

2 Parties, Roles and Interests in International Projects

Abstract. Chapter 2 describes the parties, their interests, their responsibilities and their relations in international projects. It focuses on the parties' responsibilities and the related scope of work and services that totally should match the needs of the project implementation until successful commercial operation has been achieved.

As all international projects are implemented by several parties, the distribution of responsibilities and the plan on how to implement them in a coordinated manner is essential for preventing conflicts. In this respect knowledge about and understanding of the parties, their interests and their representatives play an important and underestimated role. This also includes the relation between the project and the local authorities in the project country.

Therefore a conflict contingency plan is recommended. It highlights the potential conflict areas of the project and prepares the parties for handling disagreements that can evolve into a conflict, thereby preventing the conflict. This Chap. 2 is also an introduction to Chap. 3 about the drafting of the project contract.

Key words: Project Parties; Parties' Interests; Parties' Responsibilities; Scope of Work; Owner (Client, Employer); Quality, Health, Safety & Environment (QHSE); Project Country; Local Authorities; Laws, Regulation, Decrees and Standards; Main Contractor; Main Process Supplier; Conflict Contingency Plan; Contracting Structure; Project Plan

2.1 The Parties

Turner (1993) has identified and classified the parties involved in a project in the following general manner:

- a. "the parent organization (the owner of the facility),"
- b. "the users, who will operate the facility"
- c. "the supporters, who will supply the resources to undertake the work"
- d. "the stakeholders, who are affected by the project"

Turner (1993) uses the Channel Tunnel project as an example of the parties involved in an international infrastructure project as shown in Table 2.1 below.

During the development, decision making and approval stages of major infrastructure or industrial projects conflicts of interests will often appear regarding environmental issues. These are outside the scope of this book because some of the parties are not contract parties but regulatory and political players.

Table 2.1. The parties involved in the Channel Tunnel project according to Turner (1993)

Role	Position	Group
Owner		Eurotunnel ; its shareholders
User	Operator	Eurotunnel
Manager		Trans Manche Link
Supporters	Financiers, Subcontractors, Project auditors, Suppliers	Banks world-wide, Partners in TML consortium, W.S. Atkins, Brittish Rail and SNCF
Stakeholders	Buyers, Competitors, Com- munities	Travelling public, hauliers, Cross-Channel fer- ries, London, Kent, Pas de Calais

International projects are normally implemented by a number of contracts thereby involving many contract parties bound together by a contracting structure. There are two basic types of contracting structure: A. “The main contract type” and B. “The parallel contracting by trade type” (i.e. civil, building, mechanical & electrical, refrigeration, heat, ventilation & air conditioning etc.) as illustrated by Figs. 2.1 and 2.2.

Everyone involved in a project in any major role needs to have an understanding of the parties, their objectives, their interests, their organization, their representatives and their expected behavior in order to provide the best performance during project implementation. This involves a great number of negotiations and compromises – especially for the representatives of the Owner, the main contractor and the main process supplier.

It is very important that all parties have a clear picture of this distribution of work and responsibilities in their mind and hopefully all are seeing the same picture and respecting it.

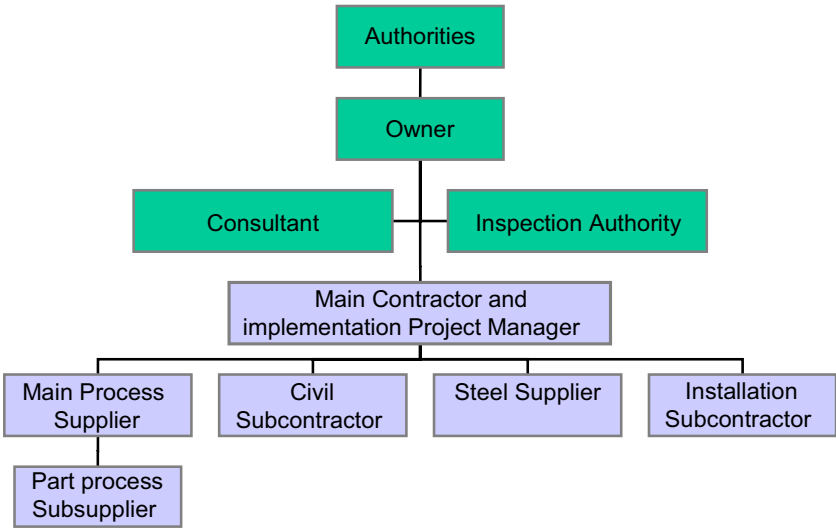


Fig. 2.1. Contracting structure with main contractor

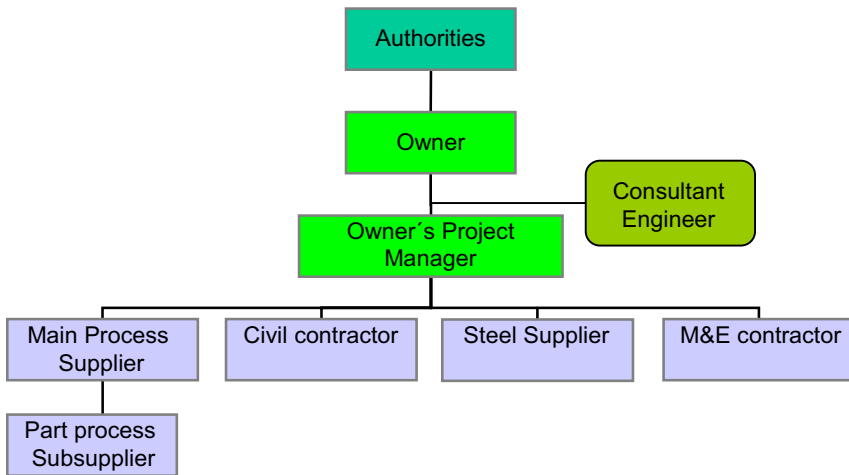


Fig. 2.2. Contracting Structure with parallel contractors

2.2 Distribution of Responsibilities Between Contracting Parties

The total scope of work and services necessary for the implementation of the project has to be divided between the suppliers, contractors and the Owner in a way that the total sum of the work packages equals the work necessary for the implementation of the project. Such a control of the distribution of the scope of work is recommended at the start of each project stage and should be performed jointly by the owner and the main contractor. Tables 2.2 and 2.3 below illustrate the typical distribution of responsibilities in the project development stage and in the implementation stages of engineering and construction.

In major international projects the relation between the Owner/the User on one side and the Main Process Supplier/Main Contractor on the other is of paramount importance.

Table 2.2. Distribution of scope of work in principle between Owner/User and Main Contractor/Main Process Supplier during the Project Development Stage

Task	Owner/User	Main Contractor/Main Process Supplier
Basic Concept	Main task holder	Advisory role
Process design	Defining input and wanted output	Main responsibility
Location	Main task holder	Advisory role/Expert role
General lay out	Main task holder	Expert role
Government Permits	Main task holder	Advisory role
Basic Work Breakdown Structure	Approval	Expert role
Contracting Structure	Approval	Expert role
Control of division of scope of work	Approval	Expert role

Table 2.3. Distribution of scope of work in principle between Owner/User and Main Contractor/ Main Process Supplier during the Project Implementation Stages

Task	Owner/User	Main Contractor/Main Process Supplier
Effective Contract	Main task holder	Might also be involved
Government Approvals	Part task holder	Part task holder
Engineering	Approval	Main task holder
Engineering Approval	Approval	Main task holder
Test of equipment & material	Approval	Main task holder
Site ready for construction	Main task holder	Approval
Site Mobilization	Approval	Main task holder
Quality of installation	Approval	Main task holder
Progress Measurement	Approval	Main task holder
Installation	Approval	Main task holder
Pre-commissioning check out	Approval	Main task holder
Raw material fulfils spec.	Main task holder	Approval
Commissioning & Training	Approval	Main task holder
Test run	Approval	Main task holder
Acceptance	Approval	Main task holder
Warranty	Main task holder	Main task holder
Operation & maintenance	Main task holder	Approval

During the project implementation stages this relation will normally come under heavy stress due to the number and seriousness of issues to be dealt with and agreed between the parties. This stress can cause disagreements to become conflicts. Therefore all what reasonably can be done to prepare and minimize this stress handling will be beneficial from a conflict prevention point of view and from an overall project result point of view! Most projects have “room for improvement” re-



Fig. 2.3. Grain terminal and storage plant in Eastern Europe

garding the distribution of scope of work, definitions of limits of supply and work, equipment specifications and functional specifications at an early stage. These areas cause most of the disagreements and of the conflicts in international projects. Efforts to reduce these causes before contract drafting and negotiations are recommended.

Another increasingly important relation is the one between the Owner/User and the Main Process Supplier/Main Contractor on one side and the local Authorities on the other. Regulatory matter is often becoming a real critical project issue symbolized by the abbreviation QHSE (Quality Health Safety Environment). This aspect is further discussed in 2.5 below.

2.3 Analysis of Contracting Parties and Their Interests

We recommend that each contract partner spends some time on mapping and analyzing information about the other party and its key representatives before project implementation starts. The effort and costs involved are marginal compared to what is spent once a major conflict has broken out, and it helps preventing such break outs! The checklist in Schedule 2.1 gives the main points of such an analysis.

2.4 Conflict Contingency Plan

The Project Plan or the project implementation manual – that the Project Manager and his team update or prepare for the project start-up meeting – should contain a chapter regarding conflict prevention and resolution including procedures and instructions that all contractors' staff involved should follow. This conflict contingency plan can be built-up on the basis of the following main points:

1. Careful reading of the official "Project Description" in order to understand the project objectives, scope and parties
2. Very careful reading of the "Contract with all its appendices" in order to be familiar with the parties' responsibilities and the contractual procedures
3. Understanding and interpretation of the contracting structure and the contractual procedures for the relations between the parties (contractual procedures are the descriptions of the dynamic interaction between the contract parties e.g. design approval procedure or variation of scope of work procedure etc.). Company rules of delegated authority to be respected.

2.5 Laws, Regulations, Decrees and Standards Governing the Contract

The project and the work to implement it (especially the work carried out in the project country) are subject to the Laws of the project country. The Laws include

Schedule 2.1. Checklist for analysis of project parties and their interests

- A. Standard company information as annual accounts and registration information
 - 1. Group level information
 - 2. Company level information
 - 3. Business Unit information
 - 4. Department information
 - B. Standard company information required
 - 1. Annual report and company organization chart
 - 2. Company and Management registration and CV's
 - 3. Credit information (credit-worthiness)
 - 4. Reference list – projects, clients and subcontractors/subsuppliers
 - C. Key Persons
 - 1. Senior Management level
 - 2. Management level including Project Management
 - 3. Key professionals
 - 4. Advisers working closely with one of the parties
 - D. Areas of special attention
 - 1. Financial situation generally
 - 2. Annual Accounts from last 3 years and Accounting practices
 - 3. Project references
 - 4. Personal & Professional references and personal contacts
 - E. The Role of the Consultant and the Inspection Authority
 - 1. Stipulations in the contract
 - 2. Professional competences
 - 3. Terms of reference
 - 4. Duration of assignment
 - F. Relations between Main Contractor and the subcontractors
 - 1. Type of subcontract
 - 2. Back-to-back stipulations
 - 3. Procedures involving subcontractors
 - G. FIDIC Contract Conditions: The Engineer
 - 1. Stipulations in the contract
 - 2. Professional competence
 - 3. Terms of reference
 - 4. Duration of assignment
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Regulations, Decrees and Standards issued by the Authorities of the project country. Reference is made to Chap. 3 discussing taxes and duties and Chap. 8 dealing with local Technical Decrees and Standards.

In case of any contradiction between the Contracts of the project and the Laws etc. of the project country the latter has priority. If a solution can be found that fulfils both, it will generally be the one preferred by the bureaucrats, but not necessarily by the contractor who often has to bear the extra costs. Here is a potential conflict area.

Especially turn-key contractors have to investigate and familiarize themselves with the Laws, Regulations, Decrees and Standards governing the Contract, because

turn-key contracting can be compared to setting up a local company and liquidating it again after project completion.

Local income tax of expatriate staff working in the project country is becoming an increasing focus area by local tax authorities! And this also goes for local Value Added Tax (VAT) and company profit taxes etc.!

Extra project costs due to insufficient planning and preparations in the area of local Law and Authorities are generally among the big contributors to project budget overrun!

2.6 The Authorities of the Project Country

Basically the project needs three types of approvals from the Authorities of the project country:

- A. Approvals to establish, build and operate the project prior to start of engineering and construction – this involves the following investigations and approvals:
 - Basic process design and plant lay-out necessary for the approvals
 - Soil investigation
 - Plant location approval
 - Infrastructure and utilities approval
 - Environmental impact assessment
 - Environmental approval
 - Construction permit
 - Industrial production license
 - Import license for equipment etc.
- B. Permit to operate the plant as built correctly in accordance with the approvals prior to project start:
 - Approval of Safety & Health instructions as part of the Operational Manual and of the Maintenance Manual
 - Approval of environmental protection measures, controls and instructions
 - Approvals of fire prevention documentation and training, fire fighting procedures and training as well as safety instructions in case of explosions
- C. Plant operation compliance with the project approvals:
 - Safety, Health & Environmental instructions and proper plant documentation, training and compliance inspections
 - Fire prevention, fire fighting and explosions safety instructions and proper plant documentation, training and compliance inspections

It is our advice to prepare and perform the necessary investigations, engineering and planning up front and if necessary use of external professional services as a supplement to one's own internal preparations (see Table 2.4). The Owner should be main task holder and overall responsible for this activity. The Owner can delegate work to consultants, so can process suppliers and contractors but the overall responsibility remains with the Owner, Contractor and Process Supplier!

Table 2.4. Recommendations regarding handling of authorities in the project country

No. of the activity	Activity recommendation	Remarks and notes
1.	Pre bid desk study of relevant Laws	Necessary but not sufficient
2.	Pre contract field study of relevant Laws, Regulations and Standards	Very critical – expert assistance needed in most cases
3.	Establishing local set up to deal with Authorities	
4.	Establishing procedures for import of equipment and materials	
5.	Establishing procedures for work permits	
6.	Establishing procedures for accounting, declaration and payment of local taxes	
7.	General recommendations	Play it the bureaucratic way; Documentation as required; Contractor should take initiative

2.7 Other Players

- A. Local banks
- B. Non Governmental Organizations (NGO's)
- C. International banks
- D. International Finance Institutions (IFI's) as International Finance Corporation (IFC), African Development Bank, Deutsche Entwicklungs Gesellschaft (DEG) etc.
- E. Foreign Governmental Aid Organizations

The banks, IFI's and aid organizations might indirectly be contract partners via the finance agreement. Reference is made to Felding et al. (2002)

2.8 Conclusion

Conflict between the parties can be prevented or handled if there is a better knowledge and understanding of the other's situation and interests.

A careful distribution of the responsibilities and duties in the project between the parties must be made meticulously and documented already in the project development stage. It must be based on the project's total requirements and on the parties' capabilities and not on wishful thinking or cost hiding exercises. It must also take the regulatory requirements into consideration. These requirements increase the complexity of projects and lead to a higher risk of disagreements and conflicts. The countermeasures are: preparations, dialogue, more preparations and more dialogue and finally agreements between the parties!

More emphasis on these aspects before and during preparation and implementation of contract drafting and negotiations is recommended as described in the next Chap. 3 and will lead to better contracts and thereby reducing the risk of conflicts.

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