

Contracting & Incentivisation

Approve Strategy (Gate C)

February 2011

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Executive Summary

Background

The NDA currently spends over 95% of its annual expenditure on procurement of goods and services from the UK and overseas supply industry. The NDA has a duty under the Energy Act 2004 to promote effective competition for contracts, and as a Contracting Authority the NDA is subject to the UK Public Contracts Regulations which incorporate EU procurement directives.

The primary procurement responsibility is with the management of the Site Licence Companies (SLCs), but other duties include the nominated role for oversight of British Energy's (BE's) discharge of the BE nuclear liabilities and support to the Ministry of Defence (MoD) in the management and discharge of the MoD nuclear liabilities. Furthermore, due to the significant spend in the Supply Chain to the SLCs, the NDA provides an overview role across the NDA portfolio of the Suppliers within the market.

In addition to the Energy Act, the NDA has obligations through the NDA Management Statement and Financial Memorandum to "ensure that an effective system of programme and project management and contract management is maintained" and is required to follow UK Government and in particular Office of Government Commerce (OGC) best practice in application of contract governance and lifecycle management.

The NDA's contracting arrangements must reflect its published mission statement:

"To deliver safe, sustainable and publicly acceptable solutions to the challenge of nuclear clean-up and waste management. This means never compromising on safety or security, taking full account of our social and environmental responsibilities, always seeking value for money for the tax payer and actively engaging with stakeholders".

The Contracting & Incentivisation Strategy outlines the NDA's objectives and principles in delivering this mission.

Topic Strategy objective

To achieve increased effectiveness and efficiency in the NDA contracts which are required to be affordable, value for money and deliverable whilst delivering safe, secure and sustainable UK nuclear clean-up and waste management operations.

Current Topic Strategy

The NDA is committed to delivery of the NDA's mission as effectively as possible through:

- a) Embedded commercial expertise and governance in the NDA procurement and contracting functions in order to ensure application of best practice and appropriate controls;
- b) Appropriate application of contract lifecycle management from the start of early discussions through to contract closure in order to ensure that short and long term goals are met and moderated against estate-wide objectives.

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The wide variation in contracting requirements for the NDA necessitates a diverse range of contract types. Accordingly our strategy is not based on a single solution (one size fits all), but provides the framework, policies and principles for us to implement the most effective contract appropriate to each circumstance. We categorise procurements into four key groupings:

Strategic Critical (typically high value, high risk contracts) These require complex, innovative and bespoke contracts with intensive lifecycle contract management. For management of the SLCs a contracting model has been developed which protects and develops the capability and independence of the SLC but allows a Parent Body Organisation (PBO) to provide direction, leadership and management through ownership.

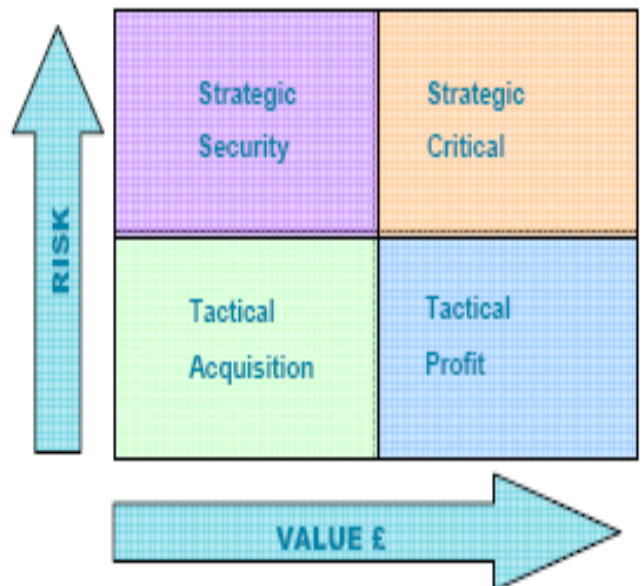
Strategic Security (typically low value, high risk contracts) May require innovative and bespoke contracts with robust lifecycle contract management.

Tactical Profit (typically high value, low risk contracts) Generally utilises standard contracts and appropriate contract management.

Tactical Acquisition (typically low value, low risk contracts) Utilises simple contracts to deliver lowest price fit-for-purpose deliverables.

In the development and operation of any NDA contract, the following objectives and principles must be considered and applied where appropriate:

- a) NDA contracts are designed to attract suppliers who will work in partnership with the NDA and develop long term, sustainable and mutually beneficial solutions for the NDA, the SLC/PBO, the Public Sector and the wider supply chain.
- b) The obligations and incentives in the contracts must be fully aligned with the NDA's mission.
- c) The key contracting principles for consideration are to:
 - Transfer commercial and performance risk to the supplier where it represents Value for Money.
 - Incentivise delivery of outputs and performance.
 - Incentivise long term SLC thinking, planning and delivery through letting of longer duration contracts (subject to compliance with procurement legislation) or incentivise multi-year performance for existing annualised contracts.
 - Develop appropriate incentivisation and pricing models for each contract.
 - Incentivise cross-supplier working.
 - Focus on delivery through strategic partnering.
 - Incentivise innovation and transfer of best practice



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Document Revision Record

Version	Stage	Record of Change	Author	Date

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1. Topic Background and Context

1.1. The NDA's Contractual Requirements

The NDA currently spends over 95% of its annual expenditure on procurement of goods and services from the UK and overseas supply industry, in accordance with UK and EU law and legislation. Under the Energy Act 2004, the NDA has a duty to promote effective competition for contracts and as a Contracting Authority the NDA is subject to the UK Public Contracts Regulations.

The vast majority of this annual spend is with the SLCs, and these form the majority of the NDA's procurement responsibilities and focus. However, other duties include the nominated role for oversight of British Energy's (BE's) discharge of the BE nuclear liabilities and support to the Ministry of Defence (MoD) in the management and discharge of the MoD nuclear liabilities.

Furthermore, with the significant spend in the Supply Chain to the SLCs, across the NDA portfolio, to ensure best value for money, there needs to good communications, efficient and effective procurement processes, appropriate risk allocation, cost analysis and a greater understanding of the Suppliers within the market. Appropriate obligations and Terms and Conditions for flowdown to the Supply Chain are included in the M&O contracts.

In addition, the NDA has obligations through the Management Statement and Financial Memorandum to place contracts via free, open and non-discriminatory competition and are required to follow UK Government (including OGC) best practice in application of contract governance and lifecycle management. These procurements are governed through a series of contracts with the majority of the NDA's mission delivered by the Site Licence Companies (SLCs) through Management & Operations (M&O) contracts.

The NDA's contracting arrangements must reflect its published mission statement:

"To deliver safe, sustainable and publicly acceptable solutions to the challenge of nuclear clean-up and waste management. This means never compromising on safety or security, taking full account of our social and environmental responsibilities, always seeking value for money for the tax payer and actively engaging with stakeholders".

The Contracting & Incentivisation Strategy outlines the NDA's objectives and principles in delivering this mission.

1.2. Background to the Contractual & Incentivisation Strategy

This document, based on consultation with stakeholders during 2009/10, lays out the NDA's contracting and incentivisation strategy to establish, maintain, enhance, operate and close out the most appropriate contracting mechanisms. This is primarily focussed on procurement related activities, but also includes those MoD related activities where NDA acts as a supplier itself. It should be noted that different contracting requirements will need to be delivered through different types of contracts and this strategy does not recommend a single solution (one size fits all), but

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provides the key principles which enable NDA to put in place and operate the most effective contract appropriate to the circumstances.

The Contracting and Incentivisation Strategy is an Enabling Strategy within the NDA's Strategy Management System (SMS) and is fundamental in delivering the requirements and obligations of the NDA through its supply base. Therefore, it interfaces directly with all SMS Driving Strategies which require that the commercial aspects are identified and analysed thus ensuring that the Driving Strategy and this Contracting and Incentivisation Strategy are fully consistent. In particular, this strategy aligns with Health, Safety, Security, Safeguards, Environment and Quality (HSSSEQ), because the maintenance of high standards of health, safety, security, safeguards and protection of the environment and the public are strategic priorities for the NDA.

1.3. Scope of the Contractual & Incentivisation Strategy

The scope of this strategy covers the contracts (including incentivisation and contract management) for:-

- Parent Body Organisations and Site Licence Companies;
- NDA Internal Procurement (NDA direct procurement);
- NDA's nominated role for oversight of British Energy's discharge of their liabilities;
- Development of MoD relationship;
- Other commercial services provided by the NDA;

and incorporates those objectives relating to the SLC Supply Chain as set out in the Supply Chain Development Strategy. It should be noted that whilst the NDA's interfaces with British Energy and MoD are currently not contractual, the principles and objectives are still applicable.

2. Current Situation

2.1. Introduction

The NDA is committed to delivery of the NDA's mission as effectively as possible through:

- a) Embedding commercial expertise and governance into NDA procurement and contracting functions in order to ensure application of best practice and appropriate controls;
- b) Application of contract lifecycle management from the start of early discussions through to contract closure in order to ensure that short and long term goals are met and moderated against estate-wide objectives.

The potential contracting options to the NDA are wide, as outlined below:-

- a) The initial options are whether to deliver the requirement through in-house resources, external supplier or a combination of the two.
- b) Where the NDA has a requirement for procured goods or services, it must decide on the appropriate contracting model e.g. whether to opt for several separate contracts or a single integrated contract or some other bespoke model. Where the NDA is providing a service, it will also work with the client to identify the most appropriate mechanism.

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- c) These contracts will be for a wide range of goods and services from strategic, high value to small direct procurements; from multi-year/multi-phased contracts to one-off buys.
- d) The wide variation in contracting requirements will require different types of contracts ranging from standard off-the-shelf NEC type contracts to bespoke SLC specific contracts developed through Open Dialogue with the bidders.
- e) Furthermore, the NDA must decide whether to simply administer the initial contract or continuously improve and refine the contract throughout its life.

2.2. Approach to Contracting & Incentivisation

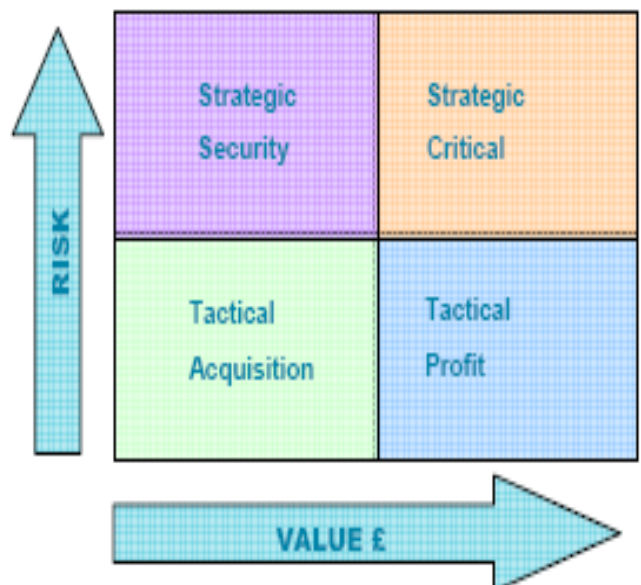
The wide variation in contracting requirements for procurement activities necessitates different types of contracts and incentivisation. This strategy does not identify a single solution (one size fits all), but provides the key policies and principles to allow the NDA to put in place and operate the most effective contract appropriate to the circumstances. Conversely, it is not appropriate to develop bespoke contracts in every circumstance and this has led the NDA to categorise the procurements into four key groupings, where appropriate; each group requiring varying levels of contractual complexity and contract management.

Strategic Critical (typically high value, high risk contracts) These require complex, innovative and bespoke contracts with intensive lifecycle contract management. For management of the SLCs a contracting model has been developed which protects and develops the capability and independence of the SLC but allows a Parent Body Organisation (PBO) to provide direction, leadership and management through ownership.

Strategic Security (typically low value, high risk contracts) May require innovative and bespoke contracts with robust lifecycle contract management.

Tactical Profit (typically high value, low risk contracts) Generally utilises standard contracts and appropriate contract management.

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2.3. Contracting Objectives & Principles

In the development and operation of any NDA contract, the following objectives and principles must be considered and applied where appropriate:

- a) NDA contracts are designed to attract suppliers who will work in partnership with the NDA and develop long term, sustainable solutions which will benefit all parties – the NDA and its suppliers which are the SLC/PBO and the wider supply chain.

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b) The obligations and incentives in the contracts incorporate, fully, NDA's mission 'to deliver safe, sustainable and publicly acceptable solutions to the challenge of nuclear clean-up and waste management. This means never compromising on safety, or security, taking full account of our social and environmental responsibilities, always seeking value for money for the tax payer, and actively engaging with stakeholders.'

c) The key contracting principles for consideration are to:

- Transfer commercial and performance risk to the supplier where it represents Value for Money. This allows the supplier to take on greater responsibilities and risks, but will require additional reward as an incentivisation;
- Incentivise delivery of outputs and performance. This means contracting for key deliverables (the 'what') which allows the supplier wider scope to find more effective and efficient solutions for delivery (the 'how');
- Incentivise long term SLC thinking, planning and delivery through letting of longer duration contracts or incentivise multi-year performance for existing annualised contracts. This will allow the supplier to address longer term perspectives and avoid short-term solutions;
- Develop appropriate incentivisation and pricing models for each contract. Each product or service has differing levels of certainty of scope and different market conditions;
- Incentivise cross-supplier working. Ensure that we harness the collaborative benefits of our suppliers working together without creating undue integration risk on the NDA;
- Focus on delivery through strategic partnering. Develop the appropriate relationship with the supplier to underpin and support the contract;
- Encourage innovation and transfer of best practice. Incentivise knowledge transfer and sharing from parent companies, across the NDA estate and wider supply chain.

2.4. Incentivisation

As part of the NDA's objective of 'Delivering through Others', it employs the world-leading expertise of international contractors along with national and local companies. For the NDA to be successful in 'Delivering through Others', it must:

- a) Be an 'Intelligent Client' with respect to how it manages its contractors.
- b) Be an 'Effective Organisation' configured to operate to deliver maximum impact with constrained resources
- c) Employ 'Trust with Consequences' as a core approach to its work with both internal and external stakeholders and teams

In working with our stakeholders both internally and externally, 'Trust with Consequences' implies that the NDA:

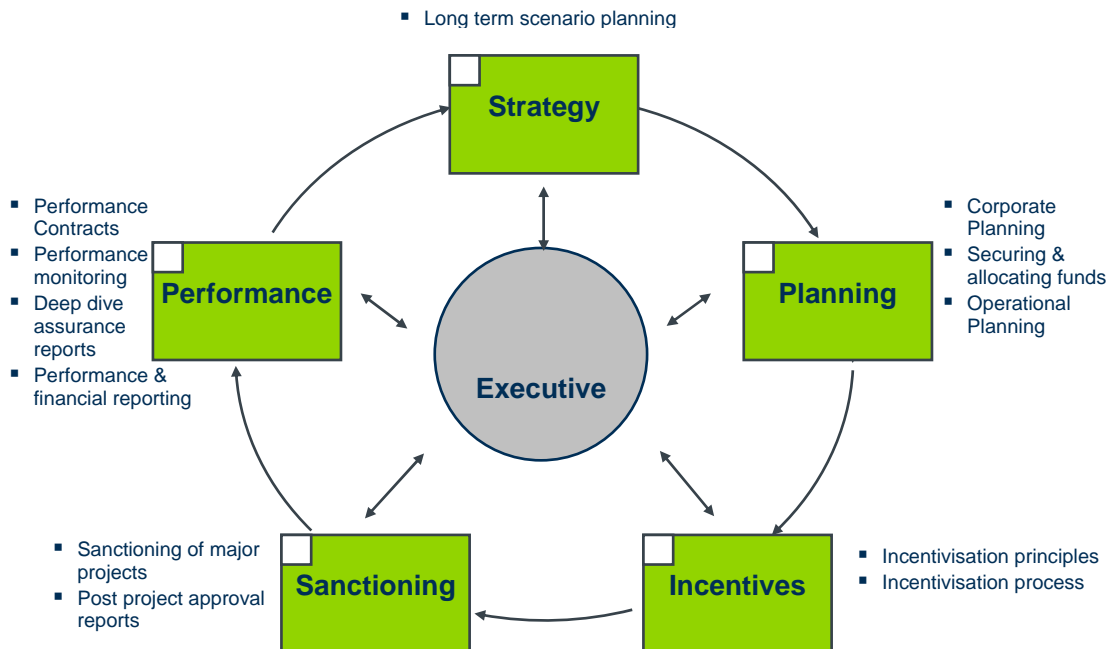
- a) Provides stakeholders with the responsibility, autonomy and authority within delegations to deliver the required performance in the way they see most appropriate
- b) Drive accountability by having incentivisation mechanisms which reward strong performance and recognise poor performance

Underpinning the operation of the NDA and it's objectives to 'Deliver through Others' with 'Trust through Consequences' are the five core processes which commences

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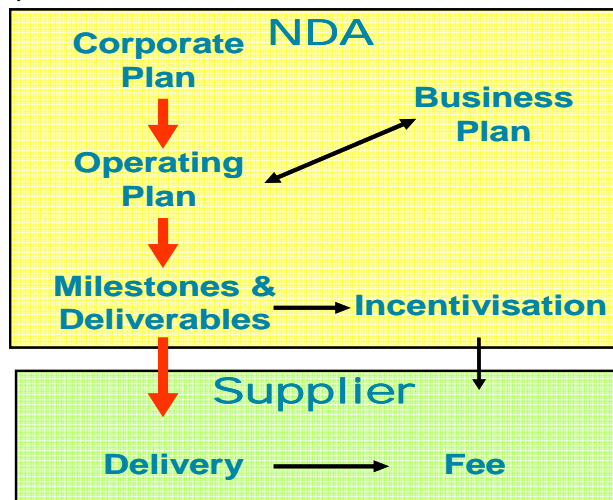
with the development of the Strategy, through Planning and Incentives leading to Sanctioning and Performance, as presented below.



Incentives is the third of these Five Key Processes. However, it also informs the NDA's decisions on Strategy and Planning, plus monitors and receives feedback from the Sanctioning and Performance phases.

The areas for incentivisation are identified by the process of following the 'Golden Thread' from Corporate Plan via Operating Plan through to Delivery by the supplier (and in particular the SLCs).

This ensures that there is a clear link between the obligations on the NDA as laid out in the Energy Act 2004 and the supply chain which contribute to delivering the NDA's mission.



2.5. Behaviours

In the delivery of contract management, the NDA follows a behavioural approach laid out below:

- The obligations and incentives in our contracts must incorporate the NDA mission and obligations as set out in the Energy Act 2004.
- Ensure that contracts enable fair, transparent and non-discriminatory competitions and support the desired relationship between the parties.

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- c) Apply UK and EU law and legislation and follow government best practice where appropriate. Ensure that the NDA operations reflect the highest standards required of a government organisation and any appropriate flowdowns are incorporated in the wider supply base.
- d) Respect the contract at all times, following all protocols, operate in a fair, open and professional manner and expect the same behaviour from all other parties.
- e) Apply strong commercial governance across the NDA estate and ensure consistent application of principles and strategy across all contracting parties.

The NDA also directly incentivises its major suppliers, the SLCs, in compliance with these behavioural expectations through moderation of their fee expectations.

3. The Case for Change

This strategy is a continuation of the existing strategy and underpins the NDA commercial governance. There is no requirement to change the existing strategy.

4. Other Information

4.1. Investment Objectives

Not applicable

4.2. Scope and boundaries of proposed change

Not applicable

4.3. Constraints

As a Non-Departmental Public Body (NDPB) we are subject to the UK Public Contracts Regulations which define how contracts are awarded and we are also expected to follow guidance and best practice throughout the lifecycle of any procurement as recommended by the Office of Government Commerce (OGC).

4.4. External Dependencies

Not applicable

4.5. Key risks, assumptions, issues and concerns

Not applicable

4.6. Stakeholders

This strategy has been reviewed on several occasions in its development by the regulatory community. It is anticipated that this group will continue to provide overview on the operation of the strategy. This strategy forms part of the Strategy II activity and other stakeholders beyond the regulatory community will be involved through this mechanism.

4.7. Work programme and scope

Not applicable

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