



Futureproofing Concessions

There is nothing permanent except change

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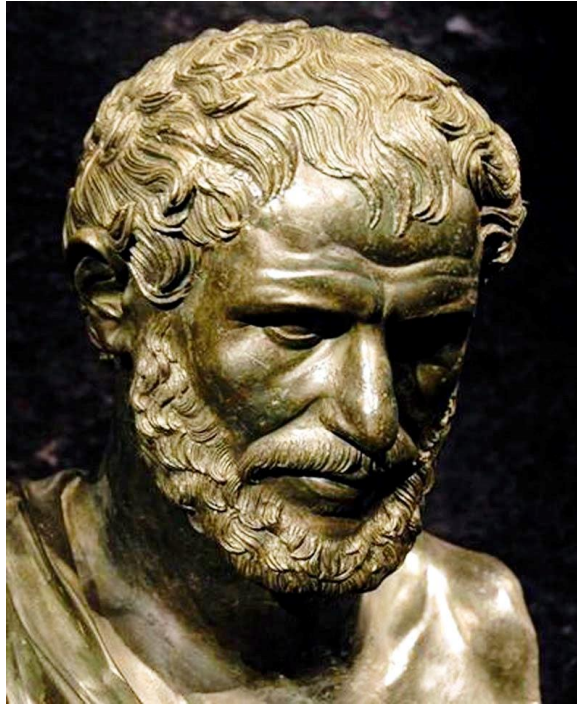


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φορές



Heraclitus

You can never step into
the same river twice

535-475 BC

Features of a Concession Project

Grantor and Contractor.

Long-term contracts.

Contractor provides a service and receives payment through:

- exploitation rights; and/or
- availability payments.

Risk transfer.

Investment phase and Operation phase.

Return to Grantor.

Duration of a Concession

Duration of a concession determined by the:

- ability of Grantor to anticipate its requirements;
- ability of potential Contractors to forecast costs and income;
- time required by Contractor to recover costs and make a profit;
- financing requirements;
- expected life of assets and renewal and replacement;
- continuity of service and transition.

Duration of Concessions



Attiki Odos
23 years

Chicago Skyway
99 year lease



Swinford Bridge
Open since 1769
250 years.....

Objectives of the parties

In summary some of the key objectives.

Party	General	Change
Grantor	Level of service Value for Money	Protect or improve level of service Control cost
Contractor	Profit Reputation	Commercial opportunity/risk Protect or improve reputation
Lender	Return Reputation	Little benefit Risk

Principles of Risk Allocation

Risk allocation follows these principles:

- risks are allocated to the party best placed to manage them; and
- risks passed to the Contractor are those that it can manage or accept at a reasonable price.

Change Types

Changes can be grouped as follows:

Source of change
Grantor
Contractor
Change in law
Change in standards

Timing
Design and Construction
Operation and Maintenance
All phases

Cost
Pre-priced
Small
Medium
Large

Type
Use or functionality
Scale or capacity
Specifications or standards

Nature of specifications

Input, Output, Outcome specifications.

The more prescriptive a contract requirement is then the less flexibility there is to adapt to change.

Grantor instructed change

Additional or changed works.

Generally – cost of impact on design, construction and subsequent O&M agreed through defined negotiation process.

In some cases schedules of rates can be used.

Cost paid by Grantor.

Contractual limitations on changes (ability to refuse under some circumstances).

Legal constraints on instructions (size and nature).

Contemplated changes

Contractor proposal

Additional or changed works.

Contractor makes proposal, seeks agreement on implementation and trials.

Generally – cost of impact on design, construction and subsequent O&M agreed through defined negotiation process.

Sharing mechanism for any cost saving.

Grantor Instructed Change in Service Requirements

Instructed changes in service requirements may impact:

- design, construction, operation and maintenance cost;
- Payment; and
- risk profile.

Generally Grantor to meet cost and any changes in risk.

UK highway project – cumulative small changes up to a cost threshold are deemed to be included in Contractor's pricing. Cumulative cost of small changes above the threshold are Grantor risk.

Change in Law

Comparison of three projects.

Location	Non-discriminatory	Discriminatory
UK	Shared	Grantor
Ireland	Contractor	Grantor
Greece	Grantor	Grantor

Change in Technical Standards

UK highway project.

Design and construction standards:

- frozen at the start of the design/construction period;
- as and when any major maintenance or renewal activities are undertaken the latest standards are adopted.

Operation standards:

- at any time the most recent are used;
- Contractor takes cumulative cost risk up to a threshold value, beyond which it becomes a Grantor cost.

Change in Technical Standards

Ireland highway project.

Change in construction standard is Construction Variation and Grantor risk.

O&M is to be to latest standards – Contractor risk.

Greek project.

Prescriptive technical standards, change by agreement.

Contemplated Variations

Rolling-stock project contains a list of “contemplated variations”.

The Concessionaire must implement the variation if required.

Items such as changes in:

- area over which train sets will be expected to operate;
- maintenance or servicing locations;
- livery and passenger environment; and
- operating speed (up to given limit).

Other variations have to be agreed on a case by case basis.

Constant Risk variations

Contract contains a list of “constant risk variations”.

Payment to the Contractor for constant risk variations is limited to the direct cost of the variation.

Other variations are considered on a case by case basis and allow changes to be made to the performance deduction regime if the variation changes the risk profile.

Conclusion

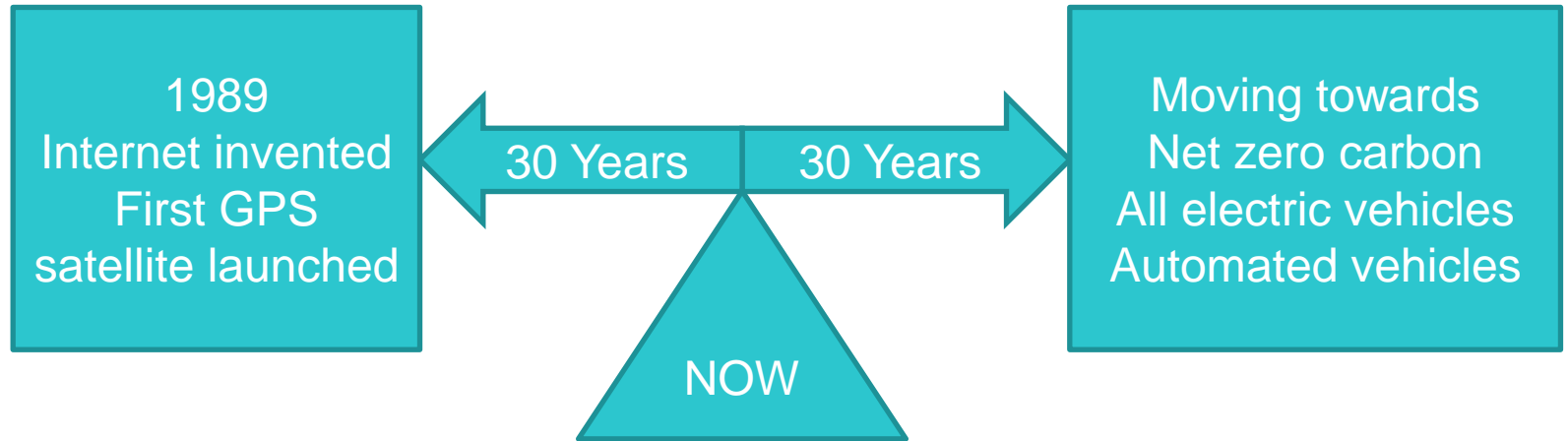
When drafting Concession contracts:

- anticipate changes as far as possible;
- provide flexibility in the specifications;
- establish clear processes for managing change;
- encourage adoption of new technologies; and
- share gains arising from innovation.

When managing Concession contracts:

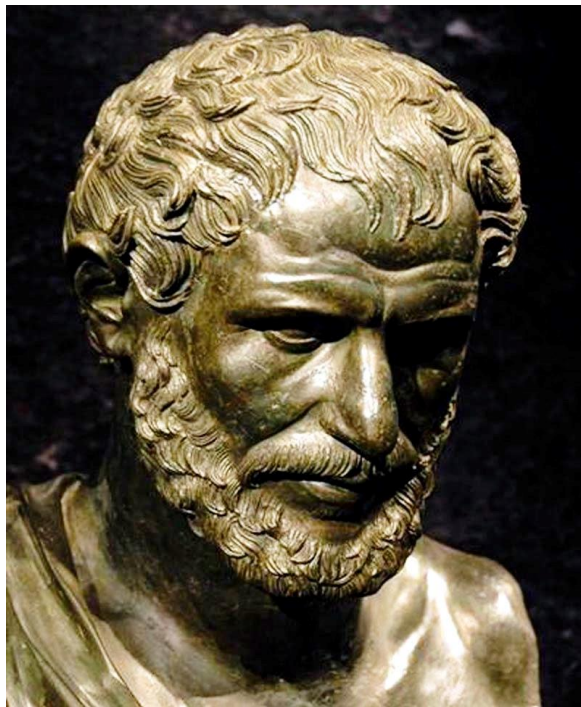
- active participation from both parties.

What does the future hold?



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