

**A CONCEPTUAL CONTRACT FRAMEWORK
FOR RESEARCH TO DEVELOP A CONTRACT FRAMEWORK FOR OUTSOURCING
OF FACILITIES MANAGEMENT IN MALAYSIAN HOSPITALS**

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ABSTRACT

This paper aims to identify the contract framework for outsourcing of facilities management of hospitals in Malaysia. The scope is the facilities engineering management services. The focus is the operation stage of the outsourcing project. It comprises the service start-up, implementation, on-going service development, review and project close. The framework is identified from the practices of public and private hospitals in Malaysia, and literatures. The public hospitals use a more comprehensive contract due to the big number of hospitals involved, scattered all over the country. There are those that have existed for more than 50 years. The comprehensiveness is to enable the client and consultant to manage, and the contractors and sub-contractors to deliver the large number hospitals specific required service levels. The private hospitals use a simpler contract, as the consultant is a subsidiary company. It stresses the contractors and consultant to follow the practice and procedures of the hospitals. However, both hospitals and the literatures describe the service start-up and implementation processes in more detail than the other three processes. This may imply that both processes have more issues to be managed; there are also more characteristics of requirements for good outsourcing contracts.

KEYWORDS

Outsourcing. Facilities Management. Hospital. Contract Framework. Users.

1.0 INTRODUCTION

Outsourcing is one of the resourcing strategies for facilities management. Organizations outsource to concentrate on the core business process. The outsourcing process comprises pre-transition, transition and operational stages. The operational stage comprises service start-up, implementation, on-going service development processes, review and project close (Reeves, 2001). The client-users-contractor relationships in an outsourcing transaction involve the social aspect and contract provisions. The latter operates on the terms and conditions of contract for success of the outsourcing transaction. This working paper therefore, aims to describe the framework for a research to develop a conceptual contract framework for outsourcing of facilities management. The conceptual framework will be developed from literatures, outsourcing practices of the public and private hospitals in Malaysia. The focus is on the operational stage as stated above.

2.0 THE ISSUES IN FACILITIES MANAGEMENT OUTSOURCING

A survey of the literatures in facilities management outsourcing showed researches have been carried out to study seven (7) aspects - the outsourcing practice, the outsourcing decisions, the reasons for outsourcing, the services outsourced, the satisfaction levels in outsourcing, the concerns about outsourcing and issues relating to the success of outsourcing as summarized in TABLE 1 below.

TABLE 1 – ISSUES RESEARCHED IN OUTSOURCING PRACTICE

ISSUES	RESEARCHERS	SPECIFIC ISSUES RESEARCHED
Outsourcing practice	Ekern (1997)	Outsourcing of non-educational services.
	Gribenas (1997)	Degree of outsourcing used.
	Buttleman (1998)	Degree of outsourcing used.
	Woolcock (1998)	UK current practice in outsourcing management.
	Mclvor (1999)	How companies carry out outsourcing process.
	Crane (2000)	Impacts of outsourcing on organization's culture.
	Yiannakas (2000)	Influence of outsourcing phenomenon.
	Marshall (2001)	Impact of organizational strategy, political manoeuvre and decision effectiveness on outsourcing process.
	FMLiNK & Encompass GlobalTechnologies (2002)	Various aspect of outsourcing practice.
Building Operating Management (2004)	Potential issues to impact facilities	

Outsourcing decisions	Goldstein (1993) Wertz (1997) Ekern (1997) Gilley (1997) Buttleman (1998) Flannery (1998) Park (1999) Gonzales (2001) Pittman (2003)	Outsourcing decision-making. Steps in outsourcing decision-making. Outsourcing decision-making. Determinants of outsourcing decision. Process employed when implementing outsourcing. Outsourcing decision-making. Effects of independent variables on outsourcing decision. Outsourcing decision factors. Decision-making process in outsourcing of campus service units.
Reasons for outsourcing	Gribenas (1997) Wertz (1997) Buttleman (1998) FMLiNK and Encompass Global Technologies (2002)	Reasons for outsourcing. Reasons for outsourcing. Motivations for outsourcing. Reasons for outsourcing.
Services outsourced	Wertz (1997) Agron (1997) Chandra (1999) FMLiNK and Encompass Global Technologies (2002) Accenture (2004)	Services outsourced. Services most often privatized. What services to outsource. Mission critical services outsourced and facility management functions outsourced. Functions outsourced.
Outsourcing satisfaction level	Owen (1994) Arthur Andersen and The Economic Planning Unit (1995) Frost (1996) Ekern (1997) Buttleman (1998) Piachaud (2001) FMLiNK and Encompass Global Technologies (2004) Accenture (2004)	The advantage exceeds the disadvantage in bundle-service contracting. Satisfaction level to outsourcers. Contribution of outsourcing to adaptation. Satisfaction level in non-educational services outsourcing. Satisfaction level. Cause and effect of outsourcing on organizational process. Savings from outsourcing. Satisfaction and performance to outsourcers.
Concerns about outsourcing	Wertz (1997) Gribenas (1997)	Concerns about outsourcing. Concerns about outsourcing.

	Buttleman (1998) Khalfan (2001)	Concerns about outsourcing. Issues, evidence and lessons in outsourcing in Kuwait.
Outsourcing success	DeHoog (1984) Chung (1996) Gilley (1997) Robinson (1998) Chandra (1999) Lee and Kim (1999) Mc Ivor (1999) Kern (1999) Nellore (2000) Jenkins (2001) Goles (2001) Pittman (2003) Davidson (2003) Goo (2003) Accenture (2004)	Conditions for success. Success factors of information system outsourcing. Performance measures. Failure to capture outsourcing efficiency. Conditions for Relationship Exchange Mechanism to superior performance. Effect of partnership quality on outsourcing success. Collaborative relationship reduces risks. Framework for effective relationship management. Role of specifications and contracts. Partnership qualities for outsourcing success. Client-vendor relationship and outsourcing success. Greater outsourcing success through Goldstein, Kempner and Rush (1993)'s outsourcing process framework. Inter-organizational learning in outsourcing. Success of outsourcing and relational aspects. Skills set to manage outsourcing and outsourcing approaches to maximize business performance.

From the literatures above, only Nellore (2000) conducted a study to link the success of outsourcing to the contractual ingredients of an outsourcing venture, the specifications and contracts. The others researched in outsourcing success from both the perspective of social and contractual relationships.

3.0 REQUIREMENTS OF AN OUTSOURCING CONTRACT FRAMEWORK

A contract relationship is based on the terms and conditions either agreed between the parties to an outsourcing or as determined by the client. The contract provisions describe the subject matter of the outsourcing contract; the responsibilities, rights and remedies of all parties to the outsourcing contract; the quality of the services to be performed by the contractor; the operational system, procedures and process including the supervision and monitoring aspects. Nellore (2000), in studying the role of specifications and contracts discovered that the latter is the agreements to ensure continuing supply of outsourced automotive components. Contracts also assist in the validation of specification, another major component of outsourcing contracts.

The following characteristics, identified by previous researchers, describe the requirements for an outsourcing contract framework. The development of the conceptual contract framework for the purpose of this research will be based on these characteristics.

**TABLE 2
CHARACTERISTICS REQUIRED
OF AN OUTSOURCING CONTRACT FRAMEWORK**

RESEARCHERS	CHARACTERISTICS IDENTIFIED
DeHoog (1984)	An effective evaluation system must be in place in order to monitor the contractor.
Chung (1996)	Flexibility and joint problem solving needed to be embedded in the contractual provision of outsourcing.
Goo (2003)	The success of outsourcing contracts depends on the relational aspects of the contracts.
Accenture (2004)	The parties to an outsourcing contract to use active governance to manage the relationship for its maximum performance. Outsourcers to define what they really want from the outsourcing arrangement at the outset
Vales (1998)	Outsourcing objectives are achieved when the outsourcer or client knows exactly what he is trying to accomplish.
Balakrishnan and Wernerfelt (1986) Joskow (1988) Williamson (1993) Ang and Cummings (1997)	The actual content of a good contract should vary according to the level of contractual hazards to align the outsourcing venture to the requirements of the client's business.
Kern, Willcocks and van Heck (2002)	A balanced contract is a characteristic of a good outsourcing contract.
Parkhe (1993)	The completeness of a contract determines the success of an outsourcing venture.
Saunders, Gebelt and Hu (1997)	The preciseness of cost and performance requirements is critical to the success of outsourcing and should be established from the outset and be clearly specified in the contract.
Gulati (1995)	A good contract helps the parties to organize their relationship towards the expectations set and the goals described – short and medium-term.

4.0 THE CONCEPTUAL OUTSOURCING CONTRACT FRAMEWORK

The relevant documents were studied, besides discussions with senior officers of both groups of hospitals. The availability of the provisions for the contract framework from all the three sources is as in TABLE 2 below.

The public hospitals practice the most comprehensive contract. It has all 11 sub-items under the service start-up, 10 from 11 sub-items under the implementation, 9 from 10 sub-items under the on-going service development, all 3 sub-items under review and all 4 sub-items under project close. The private hospitals have

3, 5, 1, 'none' and 'none' sub-items respectively. There were 7, 3, 2, 2 and 1 respectively from the literatures. The comprehensiveness of the public practice is due to the many challenges to ensure service levels are achieved. The challenges may come from the big number of hospitals involved (161), the different physical sizes and clinical services provided by the general hospitals in state capitals, districts, rural areas and maternity clinics; and the location distribution which is scattered all over the country. The contract for the public hospitals is prepared with the objective to ensure the contractor, consultant and hospitals' personnel will be able to understand the service levels required to be performed. For the private hospitals, the consultant appointed is a subsidiary company. The consultant manages and supervises the contractors. The contract documentation stresses the obligation of the consultant and contractor to follow the practices and procedures of the hospitals in all dealing. This is to ensure services required are delivered. Discussions are held whenever necessary and anywhere possible. The communication channels are more open and flexible.

TABLE 2 - SOURCES FOR THE OUTSOURCING CONTRACT FRAMEWORK

NOS.	CONTRACT FRAMEWORK	LITERATURES	LOCAL PRIVATE PRACTICE	LOCAL PUBLIC PRACTICE
1.0	SERVICE START-UP			
1.1	Philosophy, objectives & principles	1	1	1
1.2	Pre-operational briefing	1	0	1
1.3	Project organizational structure	1	1	1
1.4	Mobilization process	0	0	1
1.5	Information in client's possession	0	0	1
1.6	Facilities provided by client	0	0	1
1.7	Management of information	0	0	1
1.8	Communication	1	1	1
1.9	Costs and expenses	1	0	1
1.10	Guarantee and warranty by contractor and consultant	1	0	1
1.11	Waiver and disclaimer	1	0	1
2.0	IMPLEMENTATION			
2.1	Scope of services	0	1	1
2.2	Reimbursable services	0	0	1
2.3	Procedures in provision of services	1	1	1
2.4	Quality in provision of services	1	0	1
2.5	Supervision	0	1	1
2.6	Inspection	0	1	1
2.7	Payment and fees	0	1	1
2.8	Access to facilities	0	0	1
2.9	Management of information	0	0	1
2.10	Provision of information	1	0	1
2.11	Valuation	0	0	0
3.0	ON-GOING SERVICE DEVELOPMENT PROCESS			
3.1	Alterations, variations & additions	1	1	1
3.2	Consultant's inadequate or unsatisfactory standard of services	0	0	1
3.3	Contractor's failure	0	0	0
3.4	Disputes	1	0	1
3.5	Client's rights	0	0	1
3.6	Non-compliance excused	0	0	1
3.7	Revision of fees	0	0	1
3.8	Emergencies	0	0	1
3.9	Disclosure of claims on insurance	0	0	1
3.10	Extension of concession/ contract period	0	0	1
4.0	REVIEW			
4.1	Measurement of contractor, consultant and overall	1	0	1

	outsourcing performance.			
4.2	Performance monitoring meetings.	1	0	1
4.3	Records of operations.	0	0	1
5.0	PROJECT CLOSE			
5.1	Expiry of concession/ contract period	0	0	1
5.2	Termination	1	0	1
5.3	Balance of payment	0	0	1
5.4	Records of services, facilities & equipment	0	0	1

Note: 1 = There is provision 0 = There is no provision.

5.0 THE CONCEPTUAL FRAMEWORK

From the contract provisions studied above, the items and sub-items to be incorporated in the conceptual contract framework to be developed for the purpose of this research are as follows:-

5.1 Service Start-up

- a. **Philosophy, objectives & principles**
Describes the client's business objectives and requirements, the facilities operations, procedures and expected performance level. Also covers the mechanisms to settle disputes.
- b. **Pre-operational briefing**
The briefing covers the scope of the contract, duties and responsibilities of parties, and work procedures.
- c. **Project organizational structure**
Explain the outsourcing contract management structure as well as the person in-charge of services or process.
- d. **Operational points of contact.**
Describes the procedures for changing of the contract's structure and decision-making process, besides to also provide competent contractor's representatives.
- e. **Mobilization process**
Provision for the establishment of a Mobilization Committee to enable continuity of services including the committee members and their responsibilities.
- f. **Information in client's possession**
State the responsibility of the client to provide relevant information to the contractor.

- g. Facilities provided by client**
To list down and describe the facilities (including offices) provided by the client for use of the contractor and consultant.
- h. Management of information**
Provides for the establishment, management and maintenance of a coordinated Management Information System.
- i. Communication.**
To state the language to use, the mode of communication and relevant details.
- j. Costs and expenses**
States the contract amount, the details of works and services covered and the costs and expenses thereof.
- k. Guarantee and warranty by contractor and consultant**
States the types of warranties to be provided by the contractor including Performance Guarantee. Also describes the waivers or disclaimers.

5.2 Implementation

- a. Scope of services**
Lists out the items of works and services, the geographical, physical scope of work, the intervals and manner for contractor to carry out or deliver them.
- b. Reimbursable services**
Describes the procedures in initiating and carrying out of reimbursable works.
- c. Procedures in provision of services**
Explains the manner for managing client-contractor-consultant-users relationships and prioritization of works. Contractor to provide work order program for client's monitoring purposes.
- d. Quality in provision of services**
Describes the responsibility of the contractor and consultant to implement QAP (Quality Assurance Program) including the contractor and consultant's service levels, motivation for superior performance and benchmarking.
- e. Supervision**
Describes the procedures for supervising of works and services.

- f. Inspection**
States that the responsibilities for inspection of contractors works and services is the consultant's. However, the client still has the right to do so. The aspects to inspect are also clarified.
- g. Payment and fees**
States the procedures for assessing contractor's performance and payment, payment for variation works, intervals of payment and time periods in making payments to the consultant, contractor, sub-contractors and suppliers; and deductions.
- h. Access to facilities**
States the responsibility for parties to be allowed access to client, contractor and consultant's premises, equipment, materials, information.
- i. Management of information**
Describes the use of MIS, responsibility for preparation and maintenance of MIS, the verification of data and information, and persons who can access them.
- j. Provision of information**
States the responsibility of the parties in providing necessary information.
- k. Valuation**
Describes the procedures for measuring and valuation of works performed and services delivered.

5.3 On-going Service Development Process

- a. Alterations, variations & additions**
To anticipate change including relevant costs, to prepare work program to manage variations and the economics of planned program.
- b. Consultant's inadequate or unsatisfactory standard of services**
Options available to consultant in instances of failure to perform to determined service levels.
- c. Contractor's failure**
Provision for the client to decide necessary actions in cases of contractor's failure.

- d. Disputes**
Describes the procedures to manage disputes including referring to Client's Representative, Dispute Resolution Committee and arbitration.
- e. Client's rights**
States the client's rights to procure third parties in cases of contractor or consultant's failure.
- f. Non-compliance excused**
Lists-out the excusable and non-excusable non-compliances, and procedures to manage continuous events.
- g. Revision of fees**
Describes the mechanisms to revise fees in respond to prevailing conditions.
- h. Emergencies**
Describes the roles and responsibilities of all parties in managing cases of emergencies.
- i. Disclosure of claims on insurance**
The contractor is required to notify the client of any claims on insurance and the related incidents.
- j. Extension of concession/ contract period**
States the provision and describes the procedure for contracting parties to extend the contract duration.

5.4 Review

- a. Measurement of contractor, consultant and overall outsourcing performance**
States the need to measure contractor and outsourcing performance, based on end-customer requirements.
- b. Performance monitoring meetings**
Conducting of schedule periodic working level meetings with end-users and provider, monthly meetings to measure performance and reaffirm objectives, and executive level oversight meeting.
- c. Records of operations**
Provision to have record of outsourcing contract's operation retained in proper format.

5.5 Project Close

- a. **Expiry of concession/ contract period**
Outlines the steps to be taken by the contractor at expiry of the contract period.
- b. **Termination**
Describes the provisions for termination of the outsourcing contract including the consequences and actions.
- c. **Balance of payment**
States the need to determine the amount owned and dues to be paid.
- d. **Records of services, facilities & equipment**
States the responsibility of the contractor and consultant to furnish information, records and documents to the client. Also describes the method for the client to purchase the installed facilities and equipment installed by the contractor.

6.0 CONCLUSION

All three sources of the contract framework described above have the most provisions in the service start-up and implementation processes of the outsourcing operation stage. Only the public hospitals have comprehensive contract in the other three processes - the on-going service development, review and project close. Therefore, there is still not much issues or matters identified in the three processes, besides the public hospital practice. Even if the “to be identified” issues may not be incorporated or detailed out in a partnership sourcing contract, still successful management of an outsourcing contract will depend on them. The client, consultant, contractor and users have to interact in an environment with all the relevant issues in existence. It is suggested that studies of these “to be identified” issues in the on-going service development, review and project close processes be conducted to help enable smooth management of outsourcing contracts.

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