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British In Vitro Diagnostics Association

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Managed Service Contracts and Risk

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Agenda

- Treasury Generic Risks
- Risk Principles
- Operational Risks
- Non-Transferable Risks
- **Practical Risk Discussion**

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3 Types of Risk

- Retained Risk
- Shared Risk
- Transferred Risk

When Structuring a Managed Service Contract, the Trust needs to ensure that there is adequate risk transfer to qualify.

Follow guidance in the Treasury Green Book 2018

Treasury Green Book Generic Risks

Funding Risk
Where Project Delays or changes in scope occur as a result of the availability of funding.

Legislative Risk
The risk that changes in legislation increase costs. This can be divided into general risks eg. Corporate tax, UKAS etc.

Maintenance Risk
The risk that keeping the assets in good condition and performing to the necessary standard varies from budget.

Occupancy Risk
The risk that property remains untenanted (demand risk).

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Treasury Green Book Generic Risks continued

Operational Risk
The risk that operating costs for a defined scope of works varies from budget or that performance standards slip or the service cannot be provided.

Planning Risk
The risk that the implementation of a project fails to adhere to the terms of planning permission or detailed planning cannot be obtained and only implemented at greater cost.

Policy Risk
The risk of changes in policy direction not involving legislation.

Procurement Risk
The risk that where a Contractor is engaged, risk can arise from the contract, the capabilities of the parties and when a dispute occurs.

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Treasury Green Book Generic Risks continued

Project Intelligence Risk
Where the quality of the initial Project information is likely to impact on unforeseen problems occurring.

Reputational Risk
The risk that there will be an undermining of customer/ supplier/ media perception of the ability of the organisation to fulfil its obligations.

Residual Value Risk
The risk relating to the uncertainty of the value of physical assets at the end of the contract.

Technology Risk
The risk that changes in technology result in services being provided using non-optimal technology.

Volume Risk
The risk that actual usage of the service varies from the level forecast.

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Risk Principles

The governing principle is that risk should be allocated to whichever party is best placed to manage it.

The optimal allocation of risk, rather than maximising risk transfer, is the objective, and is vital to ensuring that the best solution is found.

Accordingly, the degree to which risk is transferred depends upon the specific proposal being appraised which is why a decent specification is so important.

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Generic Risks

The level of risk transfer should be in the technical specification and proposal, as the impact that these risks have on the suppliers' incentives and financing costs is critical.

There is often little understanding of this and the limits to risk transfer which might still be considered for value for money.

Where the supplier has clear ownership, responsibility and control explicitly set out in the long form contract document, it can manage more effectively than the procuring authority.

If the NHS seeks to retain the responsibilities and controls that go hand-in-hand with service delivery and yet still seek to transfer significant risk, which is what is happening a lot at the moment, then prices may need to increase to cover costs, and this seriously affects the re-claim part for COS.

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Operational Risks

Operational risk is transferred to the Contractor in terms of:

- Equipment,
- Assays, (RUO?)
- TAT’s,
- Financial risk e.g, Volumes,
- Quantity,
- Performance
- Compensation for KPI failure.

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Non-Transferrable Risks

- Staff
- H&S
- Insurance
- Buildings
- Accidental Damage
- Business Continuity (EP/Brexit)
- Utilities
- Negligence
- Duty of Care
- Training
- Expertise
- IVDR

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Group activity

1. KPI’s and Performance Measurement
2. BCP and Emergency Planning
3. Future Provision and Flexibility during the term

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