



# PUBLIC PRIVATE PARTNERSHIP – CONTRACT MANAGEMENT

INFRASTRUCTURE CONCESSION REGULATORY COMMISSION



# Objectives of Presentation



- This session:
  - Introduces the concepts of Contract Management, Monitoring and Regulation
  - Explains the objective of Contract Management
  - Discusses the methodologies for Contract Management

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# Political Commitment



## EXCERPTS OF SPEECH OF PRESIDENT MUHAMMADU BUHARI ON AUGUST 23, 2015

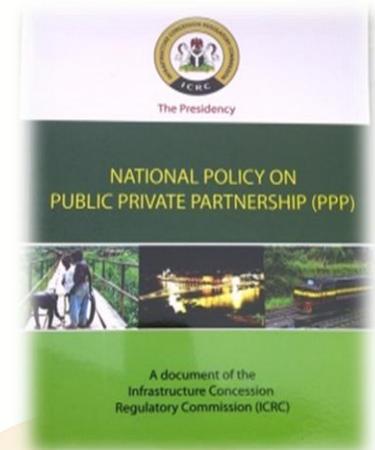
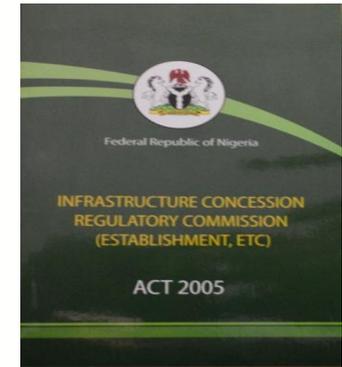
“We also have a **huge infrastructure deficit** for which we **require foreign capital and expertise to supplement** whatever resources we can marshal at home. In essence, **we seek public private partnerships** in our quest for enhanced capital and expertise.”

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# Governance Documents



1. ICRC Act (Establishment Etc,) Act 2005
2. National Policy on PPP
3. Circulars
4. Concession Agreements
5. Contract Disclosure documents – to ensure transparency



**Key Standards: Transparency and Competition**

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# The Functions of ICRC



1. Regulate Public Private Partnership (PPP) procurement by:
  - ✓ Guiding MDAs in structuring PPP transactions: **Pre-Contract regulation**
  - ✓ Taking custody of all executed agreements and monitoring compliance with the terms and conditions of such contracts: **Post Contract Regulation (Section 20 of ICRC Act)**
2. Issuing regulations and guidelines.
3. Capacity building and PPP support for MDAs
4. Collaborating with State Governments for a sustainable National PPP Framework.

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# What is Contract Management?



- From the Procuring Authority's perspective, Contract Management denotes all those activities that are required to be undertaken by the Procuring Authority to administer, manage, govern and execute the project.
- Key objective of Contract Management (CM) is to ensure that the PPP project meets its objective on continuous basis, while managing risks proactively and taking stakeholders together.
- While managing a contract, there is significant relevance of CM in the pre-award phase i.e. project identification, preparation and procurement.

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# The Roles of the MDA



The MDA is the Implementing Agency:

-**Establish Contract Management Structures:** involves defining responsibilities for contract management within government and how the relationship with the private party will be managed;

-**Monitor and Manage PPP delivery and risk:** To achieve value for money, government needs to ensure the allocation of *Responsibilities and Risks* is put into practice; monitor contract compliance and service performance by the private party; monitor and ensure compliance by government of its own responsibilities; monitor and mitigate risks allocated to both parties.

# The Roles of the MDA



**~Deal with change:** Over the life of a typical PPP contract- 10 to 30 years, things will inevitably happen that were unforeseen leading to disputes but these could be managed through Planned Reviews and Adjustments, Renegotiation or Contract Variations; Dispute Resolutions Mechanisms...all as embedded in the Contract.

**~Managing contract expiry and asset handover:** This involves managing the transition of assets and operations at the end of contract term. It typically includes specifying how the quality of the assets will be defined and assessed, whether payment will be made on asset handover and how the amount of any payment will be determined.

# What ICRC's DCC does



- A. Take Custody of Agreements; Monitor Compliance
1. Develop and maintain a database of all PPP agreements of the Federal Government
  2. Develop guidance and procedures for contract monitoring
  3. Monitor compliance with the terms and conditions of every PPP agreement

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# Post-Contract Management



## CONTRACTS DATABASE

- Receive Signed Copy of Contract
- Scan Contract and Update e-Contracts Database
- Make Duplicate Hard Copies of Contract
- File Contract and Append With Details

## CONTRACT REVIEW

- Contract Summary
- 1-Page Project Information
- Review against Act, Regulation and Guidelines
- Responsibility Matrix and Risks Matrix
- Review against Key Performance Indicators (KPIs), Outputs and Service Requirements

## COMPLIANCE MONITORING

- Contractual Conditions
- Efficient Implementation
- Socio-Economic Information
- Dispute Management

## REPORTING

- Progress Reports (Quarterly Summary)
- Global Monitor (Monthly Update)
- Dispute Matrix (When Necessary)

# Contract Management Stages



- **Procurement Stage** – period from initiation to contract signing
- **Development Stage** – from signing to service delivery start
- **Delivery or Implementation Stage** – the period when services are provided
- **Exit/Transfer/Handover Stage** – end phase of the project – winding up

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# Disclosure of PPP Contract Information



## GOAL

Design and implement clear and concise guidance for systematic disclosure of PPP projects and contract information

## OBJECTIVES

- Ensure that *stakeholders*, especially private sector investors are well informed on important features contained in the contract agreement (such as contracting parties, services expected to be provided and the time frame)
- Effectively use the public to monitor the developments and the implementation of project by engendering public awareness and support to act as another form of checks and balances in the system

## Expected Outcome

- Achieve buy-in and acceptance of PPPs by public and private sector stakeholders through increased public awareness of the benefits of PPP for public infrastructure delivery
- Strengthen private sector confidence in PPPs by institutionalising a process that will project the Commission's core values of transparency, accountability and fairness in PPP procurement process



# Training the Contract Management Team



- Staff training might be needed when recruiting and mobilizing for the government contract management team.
- Two types of training available: an overall introduction into PPPs and the project life cycle and key features explained, and advanced, for specific training (i.e. contract and project management, financial models, risk analysis, and so on).
- General training in contract management describes the basic contract management principles and so on.

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# Guiding Principles of Contract Management



- Continuous, coordinated and comprehensive monitoring.
- Avoid misunderstandings by maintaining key contract documents on a shared basis with the Concessionaire.
- Contract management functions should never interfere in the day-to-day management of the infrastructure facility.
- Termination should be last option always.

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# Contract Management Functions



- The three main functions
  - Partnership Management
  - Service Delivery Management
  - Contract Administration
- Can be considerable overlap between the functions

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# Partnership Management



- Communications can make or break a partnership
- Failure to communicate causes more problems than failure to perform
- Information sharing based upon trust and balancing negotiating positions
- Communications take place between different levels in both organisations; and
- Communications should be clear and precise

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# Partnership Management II



- Strategic level – government’s project representative and CEO of private sector service provider
- Business level – project officer and the private sector service provider counterpart
- Operational level – government staff and private sector service delivery management
- Important that communication levels be maintained when problems arise – Do Not “take this straight to the top”

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# Dispute Resolution



- Dispute Resolution processes in PPP Contract
- All disputes must follow same route from project liaison personnel on both sides to the government's project representative and private sector's CEO.
- **Important to:**
  - Record problems as they occur
  - Notify problems by correct route at correct level
  - Document approaches to resolving problems
  - Escalate only as per Contract

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# Service Delivery



- **Two Principal Areas:**
  - Risk Management – managing project threats
  - Performance Management – ensuring the project continues to be affordable, provide value for money, and that significant risks stay with the private sector service provider

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# Risk Management



- **Central component of contract management**
  - Contract risk allocation reflected in Contract Management Plan
  - Project Officer allocates “ownership” of each risk to member(s) of the Project Management Team
  - Risk measures determined and implemented
  - Assessment of mitigation measures is ongoing

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# Performance Management



- Ensures contract anticipated affordability, value for money and risk transfer
- Performance monitoring methodology
  - Level of performance to achieve Outputs ~ based on project delivery, service output and project performance.
  - Methods government can use to promote performance
  - Consequences to private sector for failure to perform

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# Level of performance to achieve Outputs



- Reflects contract provisions & includes:
  - Reporting obligations
  - Performance management system to review quality management system
  - Government officials responsible for monitoring
  - Estimate of resources government will require
  - Performance monitoring systems
  - Knowledge management throughout the project duration is key'
  - Role/Obligations of each party should be well defined in a Responsibility Matrix

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# Performance Management Monitoring & Mechanisms



- Check progress to ensure milestones met
- Regular performance progress meetings
- Regular and random inspections
- Feedback mechanisms from stakeholders/end users
- Inspecting deliverables to ensure quality
- Maintaining comprehensive performance monitoring records

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# Consequences for Not Meeting Service Levels

- Monitoring should provide basis for measuring performance against outputs
- Failure to meet outputs dealt with per contract
  - Formal warnings
  - Penalty deductions
  - Step-in rights
- Should be implemented to achieve positive response

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# Contract Administration



- Administrative process to manage all documents and processes
- Contract Administration Plan
  - Systems & procedures for contract maintenance, variation management and financial administration
  - Roles & responsibilities of government & private sector
  - Government resources needed to implement and ensure business continuity

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# Variation Management



- Few contracts stay the same: changes will occur ~ changes in law, amendments in contracts and variations in the actual works
- Establish a system for handling changes:
  - “No cost” changes – do as and when necessary
  - Small works variations – approvals required, depending on level of variation
  - Government-instituted variations – formal notice & mutual agreement process
  - Private sector-instituted variations – formal amendment of PPP contract

# Contract Maintenance



- Processes and procedures to ensure
  - Contract & related documents up to date & consistent
  - Accessible to all relevant parties
  - Provides basis for common view of contractual obligations

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# Financial Administration



- Systems and procedures to:
  - Make and receive financial payments
  - Keep records of all financial statements, per contract
  - Making Unitary and Incentive payments
  - Administering penalty deductions
  - Calculating inflation
  - Dealing with late payments
  - Receiving financial reports

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# Contract Management Summary



- Contract Management Plan a critical document
- Government's Project Representative & Project Officer
- Contract Management Framework for implementation
- Partnership approach by all parties is essential
- Contract Management Team & “ownership” of issues/risks
- Partnership Management
- Performance Management
- Contract Administration

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