

Project delivery documentation for major sporting events

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Legal documentation for projects relating to major sporting events such as the World Cup and Olympic Games (and also Dubai Expo 2020 for that matter) must necessarily achieve the core functions of the timely delivery of the project as well as the on-going legacy of economic, social and environmental outcomes once the event has concluded. This dual role is neatly encapsulated in the name of the organising body for the 2022 World Cup in Qatar, namely the Supreme Committee for Delivery and Legacy.

The core Project Delivery Agreement (PDA) for a project relating to a major event will outline standard provisions dealing with issues such as capacity of the parties, responsibilities, timing, monitoring and reporting, construction and handover, representations and warranties, default and termination. However, the PDA must also be sufficiently robust, yet flexible, to deal with the particular challenges and drivers facing event specific projects. The key issues facing major event projects including those summarized below.

Legislative support

In many cases, local laws are not sufficient to address the many complexities and manage the many risks associated with major sporting events. As a result, enabling legislation may be required to:

1. provide an environment in which the event can be held, such as the use of public facilities, potentially intrusive security arrangements, the implementation of infrastructure works, the acquisition and expropriation of land for project works, road closures and exemptions from particular local laws which do not sit well with the requirements of an international event; and
2. facilitate the construction works through labour regulation, the possible expansion, or relaxation, of local laws to enable the achievement of time sensitive construction programs and a fixed completion date.

The PDA will need to reflect these regulatory changes and provide for the satisfaction of any government checks and balances built into the project delivery process.

Request for Proposals

Most major project works broadly require a request for proposals followed by a bid proposal and evaluation process. This is particularly so where the proponent is a State or government body as they usually have well-established procurement protocols.

Whilst the bidder will be driven to deliver innovative design, cost effective completion and value for money, the proponent can be expected to concentrate on governance, the probity of the process, the proper evaluation of what may be quite different proposals and the maintenance of competitive tension in the bid process for as long as possible.

In a straightforward construction project for particular identifiable works, the relevant form of PDA may be attached to the bid documents. However, where the proponent is looking for innovative design and ideas

from the bidders themselves, the PDA may need to be finalised later in the bid process to reflect the final agreed design and scope of work.

Risk Allocation

The allocation of risk between the stakeholders is a crucial factor in the negotiation of the PDA. The focus of each party will be squarely on the identification and avoidance of risk or, if avoidance of a risk is not possible, the minimization or transfer of that risk.

The assumption of risk by a party will usually lead that party to adjust its financial analysis of the project and, in the case of a bidder, this may have detrimental effect on the prospects of success of the bid.

Many PDA's include a form of risk allocation table that lists the identified risks and then allocates responsibility for each risk to a particular party. The allocation of each risk can be a matter of hard-fought commercial negotiation but a reasonable approach is that the party best placed to manage a particular risk should assume responsibility for it.

For example, the contractor may be prepared to assume responsibility for risks such as site conditions, financing and changes in economic circumstances whilst the proponent may be prepared to assume responsibility for risks such as changes in law or policy and, possibly, the remediation of existing environmental contamination.

Construction

The project construction terms and conditions can either be set out in the PDA or in a separate construction contract and will generally impose fairly standard rights and obligations on the parties.

However, there are a number of aspects which should be carefully considered, including the following:

1. The design requirements can change over the course of the construction period due to a desire to capture ever-changing best practice in the design of the facility and to incorporate new and innovative technology and environmental initiatives. As a result, the variation procedure, and consequent cost allocation, should be particularly flexible and reactive to facilitate progressive enhancement of the final project.
2. Unlike many other construction projects, the completion date for a major sporting event such as the World Cup or Olympic Games is fixed. The opening ceremony will be scheduled for a particular date some years in advance and must occur on that date. Consequently, contractual rights such as extensions of time, claims for delays and termination can be of limited effect both in terms of the commercial imperatives and the broader political reality. Therefore, the focus must always be on the incorporation of provisions that accelerate the works (including obligations to provide additional funds and resources) to ensure completion by an immovable deadline. The PDA must also describe effective and on-going contract and project administration which will be crucial.
3. Most major sporting events now require the organization of test events and trials in order to evaluate the project's functionality and facilities. The PDA must therefore include provisions that address staged handover and the implications in terms of work schedule, site management, insurance and risk allocation.
4. In most cases, the project is constructed having regard to the end use and the event specific facilities are incorporated into the main construction works as overlay works. Once the event has finished, the overlay works are removed and the project is retrofitted for the commencement of the end use. The provisions dealing with this transition phase need to be robust enough to anticipate any design changes both in the event works and the facilities and services required for the end use.

Clean facility

Major sporting events generate enormous marketing opportunities, and therefore revenue for the

organisers and other stakeholders. In the context of major event facilities, advertisers can be expected to require a clean facility, free from any existing signage and with the minimization of potential ambush marketing, so that they can overlay their advertising and related promotional features. The PDA will need to include provisions that satisfy these requirements.

Legacy

The legacy of major sporting events for the community now has major prominence in the bid process and is usually a significant local political issue. It is recognized that events such as the World Cup and Olympic Games occupy a very limited period of time (in the case of the Olympic Games, 16 days) whereas the on-going legacy of the project will last for many years.

The legacy can include not only the use of the facilities and infrastructure but also the disposal of retrofitted facilities such as the sale of the apartments from the residential areas occupied by the contestants. Importantly, where the particular project has been implemented by the private sector, the relevant PDA could include an on-going profit sharing arrangement for the State to fund additional facilities or go into consolidated revenue to achieve other desired outcomes.

Conclusion

Project delivery documentation for major events has many similarities to usual project agreements. However it is crucial to ensure that the documentation is carefully drafted to anticipate, and address, the particular requirements of these projects that distinguish them from the standard.

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