

Symposium on Formal Relational Contracting in the public sector: a practice frontier and research agenda

Summary Note

On 13 September 2023, we gathered in Oxford for the inaugural meeting of a group of academics and practitioners interested in exploring the potential for a new approach to public contracting. The state increasingly relies on contracted independent provider organisations to provide a wide range of public goods and services, from stationery and landscaping to aircraft carriers and homelessness reduction programmes. However, often (and particular in the case of more complex contracts), these partnerships between government and private provider organisations fail to deliver public value. Recognising this, we sought to explore how bringing focus to both the formal and relational elements of contracting might help to better serve the public interest. Framing our discussion around i) the contract, ii) negotiations and collaboration, and iii) public law and accountability, we explored several key themes, detailed below. These, we hope, will provide the foundation for an ongoing conversation around how a formal relational approach to public sector contracting might lead to better contractual outcomes.

Key themes

Contract design

The way in which contracts are designed can have a significant impact on the behaviour of contracting parties. In some policy areas, contracts can be overburdened with detailed rules, with some contracts running over 2000 pages for a relatively small charity delivering services to a small number of people. An alternative approach to contract design begins by detailing the ‘rules of the relationship’, which emphasise norms designed to ensure a continued alignment of interests. These include a shared vision, broken down into clear objectives; guiding principles; governance structures; and rules for ending the relationship. This is followed by the ‘rules of the business’, which focus on the more traditional substance of what is being contracted for, and is read “through the lens of relationships”.

Governance

Governance in particular emerged as a key feature to maintaining an ongoing productive relationship between parties. Here we focused on governance as a convening space for problem solving involving several parties. It is important to identify where the contract is incomplete and where the uncertainty lies, and fill these gaps by identifying the decisions which need to be made, and by whom. We considered the skills and capabilities necessary for staff and asked about the appropriate term in post for key personnel – long enough to nurture relationships but with the need for protections against entryism or capture. There need to be different levels of governance and specific rules for changes in personnel to mitigate issues of leadership discontinuity, as well as sanctions for breaking governance rules. These features support more stable relationship structures and help to ensure the parties, as well as their wider organisations, maintain an ongoing commitment to the contract.

Procurement

Questions were raised around the potential for current procurement regulations and practices to support relational contracting. Given rules emphasise evaluating the bid and not the bidder, how can governments select partners who will buy into this way of working? While there might be some ways to signal relational norms or the desired approach under current rules, more radical changes might be required. These could involve specifying the desired qualities of providers and their past performance, although the latter requires finding objective performance criteria, which often proves challenging.

Risk

The state's reaction to failure often involves the introduction of more rules, but this limits professional discretion and promotes risk aversion. Public procurement practices and the contracts written by government are driven by efforts to minimise risk and corruption, which leads to rigidity and efforts to specify every possible outcome. Often, this creates a disconnect between the objective of a programme and what gets written into the contract, exacerbated by a disconnect between the 'acquirers' working in procurement and the 'operators' who design and manage programmes. However, a more relational approach may better describe, manage and mitigate risk, by taking joint ownership rather than seeking to transfer it away. This requires unity of understanding and unity of effort, bringing everyone around the table through governance forums, and having everyone put in effort to make decisions and take action.

Transparency

Even if risk might be better managed through relational working, concerns around corruption will remain, and indeed may be enhanced by closer partnership working. However, formal relational contracts done right ought to provide clarity around relationships. A default towards transparency in public contracts would help to mitigate corruption concerns. While commercial sensitivity is often raised as a barrier to transparency, they should be framed as public (rather than commercial) contracts which ought to be furthering public value, with an associated commitment to publish their results.

Building collaborative systems

Ultimately, individual contracts for public programmes are embedded in a wider contracting ecosystem. However, governments often lack knowledge of the subcontracted supply chain beyond their direct contractual partnerships, and often a key stakeholder – citizens using services – are not party to any contract. There is a need to get the multi-party architecture to talk to each other within an appropriate framework beyond bilateral contracts. This may be supported by better use of data, with parties undertaking a process of "benchlearning", bringing together data and learning about how things are working and what could be improved.

Participants

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