Contract Management and Service Level Agreements

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Abstract

Reasoning about organizing, governing, or managing corporate contracting has appeared in many contexts. In those occasions, terms such as contract government, contract administration, and contract management have been used. This paper will discuss comprehensive organizing of corporate contracting, in other words, contract management. Contract management is outlined in the form of long-term business contract and the focus is in the contract preparation. Contract preparation is studied through proactive contracting and competitive bidding. In addition, service level agreements (SLAs) have become an interesting and important tool in the process of procuring facility and user services also in Finland. SLAs bring a new approach and culture to parties involved in the procurement process. This has brought also challenges to parties to move on from input based service descriptions to output service levels. This paper will discuss the kind of development that is going on in the Nordic countries concerning SLAs in facility management. The paper will also discuss the kind of position SLAs have in terms of contracting. Collective research questions of this paper are: what are SLAs and contract management and how SLAs are part of contract management? The perspective arises mainly from the Finnish business and contracting practice. In addition, there are some aspects of Finnish and international contract and procurement law. One of the goals of this paper is to show what kinds of developments are going on in facility management and modern contract law. This is linked, for example, to the research approaches concerning contractual skills. When the number of long-term business contracts like SLAs grows, the recognition and handling of contractual questions and risks are emphasized. It also implies the realization of fruitful co-operation between different professions when preparing contracts.

Keywords: contract law, SLA, contract management, facility services, user services

1. Contract management

1.1 Attributes of contract management

Contract management refers to company-specific policies which are linked to arranging comprehensively corporate contracting. This arranging is mainly related to company's internal policy and can be well applied, for example, to long-term business contracts and especially SLAs (Haapio, 2005). In narrow scale, contract management is seen as a scope of tasks brought about by the project level's contract process, which contains monitoring of project's realization, control of payments, and maintenance of documents. Nowadays, the scope of tasks has been seen as more extensive: it covers contract planning, contract content, and its realization with procedures and documents (Haapio, 2005). To adopt contract management actions in a company requires always a decision by the management and economic input.

Achieving deals and contracts and to act according to them is vital to companies. That is why companies cannot afford to neglect the contract planning processes, the quality of input, the brainwork required by the task, the evaluation of impacts of business results or on what impact contracts have on the company's turnover. Because corporate governance is today so significant the management has to invest in good contract processes so that the business stays in its control (Cummins, 2005).

Contract management is mostly operative practical action. Nevertheless, when we take a look at a company which applies policies of contract management, this can also be seen as a strategic solution. Generally speaking, contracts play a significant role in companies' business. In this relation, managing them can be seen as a strategic part of company's business. With contract management, company can aim to utilize, gather and manage contractual skills (Haapio –Haavisto, 2005). This can be linked, for example, to contract preparation and contractual risk management.

The model of contract management can be outlined in the following way. First, there is the term contract management which is divided into two main parts: 1. Contract preparation and 2. Contract period. Contract preparation contains the following segments: bidding competition, contract negotiations, contractual risk management, and contract drafting (proactive law). Contract period contains of the following segments: managing information and contract documents, contractual risk management, co-operational and development procedures, supplement of contract, changing circumstances, renegotiations, and also alternative dispute resolution (cf. Haapio, 2005 II). So in my model, contract management is outlined chronologically in the form of a long-term business contract. With this perspective, contract management in terms of contract law relates to different segments from contract preparation to contract period and all the way to termination of contract.

In this paper, I will focus on contract preparation and especially on SLAs. A company which invests in contract negotiations and drafting contract clauses can save more costs that arise from problems and disputes during contract period compared to a company which does not invest as much.

Especially in long-term contractual relationships, mechanisms related to changing circumstances and also trouble situations and claims that arise from project are emphasized. To manage them, company has to plan and agree on clear and functional rules. In the business level, contract planning is related to choices of actions and contract processes: the goal is to improve producing contracts systematically, efficiently, and as economically as possible (Haapio, 2005).

As regards the planning perspective, a mindset has been presented that aspires and focuses on actions that aim towards realization of projects, not on actions relating to concluding a contract. According to this mindset, one has to start with the result. First, the project has to be examined after one year: What went wrong? How do know if you succeeded? Which people should have been involved earlier? Secondly, you have to help the other party to prepare themselves as well. In this sense, surprising the negotiation partner is not rational. If you make promises that you cannot keep, both lose. Thirdly, you have to see the combining of interests as a mutual responsibility. In other words, problems may emerge if the interests of the negotiation partners are not parallel. Fourthly, you have to communicate in the same way. To have the same information, parties have to examine the project together. The fifth and last guideline is that parties have to lead the negotiations like business processes. After negotiations, the inspections have to be combined into disciplined preparation process (Ertel, 2005).

1.2 Proactive contracting

Conceptions concerning legal issues, disputes, and the ways to solve them traditionally emphasize the position and power of courts and other institutions. Courts and other institutions consider legal issues and disputes subsequently. This kind of approach is very common as regards legal interpretations. In Finland, the Supreme Court's precedents have an indisputable and strong influence on legal thinking. This means that this influence has significance in numerous parts of the Finnish society. However, during the past few years, proactive law has obtained an important role especially in contract law and contracting also in Finland.

Practicing proactive contracting means planning of contractual relations more thoroughly so that the objective is to prevent complicated future situations and avoid problems. The aim is not to plan legal relations in the context of dispute resolution. The traditional way of focusing on dispute resolution with different laws and regulations is seen as a very static model. Because of this, there is a need to develop proactive means of resolution which could rely on more flexible tools (Holming, 2002).

There are two significant differences between proactive legal practice and traditional legal practice. The first is that proactive legal practice deals prospectively with fact patterns that may arise in the future (hot facts) while traditional legal practice deals retrospectively with established facts concerning events that have occurred in the past (cold facts). The second difference is that in traditional legal practice, the ultimate decision maker is usually a third party, such as a judge or an arbitrator, while in proactive legal practice, the ultimate decision maker is the client, acting on the advice of an attorney. The job of the traditional lawyer is to act as a historian, interpreting past events

in a light that is most favorable to the client. The job of the proactive lawyer is to help the client to shape future events so that the facts will reflect favorably on the client (Gruner, 1998).

Proactive contracting invites and gathers different professions together to co-operate in a new way for example with SLAs. Complicated technical, financial, and legal issues in long-term business contracts in the field of real estate and construction mean that according to the principles of proactive law, all the people who work in these areas in the companies involved have to cooperate closely and intensively. One essential feature of co-operation and proactive law is the skill of communicating and active participating. Instead of assuming and making interpretations, one has to try to pose clarifying and specifying questions (Rudanko, 2002). This kind of unprejudiced working method in the preparation phase of a contract like SLA makes it possible to prevent potential contractual problems and achieve the set goals. Making this happen requires developed company-specific action models and creative contractual mechanisms to prevent and manage risks.

In relation to practice, for example, contractual reality does not often correspond with contract law regulations or lawyers' assumptions. Knowledge, knowhow, and routines of business people and other players guide the choices and behavior of organizations. Besides theoretical and conscious knowledge, people have lot of experiential and unconscious knowledge on how it is worthwhile to act in a certain way or how issues should be solved. This quiet or hidden knowledge is called tacit knowledge (Haapio, 2002).

At the same time, unconscious ignorance may be present in the organization's action. Current beliefs and views or information behind decisions can be false. This ignorance or hidden disknowledge is called tacit ignorance. In this way, hidden knowledge and hidden disknowledge together have an effect on how well a company can recognize and prevent threatening problems. For example, there is a risk in situations where document gaps and their causes cannot be recognized. The risk is that it is possible that company comes across same problems again and again (Haapio, 2002). In terms of proactive law, this tells us for example, that this mindset (proactive contracting) is often linked to other fields (psychology) and views. In this sense, views of proactive contracting can be very extensive.

Freedom of contract makes it possible to use contract clauses also for preparing for unforeseeable situations. If future looks so unforeseeable when parties are concluding a contract like SLA that this uncertainty cannot be formed as a contract clause, parties can agree of a procedure which allows parties to adjust the content of the contract to changing circumstances (e.g. Häyhä, 1996 and Grönfors, 1995). The recurrence of contracts concluded in similar situations increases the parties' presumptions on foreseeability. The importance of contractual usage regulating the same business is more pronounced than other contractual usage. The more closely it is a question of contractual usage regulating business of same content, the more direct tools it produces for supplement of contract (Annola, 2003).

The idea of contract management states that it is rational for companies to act in a proactive way in contract preparation for example with SLAs. Companies can save extra costs during contract period if they invest in contract preparation. Of course, it has to be said that there is no absolute truth about this. Nevertheless, the fact is that when the internal co-operation of different professions works, the company can achieve a situation in which all essential and important questions will be carefully handled and solved in contract preparation. In that case, smaller number of problematic situations will arise due to, for example, contract gaps during contract period compared to situations in which this kind of co-operation does not work so well.

Here, it is also a question of balancing the transaction costs. It is not rational to invest enormous amounts of resources and time and this way aim to achieve a perfect contract. This is almost impossible to achieve, for example, in a case such as individual long-term business contract. Still, it is useful for companies to invest in contract preparation through contract management policies. This can mean in practice, for example, contract training of personnel and this way developing contractual skills in company. It can also mean compacting co-operation of different professions (e.g., technical, economical and juridical) with practical actions and on practical levels.

1.3 Bidding competitions

Here, procurement of facility services is an example related to bidding competitions (Balk – Puhto, 2007). Also SLAs have a significant role in this picture. This kind of procurement is described as a three-part process. The first part is about investigating the needs for these services. The second is about defining and describing the content of services, and the third part deals with the procurement of facility services through a bidding competition. The goal of investigation of needs is to determine the basic facts that planning the services requires. In the planning phase, the client decides how services are organized, prepares the tender documents, describes the limits of responsibility, and creates preconditions for an efficient quality management during contract period. At the phase in which the client calls for bids, it has to find a service provider that is able to produce demanded services in a manner that satisfies client (Puhto - Tiainen, 2001).

The client can arrange an open bidding competition, selected bidding competition, or use a negotiation procedure to select the right service provider. The amount of bidders is not limited beforehand in the open procurement process. It means that every willing bidder is allowed to attend the bidding competition. The client selects bidders beforehand in the selected procedure. These bidders have to fulfill conditions concerning technical knowhow and economical status (Lith, 2001). When the client applies a negotiation procedure, it contacts selected service providers and starts contract negotiations with them without an actual bidding competition (Liuksiala, 2004). It has to be emphasized that procurement law (legislation and case law) clearly determines the steps that has to be followed in public procurements. It covers, for example, selecting the procurement procedure and other phases of individual procurement.

A succeeded procurement of facility services requires client expertise and a good call for bids (Lith, 2003). The quality of information is very important in call for bids. It can diminish the variation with tenders. All essential information concerning work performance and offering a tender has to come out in call for bids. A detailed call for bids is a basic precondition to get comparable tenders (Siikala, 2000). According to Tweedley (1995), things get complicated because of a bidding dilemma. A bidding process can start two ways:

1. Client understands what it wants to buy and, based on this, produces a specific description of the procurement to service providers.

2. Client shows the problems it has faced and asks service providers to develop a solution to its needs.

The first option requires that the client has high professional skills and understands the needs of the site(s). The client has to also pay costs and put efforts to achieve drafting specific descriptions in to tender documents. The strength of this procedure is that client gets comparable tenders. At the same time, the procedure restricts the possibilities of service providers to develop new service solutions to the site(s) (Tweedley, 1995). Service providers have criticized, for example, the completed working time quantifying which does not allow bringing new approaches to the service production. Using them means in practice competing on who hires out personnel cheapest (Joutsenkunnas, 2006).

With the other option, the client describes only the problem and asks service providers to offer their solutions. This way, the client saves time preparing the call for bids but gets solutions which vary with price and content so that it is difficult to compare tenders and make the final decision (Tweedley, 1995). This approach is close also to SLAs which will be studied later on more closely. What is essential in solving the dilemma is that parties are conscious of the dilemma. After this, the important question for the client is: Are its own expertise and resources adequate to describe what it wants to buy on a satisfying level? When starting points are clear the client can beat the dilemma, for instance, by negotiating of the contract with several candidates after the tenders have arrived (Tweedley, 1995).

A bidding competition as a part of contract management can be outlined from the perspective of the client who drafts the call for bids and from the perspective of the company which makes a tender. A good call for bids includes all essential information and facts concerning the subject of the procurement described in an as detailed manner as possible. Thus, the client can get comparable tenders. This is the point at which it is rational for the client party to invest resources and also time. It creates a ground for a functional contract and long-term contractual relationship. In this way, it is clear that drafting call for bids has connections to contract management.

Tenders have to match the call for bids. In public procurements, this an absolute precondition. In public procurements, a tender which does not match the call for bids has to be rejected according to case law. That is why also in private bidding competitions companies should invest in defining and drafting tenders. With a tender, company commits to, for example, a price level that is the basis for the whole possible contract. A tender has an essential importance in relation to upcoming contractual

relationship and its functionality in terms of contract law. That is why it is also a part of contract management.

In addition, it can be said that especially in public procurements familiarity with procurement law and case law is a part of contract management. This becomes reality in the clients' calls for bids and companies' drafting tenders.

2. Service Level Agreements

2.1 Goals of SLA

SLA is primarily a commercial document. It functions either as an independent agreement between a client and an internal or external service provider or as a separate agreement/appendix to a more comprehensive frame agreement between client and service provider (Nordic SLA Guide, 2006). It may also function as an internal management tool in at least four areas:

1. **Internal communication tool**; Internal facility management service providers are working with the objectives of maximizing the value for the core business and cost minimization. In this work, the definitions of the quality levels required by the clients are important. As a principle, such definitions should always be made in co-operation with the service providers. SLAs are tools for the service provider to deliver the right and measureable quality levels at the right costs. The SLA structure seeks to be flexible and to cover a wide range of different service provisions and to be easily renegotiated when changes occur in demand and requirements (Nordic SLA Guide, 2006)

2. **Benchmarking tool**; Clients of facility end user services are constantly evaluating their current service contracts as regards the service level and price. When service contracts are set up as SLAs, the contract determines the quantities and quality levels to be delivered, as well as other relevant contract parameters. The client can then collect competing offers for the same service level deliverance and make more objective comparisons between different options. Without the SLA as a basis, comparisons can be made only based on prices rather than on the combination of price and quality (Nordic SLA Guide, 2006).

3. **Internal restructuring tool**. Businesses are often restructured. This can mean that support services will be separated from core business activities. For example, property related competence is often rearranged within the organisation and developed as FM departments, subsidiary units or separate limited companies. During such restructuring, the need for an organisational framework between the different roles arises. The purpose of the organisational framework is to define (Nordic SLA Guide, 2006):

    - The internal roles

    - Products and obligations

- Quality levels

- Internal production costs as a basis for price

4. **Quality assurance**. Evaluating the value for money, a client of facility and user services has traditionally been focusing on price, in combination with a subjective evaluation of delivered quality level. The latter has often caused disputes between the parties and even court cases. These problems often have their origin in poor communication and lack of agreed specifications of the scope of the delivery or quantities to be delivered. SLAs are tools to improve communications between the parties. When the SLAs clearly specifies quality levels and quantities, both parties‘ risks are reduced (Nordic SLA Guide, 2006):

    - The supplier’s risk is reduced due to more exact knowledge of his own obligations

    - The client’s risks are reduced due to more exact knowledge of the correct and required service level, and hence reduced risk of misunderstandings and disputes between the parties

SLA is used as a tool for measuring the quality level delivered and comparing it to an agreed level. Such measurements and comparisons are useful for service provisions as a tool for the client to assess whether the service is delivered to the agreed level (Nordic SLA Guide, 2006).

These dimensions show that SLAs can be used for many kinds of purposes. Obviously, the main purpose of SLA is to function as an agreement between the parties. It sets the essential goals as regards service quality and success of the contractual relationship in question. Still, like Nordic SLA Guide shows, SLA as a tool has also other important functions. These functions (shown above) connect SLAs to contract management and organisational effectiveness. The mentioned functions can also be basis for long-term organisational development work.

2.2 SLA and contract preparation

The quality of different services, in other words, the level of work tasks, has been described in service contracts as long as outsourcing services have existed. According to traditional practice, tasks related to work and service processes have been listed in facility and user service contracts. When parties have aimed to better quality of services, the goal has been that different tasks and their performance should be described in more detail. In changing circumstances, parties have been forced to draft contracts again and again (cf. Tuomela et al, 2001). The progress of business has created alternative approaches to this picture. In this relation, also SLAs have represented a new kind of model for facility and user services and their contractual arrangements.

Service specification is an important document in facility and user service contracts. This document describes the client's demands for service performance. The service provider gives an offer of facility and user services based on service specification. That is why the client must be very careful when they are drafting the service specification to get the right priced offer from the service provider (cf. Hanson et al, 2000). There are two options for service specifications in facility and user services. They are (CUP No. 30, 1997):

1. Functional, also known as task based, service specification (input model) which describes the activity that must be performed or tasks, for example filing documents and repairing systems
2. Result based service specification (output model) which describes every demanded result and performance of service. For example, conference facilities have to be clean in 15 minutes after the meeting is over.

With facility and user services, drafting an input model has often seemed to be easier than describing the result. However, an output based service specification creates better starting points to bidding competitions, seeking potential companies or preliminary selection for the negotiations than earlier practices. The clients usually want to ensure that the expected quality level is accomplished. Input based description does not give enough freedom for a service provider to use their professionalism in meeting the client's demands. When a service provider can independently choose the ways to accomplish service levels demanded by the client, the result is often better. In this way, the service provider is able to develop cost efficient methods to realize the result demanded by client (PACE, 2000).

Output model brings also other benefits. When the service provider determines how the demands are reached, the client does not need to use time and compulsory expenses in preparing detailed input based service specification. Thus, it is possible to acquire cost savings of the client's outsourcing services. Of course, it has to be said that the growth of service provider's working hours raises the price of the final offer (PACE, 2000). Output based call for bids model in facility and user services enables also the client to develop their know-how in purchasing. Also when client orientates themselves with the service needs of the core business, the communication between client and service provider is improved. This improves also the partnership mindset related to management services and outsourcing (cf. Tuomela et al, 2001).

SLA is usually created based on a service specification. Service specification is developed and changed based on needs during contract period. The quality level of services is solved by negotiations between the parties. SLA is a description of the service offered to the client and signed by the client and service provider. Therefore, an SLA is a formal document containing the following data (Atkin and Brooks, 2000):

1. Names of the parties
2. Tasks and responsibilities of the parties

3. The scale of the produced services
4. Quality level and actions set by goals
5. Schedule and ranges
6. Service fees and grounds for payment
7. Actions concerning changes

In addition, SLAs usually contain Key Performance Indicators (KPI) and bonus systems. This shows that as a contractual arrangement, SLAs are fairly complicated processes which require good contractual preparation from all parties involved. On the other hand, it is a question of business cultures. Companies or even countries which have applied input models to their procurements can have great challenges to move on to output models. This change requires research, knowledge, and examples.

2.3 SLA process

Recommended SLA process (Nordic SLA Guide, 2006):

Stage 1 is a top management (client, strategic level) responsibility. Stages 2 to 8 may be dealt with on client tactical level (professional environment managers and procurement managers);

Stage 1: Clarify the border between core business (primary activities) and support services (especially the services which are to be agreed in the SLA), and indicate right performance/quality levels with reference to core business requirements.

Stage 2: Clarify the relevant structure. Will there be one SLA or several ones under more extensive framework agreement?

In a case where there are several SLAs developed for different service deliveries from the same provider, it may be pragmatic to develop a framework agreement between client and provider which covers all general contract conditions and clauses applicable to all these SLAs and in which the SLAs appear as appendices to the framework agreement. In a case where the delivery of only one service is negotiated with an external provider, legal and other basic contract conditions must an integrated part of the SLA itself. It also has to be mentioned that with public procurements, procurement law (legislation and case law) has to be taken into account also in all types of SLA arrangements.

Stage 3: Measure the present quality level which will be the basis for the SLA provision and which objects/volumes (location, area in m2, number of workplaces, constructions, pieces of infrastructure, etc.) are to be served by the SLA provision.
Stage 4: Define the character of the facility and user services and necessary performance requirements connected with this SLA, with a view to the expected influence of the service on the primary activities (e.g. flexibility, performance criteria, reporting/control, best practice/innovation)

Stage 5: Define the service quality levels in measurable performance terms

Example 1: The time of incidents are reported until the technical status is reported from the contractor:

- 8 AM – 4 PM, max. 2 hours
- 4 PM – 8 AM, max. 4 hours

Example 2: Down-time for air-condition systems: max. 1 day per year

Stage 6: Allocate qualified procurement and management resources to manage the phases in the preparation of the SLA draft and prepare for prequalification and provider selection. Use SLA structure check lists.

Stage 7: Send the SLA draft and other tender documentation to the selected service providers. After this, evaluate the offers (with a special view to KPI-relevance to requirements in Stage 4 and 5) and select the provider(s) for final negotiations.

Stage 8: Negotiations and final preparations of agreement documentation (in some cases after due diligence). An important negotiation element is a mutual agreement on a methodology for resolving issues of non-compliance with the conditions agreed in the SLA.

This process model shows that contract preparation and especially proactive contracting are in main roles when achieving a functional SLA. Successful contract preparation requires internal effectiveness and investment of resources. It is also clear that these elements require proper management. This process also takes time. That is why people are the most important resource. With co-operative people who have know-how, it is possible to get to a situation in which, for instance, all the stages of this process model are passed successfully.

3. Conclusions

In this article, I have studied the concept of contract management and SLA and their relation. Also in Finland, it has been stated that contract management has different kinds of contents. The term contract management has also had different alternatives. Still, all these views have had some connecting factors. My model of contract management is outlined chronologically in the form of long-term business contract. Practical examples came mainly from real estate and construction business contracts.

In this model, proactive law and contract preparation play an essential role in several ways. It can be argued that contract preparation is clearly the most important phase in contract management. It contains several different dimensions but the common nominator or goal is to achieve a functional contract such as an SLA. In practice, this requires success in bidding competition, contract negotiations, and contractual techniques when drafting a contract. It is not thus exaggerating to reason that it is rational for companies to invest significant resources and time in all the sectors of contract preparation. Only this way, it is possible to achieve a functional contract and a framework for a successful contractual relationship.

SLA can exist in contractual arrangements as an individual contract or as an appendix to service contract. SLA demands thoroughness, time, and also money spending preparation work. This has to be realized, for example, in client's internal team work, bidding competitions and contract negotiations. Parties should aim to create a dynamic document and a tool which sees future's different changes in a similar manner. It is useful to chase up possible standards and other complete contract models when preparing SLAs. This makes the preparation process easier and quicker.

It seems that in Finland, a few SLAs in the original form are in use. In this way, SLAs are a fairly new approach. There is some interest within facility and user service companies to adapt SLAs to their practice. Output models also exist in some service specifications. There are still more mixes of output and input models in specifications. This is understandable because in this way, the parties want to ensure in literally every way that service provider reaches the right result. Altogether this action is against SLA mindset. The original idea is to describe the outcome of service and to give service provider the freedom to create ways to accomplish the agreed result. It is possible that when knowledge, know-how and experiences with SLAs grow in Finland, it makes this approach and tool more popular and common in facility and user services.

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