

**DELIVERABLE ACCOUNTABILITY, CHANGE MANAGEMENT AND  
BREACH IN CONSULTANCY CONTRACTS: A COMPARATIVE STUDY OF  
WORLD BANK VERSUS EUROPEAID FUNDED PROJECTS**

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**ABSTRACT.** A considerable proportion of donor aid is dedicated to technical assistance to support developing countries in their development initiatives. The majority of this aid comes from globally-operating international donors including the World Bank and the European Union. In spite of several harmonization attempts, there still exist major differences in their procurement regulations and standard contracts. Based on an extensive literature review on consulting services and an in-depth analysis of the standard forms of contract, it was found that divergence between both forms is not only clear but also paradigmatic owing mainly to market orientation paradigm differences. The findings and recommendations help advance research on and practice of various types of consultancy services in general.

**INTRODUCTION**

**Consultancy Services**

In order to procure knowledge, clients resort to consultants who are capable of pooling and efficiently applying knowledge: “Knowledge intensity is widely recognized as a hallmark of the management consulting industry” (Richter & Niewiem, 2009, p.275). Researching *consultocracy*, Gunter, Hall, and Mills (2015) classified consultancy knowledge production into three approaches (functional, critical and socially critical) each of which distinctively and differently conceptualizes purposes, rationales and narratives of the knowledge production process. Ideally, the aim of a consultancy service should not only be answering clients’ practical questions but also enhancing

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clients' reflective practices to engage in novel ways of problem anticipation, analysis and resolution (Puutio, Kykyri, & Wahlström, 2009). Consultants help clients through organizational diagnosis and knowledge transfer in order to solve problems, achieve organizational goals and effect change (Lu, Su, & Huang, 2010). In another view that sees no magicians in consultants, a consultant's service should revolve around helping clients to help themselves rather than just solving clients' problems or providing expertise (Soriano, 2004). Cohen and Eimicke (2008, p. 86) believe that consultants' duties ought to exceed mere compliance with contract requirements to include acting as faithful agents of the public sector to advance that sector's goals of satisfying public needs and ensuring government effectiveness. Amidst the evident ambiguity on the role of consultants, Furusten (2009) considers that both clients and management consultants are uncertain of the role expected of consultants and that the latter should be considered as *improvisers* (and *satisfiers*) playing an indefinite role as agents of stability rather than agents of change.

The continuum of roles a consultant assumes ranges from an "outsider" role- a simple market-based transaction role- where the agent furnishes advice in exchange of monetary gain to an "insider" role- a complex social integration role- where a network of long-lasting social ties emerges (Kitay & Wright, 2004). The two roles are not mutually exclusive, and neither role is inherently good or inherently bad; the alleged efficiency of either is contingent on the particulars of the required service and the needs/orientation of the client (Kitay & Wright, 2004). Werr and Perner (2007) suggest that the characteristics of the consultancy services are better understood as characteristics of the interaction between the client and the consultant. Critical success factors in a client-consultant relationship are the "need for trust, high levels of interaction and contingent methods" (Mitchell, 1994, p. 334). A successful consultancy service applies processes and methods that stress "the active management of the client-consultant relationship" where consultants "actively manage and manipulate the interaction process in order to create favorable impressions of their service" (Clark & Salaman, 1998, p.19). For the interactive game to succeed, consultants need to adapt their services to clients' wishes and rules (Taminiau, Boussebaa, & Berghman, 2012). Interestingly researching literature on how consultants working for the public sector see themselves, Lapsley

and Oldfield (2001) further identified perceptual differences in such self-views based on the size of the consulting entity (large firms as opposed to small ones and freelance individuals). Viewing the client-consultant relationship from the agent's side, Whittle (2006) observed that the consultant's role is daunted with a multitude of paradoxes governing the client-consultant engagement and discourse: marketing for their services, consultants face role and intention paradoxes (advocate vs. advisor; and interested vs. independent); furthermore, as owners of consulting knowledge, agents endure the paradoxes of being scientists vs. storytellers and delivering knowledge that is bespoke vs. standardized; finally, relationship paradoxes revolve around whether the consultant is perceived as an ally vs. enemy and whether it is a facilitator vs. leader (Whittle, 2006).

On the other side, Lloyd-Walker, Mills, and Walker (2014) find that consultancy services rendered through the traditional transactional mechanisms are flawed with systemic inefficiencies caused mainly by a "deterministic product paradigm" where both parties mistakenly believe that the requirements and the plans are "real" and clearly represent agreed actions. Such a perceived determinism becomes more and more realistic as the product of the project moves closer to tangibility. There is a spectrum of service tangibility that helps to identify a service-logic and a goods-logic in procurement regulations. Consultancy services are seen as *activities* rather than *objects* (Roodhooft & Van den Abbeele, 2006). Although procurement of consultancy services seems to be dominated by a service-dominant logic as opposed to the goods-dominant logic in the procurement of goods, works and non-consulting services, these two apparently incongruous paradigms are not mutually exclusive; they interact in the planning, selection and implementation of consulting services procurement at both macro and micro levels (Lindberg & Nordin, 2008). In any case, client selection of a consultant relies mainly on signals and symbols of perceived consultant competence and qualifications (Clark & Salaman, 1998). Although clients are increasingly making well informed consultant selection decisions, such a selection still remains "largely driven by instinct, haphazard relationships, or chance" (Richter & Niewiem, 2009, p. 286). On an opposite front, Roodhooft and Van den Abbeele (2006, p.492) characterize a consultant selection process to be "interactive, continuous and dynamic." Although previous findings that clients of

consultancy services are “victims, marionettes or passive consumers” are being challenged on grounds that clients are becoming more and more “professionalized” in dealing with consultancy services, considerable research still finds that contracting for those services is still inefficient (Höner & Mohe, 2009).

Prevalent uncertainty in management consulting is caused by a very low degree of formal institutionalization reducing barriers to entry (Glückler & Armbrüster, 2003). Contracting for complex advisory services must take into consideration the degree of complexity and its impact on asset specificity and resulting contestability, the degree of uncertainties involved which increases the degree of contract incompleteness and the influence of the same on the deteriorating quality of rendered services, and, finally, the potential of opportunism furnished by information asymmetries and the resulting increase in the extent of client supervision required (Raudla, 2013). Deciding to assign the rendering of professional services to external consultants does not absolve clients of accountability towards the outputs or downstream outcomes (Mitchell, 1994). It is evident in managerial economic theories that the decision to pursue the private rendering of goods and services is largely affected by the ability to “observe” the delivery process (i.e. after studying the observability and measurability characteristics of the object of exchange) (Coats, 2002). Due to the opaque and complex nature of consulting services, public sector accountability for the services rendered through contracting out is much weaker compared to its accountability for physical or easily measurable products. Despite the fact that the products of consulting work is in some sectors “socially critical” (Gunter, Hall, & Mills, 2015, p. 532), citizens or control agencies have a very long way to go to hold clients answerable to the quality of consulting services. “The lack of quality control and institutional setting allows for opportunistic behavior, increases the likelihood of dealing with inadequate service suppliers, and represents a performance risk for the client. In addition, management consulting, like most other knowledge-intensive business services, is performed after the contract has been signed, which shifts the risk of low quality or adequacy toward the client” (Glückler & Armbrüster, 2003, pp. 289-290).

Glückler and Armbrüster (2003) find that neither quality nor fees are the key drivers of competitiveness in the consulting services

industry; instead, experience-based trust and “networked reputation” are the basis of market competitiveness in this sector. However, the predominant consultant selection method in the public sector worldwide is based on weighting quality and price (Quality-Cost Based Selection or Most Economically Advantageous Tender). The majority of such weighting options has rendered such selection dominated by price where consultants submitting lower fees-lower technical scores have higher chances to win (Drew, Tang, & Lu, 2004) at a time where clients demand higher quality services at values deemed fair (Soriano, 2004).

Researching pitfalls in contracting out administrative reform policy advice, Raudla (2013) identified the following sets of time-phased issues: (a) Complexity, Uncertainty, Asset Specificity and Information Asymmetry; (b) Limited Contestability, Incomplete Contracts and Opportunism; and (c) High Transaction Costs, High Agency Costs and Low Quality. To resolve the asymmetry of knowledge and power inherent in seeking and providing advisory services and to enhance the usefulness of an advice, it is recommended that the context in which this exchange occurs should preferably be in a question-answer format with an active involvement of the recipient (Puutio, Kykyri, & Wahlström, 2009). The client should initially specify the needs and the determinants of acceptable performance- tasks that are daunted with a multitude of challenges. Some researchers attribute deficiency in consultancy contract specification to the misalignment between expectations and process performance measures (Deakins & Dillon, 2006). Service quality is the result of the comparison between client expectations and the client’s perception of how the service was rendered (Caruana et al., 1998). Consultancy services are “shaped by expectation structures, which give meaning to and provide the risks of the consultancy process and outcome” (Nikolova, Reihlen, & Schl, 2009, p.296). Pre-contract negotiations conducted in systematic, structural and organizational conditions are key factors in formulating client expectations from the consultant (Furusten, 2009). An independent review of the World Bank has identified the red tape placed on pre-contract negotiations in consultancy services to be a major drawback that needs resolution (World Bank - Independent Evaluation Group, 2014). To reduce the perception-expectation gap, it is imperative that red-tape on pre-contract client-consultant discourse be removed.

Based on the above initial introduction to consultancy services, this article will proceed as follows: the rest of the introductory part will cover consultancy services under donor aid followed by contract management, change management and conflict management. According to the above literature review, the research questions will follow enabling the comparison between the forms of contract adopted by the World Bank and Europeaid. Finally, the paper concludes this analysis and maps the results to the literature review on consultancy services in an attempt to generalize a set of recommendations.

### **Donor Aid & Consultancy Services**

Due to widespread dissatisfaction (European Commission, 2008) with the quality of expertise provided through donor-funded Technical Assistance (TA) coupled with ambiguity in its appropriate functions as well as conflict concerning the roles TA experts should exercise, both donors and recipient governments criticize TA in both its philosophical justification as well as its practical application (Gow & Morss, 1988). Despite widespread criticism of management consultancy in the public sector and skepticism towards its effectiveness, it remains a growing industry (Lapsley & Oldfield, 2001). Technical Cooperation (TC) effectiveness is impaired due to shortcomings in the methods of need identification, the manner in which TC is designed, the ambiguity of roles and expected results, ensuring that TC experts possess the necessary qualifications and competence, and the accountability of TC and its experts to recipient governments (European Commission, 2008).

Acknowledging the importance of dialogue between the client and the consultant in a TC setup, the European Commission developed a special "Format for Mutual Performance Dialogue" to render the consultant's work more effective where the consultant has to perform well and the client has to provide an enabling environment too (European Commission, 2009). The Backbone Strategy (European Commission, 2008) adopted by the EU came up with the following guiding principles: adopting a results-orientation where TC should be designed to ensure that inputs and activities are linked to planned outputs that deliver sustainable outcomes; monitoring performance of TC using pre-set suitable indicators; and avoiding blueprint approaches. In evaluating the World Bank's procurement policies, the

(World Bank - Independent Evaluation Group, 2014) highlighted several issues of relevance:

- There exists greater perceptions of problems in selection and management of consultants as compared to goods and works: consultant's guidelines are less accepted than procurement guidelines;
- Qualified consultants refrain from participating in quality- and cost-based selection processes (QCBS);
- QCBS is seen to produce award to the "least worse" firm, therefore impairing the quality/value of services;
- Concentration on transaction compliance diminishes focus on outcomes;
- There is a clear need for more involvement in contract management; and
- Value for money practices should be strengthened.

As the majority of TC is funded by the two key donors- the World Bank and the European Union- this research aims at furthering the effectiveness of TC and TA worldwide.

### **Contract Management**

The ability of the client to draft a contract and/or create a contractual relationship that naturally support and impose accountability is a prerequisite to the "buy" decision; however, such an ability is highly contingent on the nature of the services (Coats, 2002). Major challenges facing a principal (from an agency-theory perspective) are information asymmetry and the tendency of the agent to be opportunistic (Höner & Mohe, 2009). From a social interactionism perspective, another important challenge that runs in parallel is attaining convergence of expectations leading to a *joint social reality* (Nikolova, Reihlen, & Schl, 2009). During the contract management phase, the nature of the client-consultant interaction therein and the pursued consulting procedure (exploitive or explorative) are strongly contingent on the type of associated consulting services (Nikolova, Reihlen, & Schl, 2009). In the delivery of consulting services, the participation of the client is essential for the attainment of client satisfaction (Jawaharnesan & Price, 1997). Client-consultant professional and social interaction is almost always a prerequisite for good results where both parties contribute at various phases of the service delivery process (Roodhooft & Van den

Abbeele, 2006): the higher the levels of trust and interaction, the more likely the success of this relationship. However, the governance mechanism of traditional means of procuring consultancy services in the public sector is “highly normative, prescriptive and compliance-oriented thus depriving parties of latitude to explore initiative or to experiment with more pragmatic options” (Lloyd-Walker, Mills, & Walker, 2014, p.237). Feeney and Smith (2008) find that the formal/traditional mechanisms of contract management entail excessive costs that can be alleviated by the reliance on informal social mechanisms at the core of relational contracting. Feeney and Smith (2008) propose a relational governance model based on positively influencing the perceptions of client staff of their consultants through social interactionism which will in turn enhance client’s trust, reduce contract’s specificity and enhance relational governance. Conversely, and despite long-standing criticism of compliance-based management of public projects, Kassel (2008) believes that compliance with rules is essential for project success and accountability. That debate let alone, it is evident that client concentration on the process of delivery of consulting services has weakened the consultant’s accountability for its performance (Kettner & Martin, 1993).

Efficient implementation of complex contracts requires an active involvement of the client in monitoring the consultant in order to counter those forces that drive the latter away from effective and timely completion (Hubbard, Delay, & Devas, 1999). However, resorting to agency theory, Ehrhardt and Nippa (2005) doubt that the principal (client) can efficiently control/monitor the agent (consultant). Client-consultant relationship under the umbrella of a contract is more complex than a two-party interactive process. The diverse and complicated networks of interaction within a contract contribute to such complexity. A key factor that shapes client-consultant interaction is “client position plurality” as proposed by (Alvesson et al., 2009) where client positions strongly impact what kind of input, information and access a consultant can expect and what kind of performance criteria the client will use. Analyzing the role of consultants in education policy making and reform, Gunter, Hall, and Mills (2015) identified four interrelated issues critical to the success of consultancy services:

- Recognizing consultancy work as a valid function in government requires the interplay between the public office and those elected/appointed to such an office;
- The analysis of the interplay between government, policy and knowledge produced by consultants is key to understanding the delivery process;
- Knowledge production and the activities of stakeholders are rooted within the government (officials and structure) thereby shaping the sourcing and scoping of knowledge; and
- The client-consultant relationship is neither symmetrical nor fixed requiring the involvement of political science into the production process.

Nikolova, Reihlen, and Schl (2009, p. 294) suggest that successful client-consultant interaction is crucially based on the following practices: impressing,<sup>1</sup> problem-solving, and negotiating expectations “that together provide the social fabric through which clients and consultants shape common background assumptions, communicate, and create knowledge and shared expectations.” Since clients face the difficulty of determining ex-ante the quality of a consultancy service (mainly due to intangibility), the consultant should, then, “construct a reality which persuades clients that they have purchased a valuable and high quality service” (Clark & Salaman, 1998, p. 18).

### **Change Management**

The successful completion of complex projects is particularly challenging when stakeholders suffer unavoidable and unforeseeable changes (Zhang, 2013). Consultancy projects- as the case is in all types of projects- undergo inevitable changes in their lifetime. Complex projects are planned based on future assumptions which, more often than not, fail rendering some project activities impossible to implement or unnecessary, therefore necessitating a revision or redefinition of affected activities (Zhang, 2013). Additionally, in complex consultancy contracts, exchange terms are ambiguous thereby increasing the risks of consultant opportunism notably in situations of information asymmetry (Raudla, 2013). One form of such opportunism is the lowering of service quality or the creation of artificial changes to an already incomplete contract in quest of relaxed terms, escaping from responsibilities, widening scope,

increasing profitability, etc. Moreover, most service contracts constantly undergo changes in service specifications due to emerging issues (Roodhooft & Van den Abbeele, 2006). Narrowing down on the contingencies and future assumptions is not only difficult in complex and widely specified output contracts but also in short-term and narrowly defined output contracts implying high transaction costs in regular contract renegotiation, adjustment and updating (Raudla, 2013).

Crucial to the management of changes and unforeseen circumstances is the proper communication between the client and the consultant on one part and between the client and the end users on the other (Bryntse, 1996). However, communication is necessary but not sufficient. “[M]eaningful dialogue between the parties regarding the manner in which the deliverables are to be produced will serve to reduce the prevalence of arm’s-length transactions in the public sector” (Deakins & Dillon, 2006, p. 52). Open discussion and knowledge sharing are key requirements in releasing organizational knowledge present within interaction chains and are inherent characteristics of a “no-blame” culture where parties are not risk averse, but instead venture into risk taking, problem identification and resolution (Lloyd-Walker, Mills, & Walker, 2014). In a contractual arrangement with a “no-blame culture”, parties are mutually dependent to achieve “best-for-project” results, refrain from “cheating the system”, do not “easily opt out” when the situation is not convenient, adopt a pragmatic “behavioral mindset” towards problem resolution and change management (Lloyd-Walker, Mills, & Walker, 2014, p.234). Unfortunately, such a culture is still far from the prevalent transactional culture mandated in public sector procurement; therefore, solutions must be sought in the context of this prevailing culture.

### **Conflict Management and Breach**

To foster trust and good will, the consultant is expected to act based on its understanding of the expectations of the client (Furusten, 2009). In other words, the consultant should improvise acting in such a way the client expects it to act in situations of uncertainty or when the client has an unclear formulation of its problems or how to resolve them (Furusten, 2009). For this to happen successfully, both parties should be fairly cognizant of the uncertain

situation and should have reasonably solid grounds based on which they form their expectations (Furusten, 2009).

As in all classical and neo-classical contracts, “if trouble is anticipated at all, it is anticipated only if someone or something turns out unexpectedly badly” (Seal, 2004, p. 332). Much insight into client-consultant conflicts can be gained by understanding the boundary relationship between them (Kitay & Wright, 2004). Failure in client-consultant relations can happen when a party exploits its position of power (consultant underprovides the client or the client overworks the consultant) (Kitay & Wright, 2004). One way to understand a failing client-consultant relationship is to analyze client position dynamics (Alvesson et al., 2009) which facilitates understanding the regression (or conversely, evolution) of such a relationship along socio-political processes in the contract: these processes “highlight the importance of ‘thickening’ the relationship and lubricating it to establish and maintain degrees of trust that may substitute (or obscure) more direct forms of control and facilitate project completion and future business contacts. At the same time, they illuminate how power relationships play out between client–consultant and client–client, such as obscuring the brute application of sovereign power, but also more subtle processes of marginalization...” (Alvesson et al., 2009, p. 262).

Trust is one of two specific assets (the other being expertise) in policy advice consultancy as pointed out by Raudla (2013) citing Boston (1994) who classified three types of trust: contractual, competence, and goodwill. However, traditional procurement rules in the public sector mandate a one-time transactional relationship model with a consultant where recurrence, trust-building, altruism, synchronization, and cooperation are not sought or, sometimes, permitted. Traditional procurement procedures legitimize for a consultant to seek self-interest in managing risk exposure and, as a result, trigger rational yet reactionary behaviors that are often against the interests of the client leading to a “*claims mentality*”, opportunism, blame and litigation (Lloyd-Walker, Mills, & Walker, 2014). In addition, traditional contract theory aggravates the problems caused by information asymmetry and service intangibility (Raudla, 2013). In such types of transactions, when opinions will obviously (and almost inevitably) diverge, claims and counterclaims will ensue causing not only losses to parties’ time, energy and

resources, but also failure in introducing innovation opportunities all in favor of claim administration (Lloyd-Walker, Mills, & Walker, 2014). Roodhooft and Van den Abbeele (2006) believe that the client is very often directly involved in the services production process and that the services are consumed simultaneously as they get gradually produced. Both the co-production of the service as well as its gradual consumption render the allocation of responsibilities for failure very difficult. This additional characteristic of consultancy services adds to the complications of assigning liability in case of non-compliance of the end product and of substantiating a party's arguments in a conflict setup. As Mitchell (1994, p. 335) phrases it, "neither party can be totally absolved."

### RESEARCH QUESTIONS

Scholarly research on consultancy services in the public sector has not yet projected such a research on the practical platform that governs such transactions: the contract. Contractual terms govern the relationship between the parties and moderate the exchange; any practical analysis of the successes, failures, challenges, disputes, etc. of consultancy service delivery ought to primarily consider the contract conditions under which the services are being rendered. To further verify the validity of the above literature review findings, this article analyses those findings in light of two widely used forms of contract. In particular, the author aims at studying some of the above findings vis-à-vis a comparative analysis between two standard forms of contract: (i) World Bank time-based consultancy contract and (ii) Europeaid fee-based service contract. This comparative study takes also into consideration the general procurement guidelines adopted by the two entities: (i) Consultants' Guidelines for World Bank Projects and (ii) Practical Guide for Europeaid projects. Accordingly, this paper attempts to answer the following questions:

- Question 1: What is the liability of a consultant in cases of rejection of its deliverables?
- Question 2: What are the consultant's payment entitlements in cases of contested quality?
- Question 3: What attitudes do both contracts take concerning consultant professional liability?

- Question 3: What is the obligation of the consultant concerning its experts: replacement and absenteeism?
- Question 4: What are contractual opportunities and limitations with respect to change?
- Question 5: How does each form of contract tackle consultant breach?

In answering the above research questions, the paper will investigate deeper the theoretical background and scholarly research of relevance before engaging into the core of the study: the comparative analysis. Subsequently, this paper aims at synthesizing the scholarly research on consultancy services as well as the comparative analysis in order to provide a practical set of recommendations of value to practitioners, donors, consultants, policy makers and researchers. The paper proceeds as follows: Firstly, it will analyze contested quality of consultants' deliverables after an introductory literature review on quality evaluation; secondly, the paper will compare the attitudes of both contracts with respect to particular topics under change management; thirdly, it will compare both forms with respect to consultant breach; fourthly, the paper will conclude the analysis and tabulate the findings. Finally, the paper will reconcile the findings with the literature review to propose practical recommendations that may apply to all consultancy service procurement processes and contracts.

## **CONTESTING QUALITY OF CONSULTANCY SERVICES**

### **Deliverable Quality Evaluation**

Quality is defined as the “degree to which a set of inherent characteristics fulfills requirements” (PMI, 2013, p. 228) quoting ISO 9000: 2008. The relationship between quality and value is central and is at the core of any accountability framework. Koppell (2005) identified five dimensions of accountability in the public sector: transparency (revealing the facts about performance); liability (facing consequences for performance); controllability (performing as desired by the principal); responsibility (abiding by the rules); and responsiveness (fulfilling substantively the expectations). Projecting those five dimensions on consultancy services from the standpoint of the consultant, it can be deduced that accountability fails when one or more of the following occurs:

- The consultant does not reveal the facts associated with the rendering of its services;
- The consultant escapes facing consequences for mal-performance;
- The consultant consciously deviates from client instructions;
- Services are delivered in breach of applicable rules; and
- The services are not responsive to client expectations.

Different stakeholders exert push or pull pressures in directions that better suit their accountability requirements; there is an upward direction towards project funders and donors, a downward direction towards beneficiaries and end-users and an external direction towards third parties, the media and society (Anheier, Hass, & Beller, 2013). It is questionable that the increase in accountability and transparency requirements of the above stakeholders would cause an enhanced efficiency in the provision of services (Anheier, Hass, & Beller, 2013). Joaquin and Greitens (2011) criticized the assumed myth that accountability enhances performance and decomposed the latter into process, competence and results- all of which resemble productivity. Bevan (2000) believes that setting accountability frameworks will inevitably fail due to the complexities and dynamics inherent in consultancy services; instead, success of consultancy services should be planned through the engagement of responsible stakeholders and the elimination of irresponsible parties (Bevan, 2000). Acknowledging the difficulty in designing and executing effective performance evaluation systems, Amirkhanyan (2011) correlates various evaluation practices with the effectiveness of accountability. While evaluating quality and client satisfaction through informal monitoring techniques have a negative impact on the effectiveness of accountability, managing costs, client impact, timeliness and disruptions and ex-ante thorough process prescription are correlated with a high degree of accountability effectiveness (Amirkhanyan, 2011).

Post-purchase assessment of the consultancy service outputs is difficult because of the impossibility of knowing whether the services attained their intended purpose (Mitchell, 1994). Broadly set, evaluation of a consultant's performance includes both the assessment of the quality of its deliverables as well as the process followed in achieving those deliverables (Deakins & Dillon, 2006). Noteworthy, while some clients admit to the presence of gaps

between their expectations and service deliverables, they still show satisfaction with those deliverables (Deakins & Dillon, 2006). Similarly, Roodhooft and Van den Abbeele (2006) find that despite major differences between private and public contracting for consultancy services, both private and public clients are equally satisfied with the rendered services. However, the majority of construction clients has been found to be mostly dis-satisfied with the performance of their consultants and contractors (Kometa, Olomolaiye, & Harris, 1994). Service expectations have been found to be much higher than the perceived quality of the service even if the latter was deemed high (Viadiu, Fa, & Saizarbitoria, 2002). Still, it was found that public-sector clients (subject of the cited study) often lack a formal evaluation of consultancy services (Roodhooft & Van den Abbeele, 2006). While in some situations, the outputs of consultancy work may be too technical and complicated to be properly evaluated by clients, in other cases, clients may be well equipped to do the job themselves but decide to outsource it due to resource constraints thereby rendering their evaluation very competitive (Mitchell, 1994). Dunning (2011, p.261) used the term “double burden of incompetence” referring to the challenge faced by people lacking competency to evaluate the work that needs to be done utilizing those exact competencies: “This double-curse arises because, in many life domains, the act of evaluating the correctness of one’s (or anyone else’s) response draws upon the exact same expertise that is necessary in choosing the correct response in the first place.” The above issues raise serious questions to the presence and validity of measures or indicators of the *satisfaction* or *dis-satisfaction* declared by clients concerning their consultants’ deliverables.

A literature review by Clark and Salaman (1998) finds that the most common features of consultancy services are intangibility, interaction, heterogeneity and perishability. Wang, Shieh, and Hsiao (2005) find that the dimensions of service quality in management consultancy are empathy, reliability, competence, responsiveness and tangibles. This latter study affirmed that “the higher perceived service quality of customers, the higher customer satisfaction” where clients place highest significance on empathy followed by reliability (Wang, Shieh, & Hsiao, 2005, p. 381). Karantinou and Hogg (2009) consider that the successful delivery of consulting services requires an equal attention to competence and empathy. Viadiu, Fa, and Saizarbitoria (2002) conclude that the most important dimension is

reliability where a consultant renders the service as agreed, accurately and in a trustworthy manner: there exists a significant relationship between the consultant's efforts in enhancing the service quality and the client's perception of benefits realized.

The value of the outcomes of consulting services is a key mediator of the quality of the rendered services. Literature on "Benefits Management" must be applied to quality evaluation of consulting service outcomes. While Benefits Management has still not achieved any visible impact in the rendering of projects, it is proven that focusing on the benefits achieved and value delivered will increase the rate of success of projects and programmes (Breese et al., 2015). Although the extent of benefit realization from a consultancy service rises (drops) un-proportionally with the increase (decrease) in the perceived quality of this service ("*a unitary increase in quality does not result in a unitary increase in benefits*") (Viadiu, Fa, & Saizarbitoria, 2002, p. 808), the relationship is still such that more value necessitates higher efforts towards better quality.

Outcomes of consultancy services obviously and frequently "reflect uncontrollable or unpredictable influences" (Clark & Salaman, 1998, p. 21). "[The] pathway from pre-contract expectations to post-contract experience is unlikely to be linear... It follows that perceptions can be inertial in nature" (Davis, 2007, p. 400). While a high degree of subjectivity governs the relationship, each of the differing opinions carries a certain degree of credibility (Mitchell, 1994). Prevalent consultancy evaluation techniques are criticized for their evident subjectivity and biases (Ehrhardt & Nippa, 2005, p. 2): based on critics of consultancy evaluation, one may conclude that "the evaluation of management consulting is impossible due to systematic and inherent problems such as multi-dimensional cause-effect relations, impacts of time, existence of non-linear relationships, or subjective and conflicting interests." However, this criticism falls short of several contingencies moderating the evaluation process (Ehrhardt & Nippa, 2005). Efficient benefits management necessitates the following practices as adapted from (Breese et al., 2015):

- When planning for the contract
  - o Expected outcomes are clearly defined;
  - o Outcomes create a measurable value;

- Outcomes support the attainment of clear strategic objectives; and
- Expected outputs, outcomes and benefits are approved early on.
- Benefits Review
  - Outcomes/Outputs are frequently monitored for realignment with changing expectations;
  - Stakeholder needs are regularly reassessed; and
  - Consultant outcomes adhere to client's expected outcomes.
- Value realization
  - The project includes activities directed at the integration of the achieved value within the client's organization;
  - Outcomes are monitored after project completion; and
  - Value integration is pre-planned and is a regular endeavor.

The above practices highlight the importance of expectation clarity, value measurement and value integration. However, properly applying such practices at the project level is loaded with a multitude of challenges which, even when resolved, would not easily resolve either contestability or disappointment in the rendering of consulting services.

Client complaints about the quality of the services as they are being rendered are a major challenge due to the absence of any physical evidence, the reliance on semi-reliable memories, the difficulty in proving negligence or breach and the consequent difficulty of obtaining redress (Mitchell, 1994). “[D]isappointing clients was the ever-present risk in consultancy work. The more complex the advisory task was, the greater the risks of disappointment were” (Nikolova, Reihlen, & Schl, 2009, p.294). Assessing complex services where outcomes cannot be described a-priori are problematic because client-perceived satisfaction is contingent on client expectations which may be unknown or unclearly stated, hence difficult to measure and, if measured, difficult to interpret (Lindberg & Nordin, 2008). Client satisfaction “could be considered a comparative behavior between inputs beforehand and post obtainments” (Wang, Shieh, & Hsiao, 2005, p. 373). Consultancy services, which are abstract by nature, pose the client challenges of communicating needs and of verifying a proposal before the contract is signed and implemented; this invisibility causes

both a specification problem and a performance evidence problem (Roodhooft & Van den Abbeele, 2006). Werr and Perner (2007) see that the challenges in specifying/evaluating consultancy services is not a characteristic inherent in the services themselves but, instead, is a consequence of the knowledge distribution between the client and the consultant where the former's comprehension of the services is a key mediator of the whole process.

Sezer and Bröchner (2014) associate the productivity of professional services with the productivity of the client inputs. Kometa, Olomolaiye, and Harris (1994) believe that clients have a role in securing successful project performance and list several of those required client attributes. In complex consultancy contracts, clients face the risk of narrowing their role to managing contracts and processing outputs (procedural) and losing their specialist capacity to evaluate the quality of delivered outputs (substantive) which in turn may provide fertile grounds for consultant opportunism (Raudla, 2013). Interestingly, the supervision and follow-up on a consultant's work has not been found to possess any recognizable significance on the client satisfaction levels of services rendered (Roodhooft & Van den Abbeele, 2006). In any case and irrespective of the quality of the rendered services, the benefits acquired from a consultancy service will remain low if the client does not possess the proper absorptive capacity (Lu, Su, & Huang, 2010).

Clients in general aim at objectifying and partially standardizing services they are procuring in a move towards goods-dominant procurement logic (Lindberg & Nordin, 2008). Although tangible metrics exist in consultancy contracts, the assessment of outcomes remains subject to interpretive flexibility; a key task of the consultant when "the facts of the project [do] not speak for themselves," is to help shape client's interpretations/perceptions of the achieved outcomes using characteristics such as "appearance, rhetorical skills, and argumentative brilliance" (Nikolova, Reihlen, & Schl, 2009, p.293). As per Clark and Salaman (1998, p. 19), consultants should be mainly artists in impression management through "the manipulation and regulation of images relating to client perceptions of the service delivered" and "the creation and maintenance of a compelling illusion which persuades clients of their quality and value."

To maintain/enforce international best practices in contract delivery, Deakins and Dillon (2006) recommend using benchmark consultant performance standards including detailed process performance measures which help in the comparison between client expectations and perceived consultant performance on one hand and between perceived consultant performance and benchmark expectations on the other. Another key factor to ensure success and mutual satisfaction with the outcome of consultancy services (particularly complex, non-straight-forward and non-routine services) is the early coordination of both parties' process<sup>2</sup> and outcome<sup>3</sup> expectations (Nikolova, Reihlen, & Schl, 2009). Roodhooft and Van den Abbeele (2006) find that client satisfaction depends on the following key factors (in the order of importance): (i) proper detection of the needs (goal clarity); (ii) consultant selection process; (iii) evaluation; and (iv) market knowledge. It is noticed that in projects where clients carefully analyzed their needs and tried to match those needs with what a consultant could potentially provide, client expectations were eventually more likely to be satisfied (Richter & Niewiem, 2009).

The majority of contestable services fit into the explorative consulting category (complex, innovative, or non-routine). Table 1 projects the characteristics of Explorative Consulting as formulated by Nikolova, Reihlen, and Schl (2009) upon the consulting quality evaluation process.

**TABLE 1**  
**Challenges in Consulting Services Quality Evaluation**

Characteristic of Explorative Consulting (Nikolova, Reihlen, & Schl, 2009)	Impact on Evaluation
Intensive interaction between the parties	Interaction complicates evaluation due to (i) the interplay between input/output and feedback loops; (ii) the impact of client capacities and plurality; and (iii) the resulting biases associated with this interaction.
The importance of skills to build personal relationships	When relationships become personalized, evaluation becomes potentially impaired by cognitive and emotional biases; limited skills limit also the capacity to evaluate objectively and correctly.

TABLE 1 (Continued)

Characteristic of Explorative Consulting (Nikolova, Reihlen, & Schl, 2009)	Impact on Evaluation
Failure of the “expert procedure” or the mere transfer of expertise to ensure success	Deciding on success will then neither be based on the “expertise” of the consultant nor on the amount of “knowledge” transferred, but instead on something else (e.g. impressions and volatile/elastic expectations)
The importance of assisting the client in problem structuring/solving using particular high-involvement process consulting techniques	Ability to evaluate is bounded by interaction difficulties and client problem formulation and absorptive capacities.
High levels of ambiguity	Ambiguity renders evaluation subjective, difficult, chaotic and contestable.
Causal ambiguity between the consultant’s work and the achieved outcomes	Outcome deficiencies may not be easily tracked down to particular consultant services or deliverables in such a straightforward manner agreeable to both parties.
Increasing difficulty in assessing consultant performance in problem resolution as client ambiguity increases	Where ambiguity on the part of the client increases, the consultant does not only face the challenge of understanding this ambiguity accurately to resolve client problems but also faces the challenge of not being subjected to a reasonable or factual evaluation mechanism.
Success of those consulting practices that concentrate on aiding the client formulate a positive image of the consultant’s activities	This means that the critical success factor for a consultant’s work is impressing the client.

Ehrhardt and Nippa (2005) report that several scholars believe that although consultancy service evaluation is a widely analyzed yet controversial issue, the applicability of evaluation techniques and the motivation to evaluate are highly questionable. The European Court of Auditors’ Report on Technical Assistance recommended that TA evaluation should be reviewed and enhanced (European Commission,

2008). Ehrhardt and Nippa (2005) developed a framework for consultancy evaluation integrating three elements (input, throughput and output measures) and three contingencies (project characteristics, client-consultant relationship, and evaluator characteristics). This framework may be a step towards formulating an adaptable evaluation mechanism mirroring the intricacies of consultancy services and ensuring that the inherent complexity is factored into evaluation.

Acknowledging the importance of performance of consultants and experts, the European Backbone Strategy calls for establishing a pilot database that helps track previous performance of consultants and experts engaged in Framework Contracts before being deployed to all other types of contracts. In addition, the action plan also includes a compulsory use of "Evaluation of Performance Forms" prior to final payments and cross-checking with these forms when evaluating consultants or experts (European Commission, 2008). "[B]y diligently investing in multidimensional, diverse, and complex performance measurement systems, government agencies will benefit in terms of improved perceived accountability" (Amirkhanyan, 2011, p. 319).

#### **Deliverable Accountability in time/fee-based contracts**

Clients and consultants have persistently diverging views concerning how much consultants are being held accountable for the services they provide with the former (clients) having a significantly lower perception on the effectiveness of accountability measures compared to the latter (consultants) (Amirkhanyan, 2011). Accountability for rendered services is a function of the nature of the services themselves and the provision decision of the client (make vs. buy analysis) (Coats, 2002).

The WB Consultant's Guidelines (The World Bank, 2011, p. 32) article 4.2 defines time-based contracts as follows: "This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess... Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate." The EU

Practical Guide (European Commission, 2014, p. 56) defines fee-based contracts as those “where the output is unpredictable, or where the workload to achieve the specified output is impossible to quantify in advance. Therefore it is economically more advantageous to pay the services on the basis of time actually worked.”

As in all contracts, payments are settled once the services are successfully implemented. Aiming at altering the attitudes of consultants for the benefit of clients (Hubbard, Delay, & Devas, 1999), payment to consultants should fundamentally be tied to their performance (World Bank, 1994). Performance should be assessed continuously or periodically based on the type of services being rendered. Systematic approval procedures prior to payment are key activities to ensure service delivery (Bryntse, 1996). However, trying to design a complex consultancy contract with performance-based payments is haunted with a multitude of obstacles and challenges on both sides of the transaction (Hubbard, Delay, & Devas, 1999). Left out with having to assess quality without the presence of clear performance metrics, clients face the challenge of holding the consultant accountable for the *expected* quality. For performance-based contracts to deliver their anticipated benefits, they must be carefully studied, planned and aligned to cover all essential aspects of performance (Klay, 2015).

Having explored both theoretical and practical aspects of consultancy service delivery and evaluation, it is time to turn to the specific objective of this research: World Bank (2011) versus Europeaid (European Commission, 2014) approaches to the above *contestability* before proceeding into issues of change management and breach. European Commission (2009, p. 135) assigns a relatively important section on managing contracts and service quality with the following highlights: (i) monitoring contract performance is extremely important to ensure the good quality of services and the attainment of objectives; (ii) client active involvement in the approval of deliverables is crucial especially that those deliverables are deemed approved at the expiry of the contractual review period; and (iii) clients should act immediately upon the detection of any problems; since postponing this intervention “will usually be at the detriment of the project and at which time it will be more difficult to find appropriate solutions”. Although neither form of contract includes any mechanism for

consultancy quality evaluation and leaves the same to the discretion of the client, rejection of reports should be made with reference to contractual terms (e.g. WB GCC 18.1 and 45.1 (d) or the EU GCC 27.2).

In WB contracts, the client should notify the consultant of its failure (e.g. to meet any of its obligations) and suspend payments due to the consultant based on GCC 18.1 allowing the consultant a maximum of 30 days to remedy the failure. In EU funded contracts, the client similarly notifies the consultant that the interim report is rejected and explains the reasons for rejection allowing the consultant a prescribed period to make the corrections (GCC 27.2). If payment is suspended (WB GCC 18.1) or the interim report is rejected (EU GCC 27), then in both situations, the consultant is not entitled to disputed payments until the deliverables are fixed and approved.

It is often the case that deliverables require some modifications or enhancements to reflect client expectations pursuant to the first client review of such deliverables. It is more probable that consultants engage in such modifications and enhancements without claiming additional time and money when the changes are acceptable to them. Acceptable changes are probably those that (i) are evident in the contract but were missed by the consultant; (ii) require minimal/negligible effort; (iii) are shouldered by the consultant in an attempt to foster good will and strengthen the relationship with the client; (iv) have resulted from sub-standard experts' involvement as witnessed by the consultant itself; or (v) are not clearly evident in the contract, but the consultant decides to assume for other reasons. However, rejection of deliverables for major rework may less likely be acceptable by consultants due to the large impact of this rework on the relationship between the parties, the self-esteem of the consultant, or its economic impact. Neither form of contract includes particular provisions concerning various deliverable qualities spanning from those requiring minor modifications to those needing massive rework. Despite the fact that redoing the work partially or all-over again may not be possible due to inability or undesirability of the consultant (Hill & Neeley, 1988) cited in (Mitchell, 1994), consultants willing to engage again in rework may be burdened by the excessive costs or inhibited by a loss of confidence in their abilities to make better choices the second time (Mitchell, 1994).

Rework coupled with suspending payments in both cases can logically be accompanied with an express instruction by the client that the consultant is accountable for this rework. Based on WB GCC 20.1, the client can claim that a major rejection is a failure to complete the required services. Rework in this case cannot be at the client's expense; the consultant's responsibility (WB GCC 20.1 and 20.2) is to recruit qualified experts and staff to provide the services in the anticipated quality. In EU service contracts, the obligations of the consultant include amending the deliverables as instructed by the client and within the specified time limit (GCC 27.2); being always responsible for the acts, defaults and negligence of its experts (GCC 4.4); and executing the contract with due care, efficiency and diligence in accordance with the best professional practice (GCC 7.1). Based on the above, the rejection of the deliverables coupled with the above obligations renders any potential request for additional days for rework unsubstantiated. Accordingly, the consultant will decide whether to escalate the matter as a dispute or a claim or to do the rework at its own responsibility.

#### **Payment entitlement in case of rejection**

In WB GCC, the only payment milestone based on which the client can withhold payment until approval of a deliverable is the final payment contingent on the approval of the final report (see GCC 42 and 45). All payments (except the final) do not constitute an approval of deliverables. In EU GCC, interim payments are made after the approval of both the relevant invoice and report (see GCC 26, 27 and 29). Failure by the consultant may lead to suspension of payments, proportional reduction of due payments, recovery of monies already paid, collection of damages (general and/or liquidated) and termination (GCC 34, 35 and 36).

Hence, if a deliverable is rejected, both forms of contract entitle the client not to pay for this deliverable until it is fixed by the consultant. However, there is no explicit contractual reference in either the WB or the EU whether the extra effort (time) spent by the consultant in rework is billable. To remove any ambiguity, the client in its rejection of a deliverable, should inform the consultant whether the days spent rectifying it would be deemed acceptable for invoicing or not. This matter should be decided on a case-by-case basis depending on the causes of rejection and attached responsibilities. To avoid potential disputes, this matter should preferably be clarified

in the proper article of the Special Conditions of Contract. In absence of such a specification, it may be inferred, at a minimum, in both WB and EU contracts that the effort applied by the consultant during the period specified for fixing the rejected deliverables (WB GCC 18.1 and EU GCC 27.2) is not billable.

### **Delay due to rework and time-at-large**

Having settled the issue of additional days spent on rework, let us now turn to the impact of this rework on the timely completion of the services. There is no liquidated damages clause in the WB GCC. The WB Consultants' Guidelines justify this as follows (The World Bank, 2011, p. 34): "because the timely delivery of services of an intellectual and advisory nature is contingent in many ways upon actions by the client, thereby rendering difficult establishing the sole responsibility of the consultant, when there are delays, the application of liquidated damages is not recommended for consulting services." Hence, the client does not have direct remedies for consultant delays. In EU GCC, delays by the consultant are subject to liquidated damages (GCC 19). European Commission (2009) stated that extensions of the implementation period requested by consultants should be carefully examined for correctness of justifications and where no substantial justification exists, the consultant should be subjected to liquidated damages. The client is entitled to collect liquidated damages for the period the tasks are delayed beyond the period of implementation specified.

Fawzy and El-adaway (2014) researched the applicability of the "Time at Large" principle in standard forms of contracts (JCT, WB, FIDIC and AIA). Although this research was conducted on construction contracts, its findings apply also to service and supply contracts. Analyzing the four standard forms of contract, Fawzy and El-adaway (2014) conclude that there is no room for time becoming at large for reasons attributable to absence of a time for completion in the contract; acts of prevention by the client is settled in all four forms by the need to extend time; the four standard forms include a "catch-all" article covering delays caused by the client; and there are clauses requiring the client or its representative to determine or decide on the amount of time extension.

In both EU and WB service contracts, the time for implementation is clearly set in the contract. Hence, time at large cannot apply for

reason of absence of time for completion. However, concerning the rework of rejected deliverables, the WB specifies a maximum of 30 days to remedy the failure while the EU does not have a prescribed time limit. Hence, to avoid having the rework time becoming at large (in EU contracts), the client should specify the time for completion of rework.

Time at large may apply also for acts of prevention by the client where it prevents the consultant from completing on time. Acts of prevention by the client or delays caused by the client are addressed in both types of contract. As per the WB GCC, the mentioned situations that entitle the consultant to an extension of time are the following: (i) GCC 16.1 (modifications and variations); (ii) GCC 17.7 (extending time due to force majeure); and (iii) GCC 38.2 (extending time if the client fails to provide the services, facilities and property in a timely manner). In EU GCC, the situations that entitle the consultant to an extension of time are the following: (i) GCC 5.1 (client to provide necessary information and/or documents promptly); (ii) GCC 19.2 (setting the implementation period as may be subsequently amended by extensions); (iii) GCC 20.2 (b) (consultant to state the impact on the timetable of activities of a requested change); (iv) GCC 35.6 (entitling consultant to a fair and reasonable extension pursuant to suspension); and (v) GCC 38.6 (entitling consultant to a fair and reasonable extension pursuant to force majeure).

In WB GCC 38.2, the client is bound to extend time for an equivalent period should it not furnish the consultant with promised services, facilities and property. This clause is the same as the “catch-all” (Fawzy & El-adaway, 2014) provision which is absent in the EU contract; the similar- yet less forceful- EU clause (GCC 5.1) requires “prompt” supply of information and documents but stays silent on what to do if these are not promptly furnished. EU GCC 37.1 (b) entitles the consultant to terminate should the client persistently fail to meet its obligations in spite of reminders. Accordingly, time becoming at large due to acts of prevention by the client is possible under EU service contracts while not under WB service contracts.

### **Liability**

The above discussion on deliverable accountability covers not only those deliverables that are faulty or defective but also those rejected on other grounds. Faulty or defective services are subject of

other contractual terms also covered by both conditions of contract. The WB GCC 23 sets consultant's liability as per applicable law unless additional provisions are specified in the Special Conditions. "The contract need not deal with this matter unless the parties wish to limit this liability" (The World Bank, 2011, p. 35). The SCC includes the WB's Policy in this matter: "... The Consultant's liability shall not be limited to less than a multiplier of the total payments to the Consultant under the Contract.... A statement to the effect that the Consultant is liable only for the re-performance of faulty Services is not acceptable to the Bank..."

The recently introduced (January 2014) EU GCC includes detailed provisions on liability covering the following: Liability for damage to services (GCC 12.1); Contractor's liability in respect of the Contracting Authority (GCC 12.2); and Contractor's liability in respect of third parties (GCC 12.3). Liability for damages to services requires that the consultant assumes "(i) full responsibility for maintaining the integrity of services and (ii) the risk of loss and damage, whatever their cause, until the completion of the implementation of the tasks and approval of reports and documents." This liability continues beyond completion of phases or interim services if the downstream services affect the previously delivered services. In addition, the consultant "shall remain responsible for any breach of its obligations under the contract for such period after the services have been performed as may be determined by the law governing the contract, even after approval of the reports and documents, or by default for a period of 10 years." The liability cap set in the GCC 12.1 is at 1,000,000 euros for contracts less than or equal to this amount. This liability in larger value contracts is capped to the contract value.

While the EU GCC is more prescriptive and definitive in liability provisions, the WB GCC is generic leaving it to the client (in the Request for Proposals) and the consultant (in its Technical Offer) to respectively specify and comment on the liability provisions under guidance of the WB's policy. This creates room for capping the liability at levels higher than the caps provided in the EU GCC for contracts in excess of 1,000,000 euros. Both contracts prohibit limitation of liability in cases of fraud and gross negligence.

### **Inability to mobilize a competent expert**

The European Backbone Strategy highlighted the importance of ensuring availability of experts proposed in a tender during contract implementation by stressing the possible penalties, clarifying the potential of contract termination, and widening the scope of expert replacement (European Commission, 2008). As per WB GCC 18, the client should notify the consultant of its failure to mobilize a competent replacement and should specify a time limit to do so. The client withholds any payments in this period. Similarly, EU GCC 17.4 instructs that the client makes no payment for the period when an agreed staff to be replaced is absent. The replacement must be proposed by the consultant within 15 calendar days from the first day of the agreed staff's absence. If after this period the consultant fails to propose a competent replacement, the client may apply liquidated damages up to 10% of the remaining fees of that expert. "There must be no hesitation to impose the penalties/reduction in fees allowed by the contract" (European Commission, 2009, p. 134). Continued absence of an expert is a breach of contract covered by EU GCC 34 as well as EU GCC 36.2 (o) entitling the client to terminate the contract.

Based on the above, it is evident that the EU GCC takes a stronger position triggering an active endeavor by the consultant to avoid expert replacement and, when forced to replace, act immediately.

## **CHANGE MANAGEMENT**

### **Additional services**

The European Court of Auditors' Report on Technical Assistance recommended that "more flexibility should be allowed during the inception phase to adjust the project design and/or the Terms of Reference for the technical assistance to changes in circumstances" (European Commission, 2008, p. 12). As per European Commission (2009), changes that are anticipated at the outset must be explicitly stated in the Terms of Reference to allow consultants to plan for the same. The EU has more detailed provisions concerning variations (EU GCC 20.1 to 20.6) in comparison with the WB (WB GCC 16.1 and 16.2). The WB adopts a relatively flexible approach towards change

management whereby major changes are finally approved by the WB which verifies that they are consistent with the loan agreement and/or the procurement plan (The World Bank, 2011). The EU (European Commission, 2014) adopts a more rigid and prescriptive approach and categorizes two types of services that may be the subject of change to an existing contract on condition that neither fundamentally alters the contract or the initial award conditions: (i) complementary services, or (ii) additional services.

As per WB GCC 31.1, “the rate of remuneration payable to ... new additional Key Experts shall be based on the rates for other Key Experts position which require similar qualifications and experience.” In EU GCC 20.2 (b) (iii), amendments to the contract shall be made “using the contractual fee rates when the tasks are similar. When the tasks are not similar, the contractual fee rates shall be applied when reasonable.” Once the terms are agreed, and as per WB GCC 16.1 and 29.3 (EU GCC 20.1 and 20.2), an addendum for signature between both parties should be prepared. Both the WB and the EU do not permit clients to impose changes affecting contract price without the approval of the consultant.<sup>4</sup>

#### **Budget amendment: shifting between budget lines**

In the WB GCC, the consultant may increase or decrease the time-input of any expert by 10% or one week (whichever is greater) by giving notice to the Client (GCC 29.2) on condition that the contract amount is not surpassed. However, if the work anticipated is new or additional, the parties shall mutually agree on additional time-input and sign an amendment if the contract amount will consequently increase (GCC 29.3). Major requests for transferring funds from one budget line to the other shall be given due consideration by the client and must be mutually agreed in an amendment (GCC 16.1). In the EU GCC 20.2 (d), the client is entitled to issue administrative orders (not an addendum) shifting funds from one budget line to the other (with no increase to the contract price) as long as the initial award conditions are not impaired. The consultant cannot singlehandedly do such shifts (GCC 20.4). Hence, the WB grants the consultant more leverage with maneuvering with expert effort under the preset ceiling, whereas the EU requires client approval for such reallocations without specifying a ceiling.

### **Suspending implementation**

Technical Assistance and advisory services usually face needs for postponing implementation of certain phases until meeting some contingencies on the client side. In the WB, if the SCC for GCC 14.1 did not explicitly mention the possibility of postponing completion (or suspending implementation), then any such postponement requires the approval of both parties. The above analysis applies to EU contracts with the following to note:

- If a phase is set to commence after the approval of the prior phase (GCC 27.4), then this allows the postponement of the subsequent phase;
- The consultant is obliged to suspend the contract as instructed by the client (GCC 35.1);
- The consultant is entitled to additional suspension-related expenses (GCC 35.4 and 35.5);
- GCC 35.7 entitles the consultant to issue a notice of termination (after 30 days) if the suspension exceeds 90 days; and
- The client can request amendment of the period of implementation (to postpone or suspend implementation) (GCC 20.1).

Based on the above, deferring the date of completion in EU service contracts is possible in two instances that do not apply to the WB.

### **CONTRACT BREACH**

Rejection of the final report in EU automatically invokes the dispute resolution mechanism (GCC 27.3) that starts with an obligatory attempt to amicable resolution. In the WB, the invoking of the dispute resolution mechanism is not automatic and requires the referral of either party pursuant to a non-automatic attempt to amicable resolution (GCC 48 and 49). While the client is, in cases of breach, entitled only to suspend payment to the consultant (WB GCC 18.1) and threaten with termination (WB GCC 19.1.1 (a)), in EU contracts, termination for breach entitles the client to suspend payments, complete the work itself or through a third party at the consultant's expense, and recover losses (GCC 36.3, 36.6 and 36.7). GCC 19 of the WB provides both parties the right to immediate termination after a 5, 30 or 60 days' notice (in the case of termination by the client) and a 40 days' notice (in the case of

termination by the consultant). However, WB GCC 47 requires of each party to act in “*good faith*” with respect to the rights of the other party and to take “*all reasonable measures*” to achieve project objectives. Furthermore, WB GCC 20.1 requires the consultant to act as a “*faithful*” advisor to the client. Both articles 47 and 20.1 seem to provide for some foundation for relational transactions where trust is nurtured and altruism is anticipated; yet, “*good faith*” and “*faithfulness*” requirements tend to be rather foreign amidst a traditional transactional procurement setup where a blame and risk aversion culture is instilled in every other corner of the GCC. On the other hand, while the EU GCC 8.1 requires the consultant to act as a “*faithful*” advisor to the client, there is no “*good faith*” requirement in the contract. In the EU GCC, client termination simply requires a 7 days’ notice while consultant termination requires a 14 days’ notice in a similarly pure economic transactional paradigm in spite of the fact that parties should attempt amicable resolution of their disputes (time limit to reach an agreement is 28 days and 120 days from notification in the case of the WB and EU respectively).

The client cannot terminate based on WB GCC 19.1.1 (a) before it has notified the consultant of breach and of suspending payments (GCC 18). WB GCC 18 entitles the consultant to 30 days to make good the failure described in the suspension notice. If within those 30 days, the consultant did not rectify the mistakes, the client should send a notice of termination effective in another 30 days. If the consultant disagrees with the client’s views, it may (GCC 48.2) draft a Notice of Dispute to the client who is required to respond in 14 days. Within an additional 14 days, if the parties fail to amicably agree on a resolution, the matter is referred to adjudication/arbitration<sup>5</sup> (GCC 49.1) as specified in the SCC. The EU adopts an optional middle step before a claim proceeds into arbitration or litigation; as per EU GCC 40.3, conciliation should be used as an alternative dispute resolution mechanism over a time limit of 120 days from the date any party requests conciliation. Should this procedure also fail, either party may commence arbitration or litigation as set forth in the SCC.

The WB does not entitle the client to complete the services at the defaulting consultant’s expense. If the client decides to terminate, the consultant risks only not getting paid for unsatisfactory work already done (GCC 19.1.6). On the other hand, breach in EU contracts entitles the client to damages (GCC 19 and GCC 34), termination (GCC 36.2),

completing the services at the consultant's expense (GCC 36.3), suspending payments (GCC 34.4 and 36.6), recovery of consequential losses up to the value of unsuccessful services (GCC 36.7), and any additional costs associated with addenda to the contract resulting from consultant's breach (GCC 20.5). Such a wider spectrum of remedies presents a deterring effect against mal-performance, default or breach.

However, when uncertainty in a contract increases, the effectiveness of both "carrots" and "sticks" is reduced (Hubbard, Delay, & Devas, 1999): in complex contracts with a high degree of interconnectedness between client input and consultant throughput/output, the consultant may secure every excuse of not delivering on time awaiting client's actions or tolerating client's weak capacities to process/make decisions- thereby rendering damages clauses less and less effective. What would be the true impact of such "sticks" in contracts with high degrees of complexity and interconnectedness remains to be validated, and how easy would it be for clients in such contracts to prove breach in front of an arbitration panel?

### CONCLUSION AND PRACTICAL IMPLICATIONS

In the light of scholarly work on consultancy in the public sector, this paper compares the default attitudes of two of the most widely used general conditions of service contracts in the world. In spite of the similarities, there is sizeable divergence that may be attributed to the differences in the allocations of risk by the two global entities- the World Bank and the European Union- between governments receiving donor funds and the market. Table 2 below is a summary representation of such differences that shed a light on how favorable the terms to the market or governments are. It may be observed that the inclination towards the market is less in Europeaid service contracts where the analyzed contractual terms exert pressure on the consultant and apply several limitations that in the World Bank consultancy service contract do not exist. However, in the EU GCC, the consultant too may resort to claiming damages (general or liquidated) for client's breach therefore bringing more equilibrium to the equation. While the presence of such measures may not eliminate breach or opportunistic behavior, they do play a role in

**TABLE 2**  
**Comparing World Bank and Europeaid Time/Fee-Based GCC**

Research question	WB time-based consultancy service contracts	Europeaid fee-based service contracts
liability of a consultant in cases of rejection of its deliverables	Approval of deliverables is tied to the review of the final report. Deliverables should be amended as instructed within 30 days.	Interim and final deliverables are subject to client review. Deliverables should be amended as instructed and within a prescribed period.
the extent of deliverable accountability: rework effort	Whether rework effort is billable is not clear in the GCC. Text entitles the client to suspending payments for unacceptable deliverables but is silent on whose paying for rework.	
the extent of deliverable accountability: delay & time at large	No liquidated damages are recommended. Time becoming at large is not possible under normal contractual arrangements.	Liquidated damages apply. "Time at large" is possible due to acts of prevention by the client and failure to specify time for rework.
the consultant's payment entitlements in cases of contested quality	Interim payments are done for time actually spent regardless of approval of deliverables (except for final payment contingent on approval of final report); yet interim payments may be suspended if consultant fails to meet its obligations.	Interim payments are done after approval of interim deliverables and reports; payment for contested deliverables may be suspended.
the obligation of the consultant with respect of its experts: replacement and absenteeism	No payment to be processed if an expert is unavailable (resigns or asked to be replaced). Replacement must be done within a prescribed time limit. Failing which, the GCC does not explicitly permit the client to terminate.	No payment to be processed if an expert is unavailable (resigns or asked to be replaced). Replacement must be done within 15 days. Failing which, liquidated damages at 10% of this expert's remaining fees should be applied. Continuous inability to replace would entitle the client to termination.
Liability for faulty or defective services	Unless otherwise agreed between the parties, liability provisions are as per governing law; clients may in SCC specify liability caps in excess of those preset in EU GCC for contracts > € 1,000,000.	More prescriptive and definitive liability provisions are used with fixed liability caps varying with contract value.

TABLE 2 (Continued)

Research question	WB time-based consultancy service contracts	Europeaid fee-based service contracts
contractual opportunities and limitations with respect to change: shifting between expert days	The consultant has discretion over increasing/decreasing the time-input of any expert by 10% or one week (whichever is greater). Changes in excess of 10% require an addendum.	The client must approve any change in the time-input of any expert.
contractual opportunities and limitations with respect to change: suspending implementation or deferral of the date of completion	Any client entitlement to suspend the period of implementation is not mentioned in the GCC. If such a suspension (or deferral) is required by the client, it must be mutually agreed.	The consultant is obliged to suspend the contract as instructed by the client. If this suspension exceeds 90 days, the consultant may request termination. The consultant may claim suspension-related expenses. Implementation of successor phases may be deferred until approval of a predecessor phase.
contractual opportunities and limitations with respect to change: additional services	WB adopts a flexible approach towards change management requiring mainly mutual consent. Major changes need to be finally approved by the WB which verifies that they are not inconsistent with the loan agreement and/or procurement plan.	EU adopts a more rigid and prescriptive approach to change management and categorizes two types of services that may be the subject of change to an existing contract on condition that neither does impair the initial award conditions.
consultant breach	When client observes breach, it must notify the consultant and suspend payments before it can issue the notice of termination. The consultant has 30 days to remedy its breach. The client's notice requirement to terminate is 5, 30 or 60 days.	In cases of breach, client is entitled to suspend payments, complete the work itself or through a third party at the consultant's expense and recover consequential losses. The client's notice requirement to terminate is only 7 days.

limiting the same. On the other hand, while the WB GCC offers more flexibility and discretion to both parties, it paves the way for both opportunism and trust building. Opportunism is more feasible where the terms are more relaxed; and the less usage of “sticks” is more conducive of trust building. Both contracts are very similar in dealing

with deliverable low or contested quality. The EU GCC contains detailed liability provisions in case of defective services that cause loss or damage; yet both EU and WB remain more generic when it comes to rejected services that are not accepted by the client and still do not cause any direct loss or damage. Statistically, this latter set of services outnumbers the former by far and necessitates additional attention.

### **IMPACT ON RESEARCH ON CONSULTANCY SERVICES**

Much of the findings of the above literature review on consultancy services can be mapped to the findings of this paper to support the generalization of the following recommendations that can apply to consultancy services in the public sector in general. Assuming that the transactional nature of public procurement relations will persist for long, additional terms should be inserted in the conditions of contract notably covering the following:

- Increasing certainty with respect to the role of the consultant through including descriptions of the various roles in the GCC to enable the client to select and specify in the SCC based on the particulars of each contract.<sup>6</sup> Furusten (2009), Glückler and Armbrüster (2003), and Hubbard, Delay, and Devas (1999) analyzed role identification and un-certainty reduction further supporting this recommendation; Whittle (2006) proposed the use of “interpretive repertoires” to better understand roles and paradoxical discourse.
- For evaluating the quality of deliverables, detailing a customizable and adaptable approach/methodology that may be used for various types of consulting services covering a wide range of their complexity, tangibility and asset specificity (see section “Deliverable Quality Evaluation” above on the importance of and obstacles to a successful consultant service evaluation system);
- Elaborating a procedure for dealing with the correction of low quality deliverables such as liability for rework effort and ensuing delays; such a procedure should ideally be able to accommodate for wrongly perceived determinism, tangibility, asset specificity and expectations; and should ideally distinguish between various degrees and causes of deliverable rejection. A wealth of research exists on quality contestability, service indeterminism and

intangibility, and client expectations (see Caruana et al. (1998), Clark and Salaman (1998), Davis (2007), Deakins and Dillon (2006), Höner and Mohe (2009), Lindberg and Nordin (2008), Lloyd-Walker, Mills, and Walker (2014), Nikolova, Reihlen, and Schl (2009), Raudla (2013), Richter and Niewiem (2009), Viadiu, Fa, and Saizarbitoria (2002), and Mitchell (1994));

- Detailing provisions concerning the consulting procedure and the interactive nature of the relationship between the parties in the delivery of the services in a customizable and adaptable way to be adopted in a manner congruent with the specific type of services requested.<sup>5</sup> Consulting procedures and the importance of the interaction between both parties have been researched by Clark and Salaman (1998), Furusten (2009), Hubbard, Delay, and Devas (1999), Jawaharnesan and Price (1997), Kitay and Wright (2004), Kometa, Olomolaiye, and Harris (1994), Lloyd-Walker, Mills, and Walker (2014), Nikolova, Reihlen, and Schl (2009), Puutio, Kykyri, and Wahlström (2009), Roodhooft and Van den Abbeele (2006), Sezer and Bröchner (2014), Soriano (2004), Taminiau, Boussebaa, and Berghman (2012), Werr and Perner (2007), and Coats (2002); and
- Incorporating practical measures fostering faithfulness and good faith. The importance of trust and reliability in the rendering of consulting services can be seen in Alvesson et al. (2009), Boston (1994), Furusten (2009), Glückler and Armbrüster (2003), Lloyd-Walker, Mills, and Walker (2014), Roodhooft and Van den Abbeele (2006), Soriano (2004), Feeney and Smith (2008), and Viadiu, Fa, and Saizarbitoria (2002).

While the conditions of contract offer a basic ground for moderating the relationship between the parties, several other components of the final contract and procurement documents are equally important. These are the terms of reference, consultant's proposal, technical proposal evaluation report, and pre-contract negotiations minutes. It is there where the substance of the service is described, elaborated, reviewed and agreed. These components are beyond the scope of this paper. However, the above research highlights the following imperative practical recommendations in Table 3.

**TABLE 3**  
**Additional Practical Recommendations Mapped to Literature Findings**

Contract Component	Recommendation (with supporting findings from literature review)
Terms of Reference (TOR)	<ul style="list-style-type: none"> <li>- Result from a through needs analysis ((Deakins &amp; Dillon, 2006), (Lloyd-Walker, Mills, &amp; Walker, 2014), (Richter &amp; Niewiem, 2009), and (Roodhooft &amp; Van den Abbeele, 2006)).</li> <li>- Explicitly state the expected role of the consultant ((Furusten, 2009), (Glückler &amp; Armbrüster, 2003), (Kitay &amp; Wright, 2004) and (Hubbard, Delay, &amp; Devas, 1999)).</li> <li>- Explicitly state the expectations of the client ((Caruana et al., 1998), (Davis, 2007), (Deakins &amp; Dillon, 2006), (Furusten, 2009), (Lindberg &amp; Nordin, 2008), (Nikolova, Reihlen, &amp; Schl, 2009), and (Viadiu, Fa, &amp; Saizarbitoria, 2002)).</li> <li>- Based on a realistic estimation of the degrees of intangibility/asset specificity/determinism, allow compatible levels of flexibility in specifying not only methodologies and delivery processes but also the outcome<sup>7</sup> ((Clark &amp; Salaman, 1998), (European Commission, 2008), (Furusten, 2009), (Lloyd-Walker, Mills, &amp; Walker, 2014), (Nikolova, Reihlen, &amp; Schl, 2009), (Raudla, 2013), and (Roodhooft &amp; Van den Abbeele, 2006)).</li> <li>- Adopt a results-orientation ((European Commission, 2008), (Lloyd-Walker, Mills, &amp; Walker, 2014), (Wang, Shieh, &amp; Hsiao, 2005), and (World Bank - Independent Evaluation Group, 2014)).</li> <li>- Avoid concealing/omitting any relevant information ((European Commission, 2009), (Höner &amp; Mohe, 2009), (Puutio, Kykyri, &amp; Wahlström, 2009), and (Raudla, 2013)).</li> <li>- Elaborate on the dependency between the parties in the delivery process from the eyes of the client ((Alvesson et al., 2009), (Clark &amp; Salaman, 1998), (Kometa, Olomolaiye, &amp; Harris, 1994), (Nikolova, Reihlen, &amp; Schl, 2009), (Sezer &amp; Bröchner, 2014), (Soriano, 2004), (Roodhooft &amp; Van den Abbeele, 2006), (Taminiau, Boussebaa, &amp; Berghman, 2012), and (Werr &amp; Perner, 2007)).</li> <li>- Detail a practical and realistic performance measurement system (process and outcome) (see section “Deliverable Quality Evaluation” above for a literature review on consultant service evaluation systems).</li> <li>- Specify a consulting procedure and formulate interaction mechanisms in a manner congruent with the type of required services (see fourth bullet under first paragraph of “Impact on Research on Consultancy Services” above).</li> <li>- Accurately match specified results with effort/budget estimation and expert profiles specified in a manner enabling the consultant to safely rely on.</li> </ul>

TABLE 3 (Continued)

Contract Component	Recommendation (with supporting findings from literature review)
Consultant Proposal	<ul style="list-style-type: none"> <li>- Result from a thorough analysis of the TOR (see discussion on matching understanding with expectations).</li> <li>- Explicitly state the consultant's understanding and perception (same as above).</li> <li>- Elaborate a compatible and realistic delivery methodology and consulting technique (exploitive/explorative) (Nikolova, Reihlen, &amp; Schl, 2009).</li> <li>- Propose sufficiently qualified experts compatible with the requirements and obligations ((European Commission, 2008), (Gow &amp; Morss, 1988), and (Raudla, 2013)).</li> <li>- State transparently any issues, concerns, assumptions, or constraints (see discussion on information asymmetry and opportunism).</li> <li>- Avoid concealing/omitting any relevant information (same as above).</li> </ul>
Technical Evaluation Report	<ul style="list-style-type: none"> <li>- Thoroughly attempt to comprehend consultant's understanding and proposed technique ((Caruana et al., 1998), (Clark &amp; Salaman, 1998) and (Davis, 2007)).</li> <li>- Match proposal with client's expectations (same as above).</li> <li>- Record any issues, concerns, risks, weaknesses, strengths, etc.</li> </ul>
Pre-contract negotiations	<ul style="list-style-type: none"> <li>- Debate consultant's comments on the TOR and client's comments on the proposal (see discussion on matching understanding with expectations).</li> <li>- Ensure common understanding of performance measurement system ((Davis, 2007), (Deakins &amp; Dillon, 2006), (Ehrhardt &amp; Nippa, 2005), (European Commission, 2009), (Lindberg &amp; Nordin, 2008), (Nikolova, Reihlen, &amp; Schl, 2009), and (Roodhooft &amp; Van den Abbeele, 2006)).</li> <li>- Reduce expectation volatility and elasticity on both sides of the transaction.</li> <li>- Align process and outcome expectations.</li> <li>- Elaborate client contract management paradigm. ((Caruana et al., 1998), (Furusten, 2009), (Nikolova, Reihlen, &amp; Schl, 2009) and (World Bank - Independent Evaluation Group, 2014)).</li> </ul>

The recourse to management consultants is “*here to stay*” where “management consulting plays a significant role in modern society” (Engwall & Kipping, 2013, p. 94). In spite of globalization of the consultancy profession, the practice of management consultancy remains to be culturally-sensitive (Taminiau, Boussebaa, & Berghman, 2012). Management consulting is “a socially and

culturally contextualized business” (Glückler & Armbrüster, 2003, p. 290). Hofstede (1980), in a research covering about 72 countries, proved that cultures are well differentiated and the same ought to impact their adoption of theories, policies, standards, etc. Additionally, social contracts differ from one culture to the other as a result of the differences in each culture’s political, social and economic institutions in spite of universally accepted basics with an equalizing effect (Bucar, Glas, & Hisrich, 2003). Cultural distinctions prevent expectation construct equivalence in the consulting industry (see for example Caruana et al. (1999)). Accordingly, any analysis that does not take into consideration societal and cultural aspects cannot be blindly generalized. Based on the above qualification, this paper aimed at addressing consultancy work in general with no attempt to generalize any rules or package any solutions. However, as it is understandable that both the WB and the EU need to standardize their respective rules to apply wherever they operate, those recommendations may prove useful for donors, professional bodies, recipient governments and consultants.

#### NOTES

1. Through presenting tangible outcomes or using storytelling, rhetorical skills, or charisma and “in order to reduce interpretive variety and convey the symbolic meaning of a highly complex product” (Nikolova, Reihlen, & Schl, 2009, p. 295).
2. “Process expectations were concerned with the way in which clients and consultants were supposed to interact with one another, including how the consultancy problem was constructed, how participative the interaction was designed to be, and which role each party was assigned during the consultancy project” (Nikolova, Reihlen, & Schl, 2009, p. 294).
3. Although outcomes ought to be expressly stated in the contract, outcome expectations remain subject to conflicting interpretations; “An outcome expectation can be conceived as a judgment of the likely consequences of a pattern of behavior” (Nikolova, Reihlen, & Schl, 2009, p. 294).
4. The 2013 version of the EU GCC enabled the client to effect change at prices different from those proposed by the consultant (EU 2013 GCC 20.2).

- 5 International commercial arbitration in a neutral venue is mandated by the WB if the consultant is foreign.
6. As an alternative to inserting such default descriptions in the GCC, it may be more practical to have the particular role detailed in the Terms of Reference (See Table 3).
7. Highly normative and prescriptive methodologies and results in the TOR are not suitable for services with a high degree of intangibility and low degree of determinism. To the contrary, consultants here should be motivated to explore innovative ways in a pragmatic manner.

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