“HFS”) in relation to health projects.
- 1.3. The model has been in operation for almost 18 months and it is recommended that it develops and evolves further to cover an increasingly strategic role for SFT, the potential for sharing resources and exploration of new areas such as end of contract arrangements and by working together to focus on carbon reduction through adjusting lifecycle replacement.

2. INTRODUCTION

- 2.1. The objective of this briefing note is to describe the operating model for PPP projects in the health and education sector in Scotland that has been established to ensure that such contracts are managed well and that the services provided meet service needs and contractual requirements.
 - 2.2. The objective of effective contract management by Authorities is to ensure that:
 - the private sector is delivering the standard of service that the contract sets out, so that risk is appropriately transferred and understood;
 - the contractual remedies in the contract, particularly the deductions flowing from the payment mechanism, are applied transparently and accurately in normal course so that the Authority pays only for what is properly due;
 - the relationship with the private sector parties is conducted on a commercial footing, recognising the long-term nature of the relationship and with a mutual recognition and respect for each party’s rights and responsibilities;
 - changes are delivered to meet the authority’s requirements and timescales;
 - benchmarking, where included in the contract, is conducted effectively and provides a value for money outcome; and
 - the lifecycle replacement throughout the contract and ultimately handback arrangements are managed, so that when the Authority takes on responsibility for the facility at the end of the contract it meets the handback requirements. This ensures that the Authority does not inherit a poorly maintained building with ongoing liabilities over and above what would be expected having paid for the service during the contract period.
 - 2.3. Effective contract management ensures good service provision as well as shared knowledge and expertise across the public sector. SFT has taken this moment to reflect on how the current approach involving Regional Collaborative Groups of contract managers can continue to develop. Areas which SFT believe will becoming increasingly important in this context are: compliance with statutory and other similar requirements; handback arrangements (in respect of which SFT is publishing a separate paper); and energy efficiency and carbon reduction across facilities.
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3. BACKGROUND TO THE OPERATING MODEL

- 3.1. Since 2013, SFT has carried out reviews of over 30 Contracts and provided support to a number of Authorities on various issues as they arose.
- 3.2. In 2014 a specialist support team was formed as a collaborative team staffed jointly by SFT and HFS personnel to provide central support for operational health projects, under the governance of a Joint Board that includes representatives of Scottish Government, HFS, SFT and health boards.
- 3.3. As Hub and NPD projects approached their operational phase, bespoke training and readiness appraisals have been carried out to assist the Authorities in preparing to manage those Contracts. A number of workshops have also taken place jointly with the Authorities and private sector participants to assist in achieving a common understanding of the requirements of the Hub and NPD contracts and foster good working relationships going forward.
- 3.4. In 2018, the Authorities in the north region formed a working group that considered the potential for collaborative structures, and this led to the setting up of the first regional group covering both education and health Contracts (a **“Regional Collaborative Group”**). A further four Regional Collaborative Groups to cover education projects and two regional operational collaborative groups (**“ROCGs”**) covering health have now been operating for over 18 months. Annex 1 lists Authorities participating in all seven groups.
- 3.5. A sample remit (the **“Remit”**) for a Regional Collaborative Group is set out in Annex 2 and the ROCGs have adopted terms of reference based on the Remit and adjusted to reflect their governance arrangements. Further details of the work and experience of the regional groups to date are set out below.
- 3.6. Building on this work, and in the context of the progress to date of the Regional Collaborative Groups, SFT has reviewed its role and focus in the area of operational contract management and makes some recommendations for the further enhancement of the Regional Collaborative Groups. As noted below, the ROCGs are sub groups of a national PPP Practitioners Group within the NHS in Scotland and are accountable to the Joint Board so the development of those groups is for the Joint Board.

4. EXPERIENCE OF THE REGIONAL COLLABORATIVE GROUPS AND ROCGS

- 4.1. The Remit of the groups covers different elements of contract management which formed the basis of an initial workplan for the groups with Annex 3 listing the topics covered to date. The ROCGs agendas have been set by the specialist support team and have covered similar topics as well as health specific processes and guidance. An important item on each agenda has been to hear from members issues that are currently of concern so that views can be shared, and issues resolved. Issues of common interest are then shared with the other groups.
- 4.2. Following discussions across the regional groups a number of templates and issues notes have been circulated to assist in ongoing knowledge and capacity building and to take account of the change of Authority’s contract management personnel over time. To assist this process going forward, the north Regional Collaborative Group recently decided to set up a dedicated shared space/portal and file structure to share knowledge, systems and tools, with support from SFT. It is envisaged that this would then be rolled out across the other groups.

4.3. There are numerous examples of positive outcomes from the discussions that have taken place within the Regional Collaborative Groups and ROCGs and also work by SFT and the specialist support group with individual Authorities and at all of the groups the members have confirmed the usefulness of the groups and that they should continue.

5. OPERATING MODEL

5.1 Model for Education Contracts

By way of illustration, the operating model for Education Contracts is as shown on the following diagram.



The role at each level is as follows.

5.2 Strategic Level

In relation to education projects, SFT's role is to

- act as a centre of excellence for PPP contract management;
- support the Regional Collaborative Groups
- focus on strategic issues and in particular:
 - end of contract and handback issues; and
 - energy efficiency and carbon reduction measures in projects particularly through the use of changes to lifecycle replacement;
- actively participate as a joint member of the NHS specialist support team;
- provide a cross Scotland view of issues and act as a conduit for communication among the Regional Collaborative Groups and the ROCGs;
- provide support on individual projects as appropriate and resources allow;
- take a strategic approach to its relationships with the private sector parties including investors, MSA providers and FM providers; and
- continue to provide training for participants.

5.3 Regional Level

The Remit of the Regional Collaborative Groups set out the focus of their work, namely:

- jointly to develop common systems and processes in a structured manner, across a range of contract management activities and issues applicable to NPD, Hub and PPP contracts (with adjustments being made to reflect the different contract forms) and taking account of the elements of work listed in Appendix 3 of the Remit;
- to share knowledge and experience of good practice in a focussed way in the context of live examples from their respective projects;
- to be supported by the SFT operational PPP team through which it will share issues ideas and experience with other collaborative groupings;
- to develop and implement a workplan annually;
- to meet every two to three months;
- to work together on common issues and, across geographies as appropriate, with colleagues who have common private sector providers;
- to develop skills with increased confidence in their contract management approach;
- to take a consistent approach to private sector counterparties;
- to allow practitioners to develop specialisms within their role; and
- to collate benefits arising from the working of the Forum.

We would recommend that:

- participants take a more active role in leading the groups and that a rotating Chair be introduced;
- Authorities explore the potential for increased sharing of resources to address issues that some Authorities have had in relation to sufficiency of resource and also to lever the potential for specialisation (on issues such as benchmarking and Variations) at a regional level.
- participants explore ways of optimising working on issues that apply across regional groups, for example, involving the same private sector counterparty or FM provider and so enhancing a consistent approach.

5.4 Project Level

At project level the contract management of individual projects and the relationship at an operational and senior level with private sector counterparties and FM providers takes place. This includes dealing with all of the contract management elements listed in the elements listed in Appendix 3 of the Remit, though as noted above we recommend that dealing with some elements at a regional level should be explored.

The level of resource and access to specialist technical assistance within the Authority is important, as is the continuity of knowledge transfer and sustainability of the Authority's resource, linked to the potential for resource sharing.

The participants benefit from ongoing participation in the Regional Collaborative Groups and can apply the knowledge and tools acquired through the groups to their individual projects.

6. SPECIALIST SUPPORT TEAM AND ROCGS

- 6.1. The ROCGs are sub groups of a national PPP Practitioners Group within the NHS in Scotland and are accountable to the Joint Board so the development of those groups is for the Joint Board.
- 6.2. The work of the specialist support team and ROCGs in health projects is similar to that which SFT and the Regional Collaborative Groups do in relation to education projects and there is ongoing sharing of knowledge and experience across the two sectors. It is envisaged that in the north, the health boards will continue to participate in the north Regional Collaborative Group and to feed back to the Joint Board and to the PPP Practitioners' Group.
- 6.3. The ROCGs have benefited in particular from access to subject matter experts, such as relating to SCART, engineering and energy as a central resource and have been considering coordinating procurement for external advice.
- 6.4. The remit and focus of the specialist support team is a matter for the Joint Board and takes account both of work that has and will be done in the education sector and the particular requirements of the health sector.

7. CONCLUSION

As will be seen from the contents of this paper substantial work and progress has been made to date in the field of contract management of the Contracts through a collaborative approach among public bodies.

**ANNEX 1
COLLABORATIVE GROUPS**

Regional Collaborative Groups

North	West	South West	South East	East Central
Aberdeenshire Council	City of Glasgow College	Ayrshire College	East Lothian Council	Angus Council
Aberdeen City Council	East Dunbartonshire Council	Dumfries & Galloway Council	Midlothian Council	Clackmannanshire Council
Argyll & Bute Council	East Renfrewshire Council	East Ayrshire Council	Scottish Borders Council	Dundee Council
Inverness College	Glasgow City Council	North Ayrshire Council	The City of Edinburgh Council	Falkirk Council
NHS Grampian	Inverclyde Council	North Lanarkshire Council	West Lothian Council	Fife Council
NHS Highland	Renfrewshire Council	South Ayrshire Council		Perth & Kinross Council
NHS Orkney	West Dunbartonshire Council	South Lanarkshire Council		Stirling Council
Moray Council				
Shetland Council				
The Highland Council				

ROCGs

NHS Ayrshire & Arran	NHS Fife
NHS Dumfries & Galloway	NHS Lothian
NHS Forth Valley	NHS Tayside
NHS Greater Glasgow & Clyde	SNBTS
NHS Lanarkshire	

**ANNEX 2
SAMPLE FORM OF REMIT FOR COLLABORATIVE FORUM**

Collaborative Forum

Operational Contract Management for PPP/NPD/Hub Contracts

Remit

a) Background

The participant authorities within the * region have agreed to form this collaborative forum in relation to the contract management of operational revenue funded contracts, encompassing those concluded under PFI, PPP, Hub and NPD programmes.

The participants agreed that the objectives that the Forum will promote are those listed in Appendix 1 and that key success factors are those listed in Appendix 2.

The key elements to be carried out by an authority in contract managing a revenue funded contract are listed in Appendix 3.

b) Participants

The participants in the forum are the following Authorities:
[Participants listed]

and the Forum will be supported by the operational PPP team of Scottish Futures Trust.

c) Collaborative Forum : Remit

The remit of the Forum is for contract management practitioners:

- jointly to develop common systems and processes in a structured manner, across a range of contract management activities and issues applicable to NPD, Hub and PPP contracts (with adjustments being made to reflect the different contract forms) and taking account of the elements of work listed in Appendix 3;
- to share knowledge and experience of good practice in a focussed way in the context of live examples from their respective projects;
- to be supported by the SFT operational PPP team through which it will share issues ideas and experience with other collaborative groupings;
- to develop and implement a workplan annually;
- to meet every two to three months;
- to work together on common issues and, across geographies as appropriate, with colleagues who have common private sector providers;
- to develop skills with increased confidence in their contract management approach;
- to take a consistent approach to private sector counterparties;
- to allow practitioners to develop specialisms within their role; and
- to collate benefits arising from the working of the Forum.

[In addition, * have agreed to explore further the opportunities and benefits of sharing resource across projects to improve efficiency and resilience.]

d) Senior Personnel Involvement

By way of governance oversight, the group of senior personnel responsible for contract management within their authorities should meet regularly, every six or nine months to receive feedback from the operation and benefits accruing from the group's activities and to discuss any developments that could be made.

e) Benefits

The anticipated benefits of the collaborative Forum are

- a better standard of service across the region;
- improved management on the private sector's part;
- the potential to make better use of the resources available on a regional basis;
- the potential for making savings or other efficiencies, particularly on PPP contracts;
- utilisation of effective common systems and provide a consistent approach to the private sector;
- better and more service focused monitoring tools; and
- greater collaboration, improved transparency and overall better value for money

Appendix 1 – Objectives of Contract Management

The objective of the approach to be promoted by the Forum is that is that authorities with revenue funded contracts in the health and education sector should effectively manage their contracts:

- so that they are delivering the standard of service that the contract sets out so that risk is appropriately transferred and understood;
- to this end that the contractual remedies in the contract, particularly the deductions flowing from the payment mechanism, are applied transparently and accurately in normal course so that the authority pays only what is properly due;
- the relationship with the private sector parties is conducted on a commercial footing recognising the long-term nature of the relationship and with a mutual recognition and respect for each party's rights and responsibilities;
- to deliver savings (on legacy PPP projects) or other efficiencies in respect of the contract or the facilities;
- changes are delivered to meet the authority's requirements and timescales;
- benchmarking, where included in the contract, is conducted effectively and so to provides a value for money outcome; and
- the lifecycle replacement throughout the contract and ultimately handback arrangements are managed so that when the authority takes on responsibility for the facility at the end of the contract it meets the handback requirements. This ensures that the authority does not inherit ongoing liabilities over and above what would be expected having paid for the service during the contract period.

Appendix 2 – Key Success Factors

The participants have agreed that the following factors are key to achievement of the objectives that the Forum will promote:

- clear accountability, responsibilities and relevant risk transfer requirements both within the public bodies and between the public bodies and the private sector parties (Project Co, Investors, MSA providers, FM provider and construction contractor)
- all documentation in place and accessible in an electronic and searchable form;
- transparent understanding of the contract documents, shared by the public and private sector parties;
- effective contract management and implementation of best practice and statutory compliance recommendations (by the public-sector bodies and through the MSA providers);
- sufficient resource on the public-sector side that has capacity and is sufficiently capable and knowledgeable;
- commercial understanding on the part of public sector bodies;
- commitment at a senior level to apply the contract to achieve the objectives that the Forum will promote and ensuring that all public and private sector stakeholders are engaged and understand the relevant escalation process; and
- effective succession planning within public sector.

Appendix 3 – Elements of Contract Management

The key elements to be carried out, and issues to be dealt with, by an authority in contract managing a revenue funded contract are as follows

- “Forensic” review of helpdesk records and monthly reports.
- Monthly meetings with SPV/FM provider
- Resolution of any issues by discussion with the project company on monthly basis
- Retention of disputed amount
- Review, sign off and payment of invoices
- On site monitoring of non compliances and logging on helpdesk
- Confirmation that events have been resolved when completion is noted on helpdesk
- Periodic inspection of sites : hard fm and, where appropriate, soft fm audits.
- Review of PPM and lifecycle annual and five yearly plans
- On site inspection/survey to compliment that review
- Arranging access to individual areas for PPM and reactive repairs
- Statutory compliance confirmation
- Monitoring on monthly basis against PPM and statutory compliance plans
- For health projects, dealing with health specific issues
- Energy consumption and potential reductions
- Energy sharing mechanisms in PPP contracts
- Insurance sharing in PPP contracts
- Benchmarking in PPP contracts
- Submission of Change/Variation requests, negotiation of pricing and any contract changes and management of these requests
- Changes to method statements
- Approval and updating of protocols
- FOI and ad hoc requests
- Handback process
- Strategic engagement with the project company, investors and funders
- Issue of Warning Notices or Termination notices
- Other issues raised by participants or SFT

ANNEX 3

TOPICS COVERED BY REGIONAL COLLABORATIVE GROUPS

- Remit
- Topics from Participants: current issues: recurrent agenda item
- Forensic review of monthly reports, including helpdesk records
- PPM/Lifecycle Replacement
- Variations
- Feedback on lifecycle/handback pilots
- Help Desk Protocol/Call Classification
- Malicious Damage
- PPM follow up (FM65/67 in NPD/Hub and tracking in PPP projects)
- Authority Step-in – Implications, risks and wider considerations
- Developing the collaborative groups
- Lifecycle/PPM annual reviews
- Potential for energy saving and carbon reduction through lifecycle : pilot projects
- Defects rectification - Lifecycle v Change
- Water quality/draft headline water quality policy review
- Communication protocol between forum meetings