Project Business Management [1,2]

Building Bridges Across Organizations in Project Business

Oliver F. Lehmann, MSc, ACE, PMP

"One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith."
– International Court of Justice

Summary

Four case studies show what happens when the customer–contractor interface comes under stress, and what good governance design can achieve when it holds. The call to action is to strengthen the organizations involved by building integrity and focusing on completing over competing, turning contract parties into project partners.

[1] This is an article in a series by Oliver Lehmann, author of the book "Project Business Management" (ISBN 9781138197503), published by Auerbach / Taylor & Francis. See full author profile at the end of this article. A list of the other articles in PM World Journal can be found at https://pmworldlibrary.net/authors/oliver-f-lehmann.

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Risks At Cross-Corporate Interfaces

Project Business Management starts from a simple observation. When a project crosses organizational boundaries under contract – when one organization buys the project from another, with money, scope, schedule, and risk all flowing across the boundary – the project itself becomes the business.[1]† Not a side activity, not an internal initiative, but the commercial relationship in concrete form. Everything that follows in governance, contracting, performance management, and dispute resolution flows from that single fact.

If the project is the business, then the customer–contractor interface is where the business lives. It is also where most of the things that can go wrong do. The interface is the surface across which money flows, decisions are made, information is exchanged or withheld, change is approved or denied, claims are lodged or resisted, and reputations are made or broken. It is the highest-energy boundary in any project business arrangement.

Most project management literature treats this interface as a procedural matter – contracts, change orders, dispute boards, and escalation paths. That is necessary but not sufficient. The interface is also a governance surface, and when governance at that surface fails, the project does not merely run late or over budget. It can mutate. It can become something other than what it was contracted to be: a vehicle for outcomes none of the original parties would have signed up for, and that few will publicly defend afterward. The encouraging news is that the converse is equally true. Where the interface is well-designed and well-tended, projects deliver, partnerships endure, and the surface itself becomes a source of value rather than a cause of distress.

The cases that follow are studied not to indict the parties involved, but to extract the design lessons that make the difference.

This article examines four projects where the interface, in different ways, did not function as the governance design assumed. The Panama Canal expansion, where a sophisticated public-sector owner met a contractor consortium that had bid aggressively. The Venice MOSE flood barriers, where a closed concession structure was the subject of an extensive criminal investigation. The Lesotho Highlands Water Project, where a small African state successfully prosecuted multinational contractors and consultants. And the Sydney Light Rail project, where a contractor alleged that the public-sector owner had withheld material information at tender, a case that illustrates the customer side of the interface as the source of stress. The four cases are drawn from the public record of arbitral awards, court judgments, regulatory sanctions, settled litigation, and plea documents.

Case One: The Panama Canal Expansion

Why the project was necessary

By the early 2000s, the Panama Canal – handling around five percent of world maritime trade and a far higher share of cargo to and from the eastern United States – was facing a strategic problem visible to anyone who tracked container shipping. The canal had been built to a generation of vessels now called Panamax. The industry had moved on. Container ships above the Panamax envelope, the so-called Post-Panamax class, were already in service, and the order book pointed to Post-Panamax becoming the dominant size in the global fleet within a decade.[2] Roughly one in eight container ships was already too large for the existing locks. The Autoridad del Canal de Panamá (ACP), in its own 2005 capacity studies, projected that the canal would reach its maximum sustainable capacity between 2009 and 2012.[3]

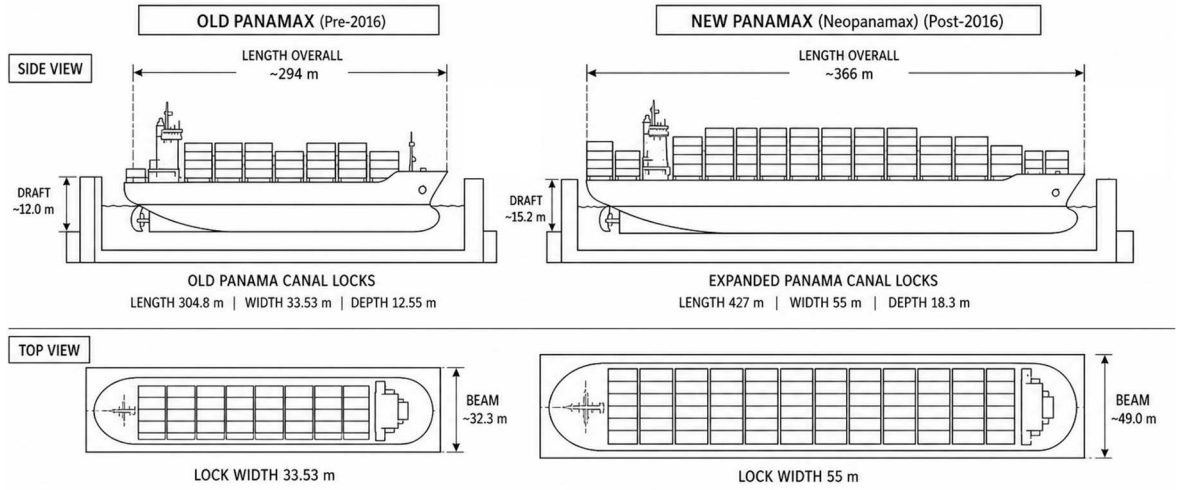

Figure 1: New Panamax class compared with the old

The strategic stakes were sharp. The canal's principal commercial advantage was on the Asia–US East Coast route, where Panama's vessel-productivity advantage over the Suez alternative – more round-trips per year, lower transportation costs – was eroding precisely because Suez could already accommodate larger vessels. Without expansion, the canal would, on a defensible analysis, lose share on its most valuable route. With expansion, it could capture the projected demand growth through 2025 and beyond, doubling capacity. President Martín Torrijos formally proposed the expansion on 24 April 2006. Panama's constitution required not only Cabinet and National Assembly approval but a national referendum. On 22 October 2006, the proposal was carried out with 76.8 percent in favor.[4]

The headline budget was approximately USD 5.25 billion, financed through a combination of canal toll receipts and external loans, with the project itself a self-financing public investment in a strategic asset already owned by the state. The economic case was, by megaproject standards, unusually clean: an existing customer base with established willingness to pay; a quantifiable competitive threat from the alternative routing; a closed water-and-locks engineering problem rather than a green-field venture; and an owner

whose revenue from the existing canal had grown briskly since the 1999 transfer from US to Panamanian administration. This was not a speculative project. It was a defensive and expansionary investment by a sophisticated public-sector owner protecting a strategic asset.

The bid and the contract

In 2009, ACP awarded the Third Set of Locks contract to Grupo Unidos por el Canal (GUPC), a consortium led by Sacyr (Spain) with Salini-Impregilo (now Webuild, Italy), Jan De Nul (Belgium) and Constructora Urbana SA (Panama). The contract value was approximately USD 3.2 billion. The next-lowest bidder had priced the work around USD 4.2 billion; a third bidder was near USD 5.9 billion.[5]

ACP managed the expansion through a Project Management Office whose staff included more than fifty engineers trained to PMP standard, with documented change-management protocols and tiered approval thresholds for cost and scope. As ACP locks-division executive Jorge de la Guardia put it in a 2016 PM Network feature: *"It may take more time for the contractor to get things done properly. But we can live with a delay. We cannot live with a bad project."*[6] The discipline of that posture matters when reading what came next.

The Canal's engineering history is among the best documented on Earth. The French failure under Ferdinand Lesseps in the 1880s, the American achievement of 1904–1914, and a hundred years of subsequent operation, dredging and slope-stability work had produced a public record on the Canal's geology, hydrology, and concrete-aggregate behavior that any serious bidder could consult.[7] Reports at the time noted that senior Panamanian officials were openly concerned that the winning bid was below the cost level the project would likely require to meet specifications.

Disputes, dispute boards, and arbitration

The contract was a FIDIC-style turnkey arrangement with a Dispute Adjudication Board (DAB) for first-instance technical resolution and arbitration as the appellate forum. Construction proceeded amid sustained disputes over basalt aggregate quality, concrete mix design, foundation conditions, labor costs, and schedule. Work stopped in February 2014 due to a claimed shortfall exceeding USD 1.6 billion.[8] A financial accommodation reopened the site, but the underlying disputes were displaced first into DAB rulings and then into arbitration.

The arbitration clause specified Panamanian substantive law, English as the procedural language, and arbitration under the Rules of the International Chamber of Commerce, with the seat in Miami, Florida.[9] The seat is not a mere geographical detail. It determines which national courts have supervisory jurisdiction over annulment proceedings – in this case, the United States federal courts. The combination placed the dispute in the gravitational field of international construction arbitration as practiced under common-law contract culture: heavy disclosure, cross-examination, strict reading of the contract document, and a strong presumption that risk allocation as written governs outcomes.

That gravitational field matters. The European venturers came from civil-law traditions in which good faith – Spanish *buena fe*, Italian *buona fede*, Belgian *goede trouw* (Dutch) and

bonne foi (French) – is an active interpretive principle, used by judges to recalibrate contracts when circumstances or representations diverge from expectation. None of that travels well into ICC arbitration with a US seat. The tribunal will not refuse the concept of good faith but will read the contract first and interpret good faith narrowly, within the document's allocation of risk.

Outcomes

The arbitral results across multiple proceedings were largely favorable to ACP on the central technical disputes. On basalt aggregate quality and concrete mix design – the headline disputes – tribunals found for the owner. On certain labor cost claims and foundation conditions, GUPC won partial recoveries.[10] GUPC was ordered to repay substantial advances and damages, with a net award to ACP of approximately USD 271.8 million on the principal disputes. GUPC challenged the award before the United States Court of Appeals for the Eleventh Circuit, alleging arbitrator partiality based on professional acquaintance among the panel; the Eleventh Circuit upheld the award in August 2023, and the United States Supreme Court declined review in March 2024.[11] Further proceedings continue, including a multi-billion-dollar delay-and-disruption claim scheduled into 2026.[12]

Importantly, the arbitral findings concerned technical and commercial matters: the suitability of basalt aggregate, the formulation of the concrete mix, the management of foundation conditions, the calculation of labor cost claims. They were not, and should not be characterized as, findings of bad faith or wrongdoing on the part of GUPC. The dispute is a commercial dispute resolved through commercial arbitration, with the contractor consortium having exhausted all available appellate avenues.

The governance reading

Panama is a story of governance asymmetry exposed by procedure. The owner was sophisticated, technically competent, and disciplined in documenting its position. The contract was written tightly, with risk allocation favoring the owner where the project's history justified caution. The forum was chosen for forensic discipline rather than relational accommodation. The contractor consortium pursued its claims vigorously, both at the DAB and in arbitration; on the central technical disputes, the consortium did not prevail.

For project business practice, the structural lesson is uncomfortable but useful. When a sophisticated customer contracts under a forum and law it has chosen for documentary discipline, equitable arguments about good faith, changed circumstances, or relational accommodation operate within the document's allocation of risk rather than around it. The contract is the constitution. Historical due diligence is the price of admission. None of this is a criticism of the consortium's conduct in the dispute; it is an observation about the structural environment in which sophisticated international construction arbitration now operates.

Or – in short: Make sure the contractor’s project manager knows the contract as well as the customer’s.

Case Two: Progetto MOSE

A project that became the business

If Panama illustrates an interface stress-tested by procedure, the Venice MOSE project illustrates an interface that, on the public record, was the subject of extensive criminal investigation, a wave of indictments, and a smaller wave of convictions, with much of the picture left judicially incomplete by the operation of Italy's *prescrizione* (statute-of-limitations) regime. MOSE – Modulo Sperimentale Elettromeccanico, the experimental electromechanical module of submersible flood barriers designed to protect the Venetian lagoon – began as a 1980s response to the city's recurrent *acqua alta (high water)* flooding. Three decades and approximately 6.2 billion euros later, the project was operational but had become a textbook reference for the governance literature of major infrastructure.[13]

Technically, MOSE is a system of seventy-eight buoyant flap gates installed across the three inlets that connect the Venetian lagoon to the Adriatic Sea: two rows of twenty-one and twenty gates at the wider Lido inlet, joined by an artificial island that houses the operating plant; one row of nineteen gates at Malamocco; and one row of eighteen at Chioggia. Each gate is a hollow steel box, about 20 meters wide and weighing some 300 tons, hinged to the lagoon floor within a concrete housing caisson.

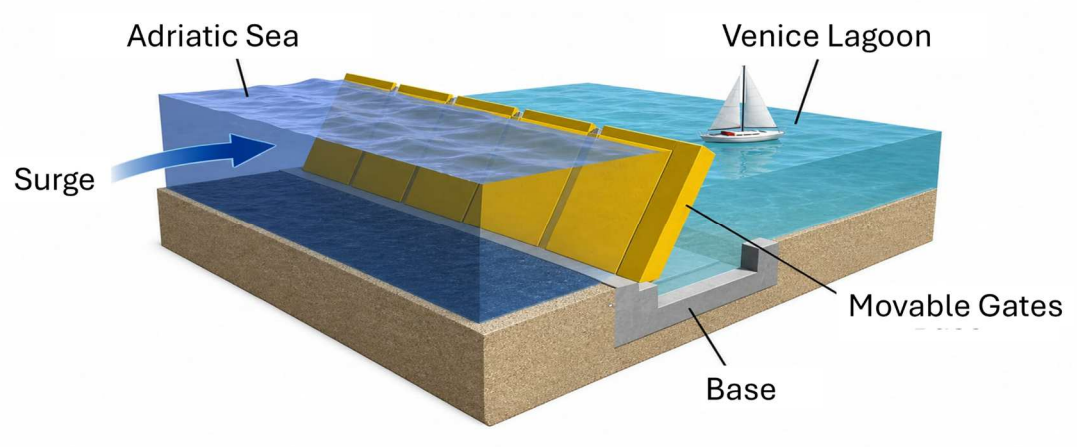

Figure 2: The schematic principle of Progetto MOSE flood surge barriers with barriers raised

In normal conditions, the gates lie flooded and flush with the seabed, invisible from the surface and leaving the inlets fully open to navigation, tidal exchange, and the lagoon's ecological flushing. When an exceptional tide is forecast, compressed air is injected into the gates, expelling the water; the gates rotate upward on their hinges by buoyancy alone and emerge above the surface to block the incoming surge. A full closure is reached in roughly 30 minutes and reversed in about 15 minutes, with typical closures lasting 4 to 5 hours until the peak tide passes. The system is currently activated for forecast tides above 110 centimeters and is designed to withstand tides of up to 3 meters above mean sea level,

comfortably above the historic 1966 flood. A navigation lock at the Malamocco inlet allows commercial shipping to enter and leave the lagoon while the gates are raised, and the entire operation is coordinated from a control center at the Venice Arsenale, drawing on meteorological and tidal data from the Acqua Alta oceanographic tower offshore. The first operational defense of the city took place on 3 October 2020; the gates have since been raised many dozens of times and, on each occasion, have reduced flooding on St Mark's Square and the historic center while the Adriatic outside rose to levels that would otherwise have inundated them.

Figure 3:People in Venice use special shoe covers during high water.

For a country located inside the EU, the contractor arrangement was unusual. Design, construction, and maintenance were entrusted to a single private consortium, Consorzio Venezia Nuova (CVN), as sole concessionaire of the Magistrato alle Acque, the public authority overseeing the Venice lagoon. Major Italian construction houses held shares in CVN, including Impregilo and Mantovani. The project benefited from a special legal regime that, by derogation from the Italian Public Contracts Code, permitted direct award rather than competitive tender.[14] CVN's longtime president Giovanni Mazzacurati was reported in 2006 as having responded to a question about the absence of competitive tender by asking, rhetorically, whether the Americans had launched a public tender to go to the Moon.[15]

Prior warnings

The structural concerns were readable from the public record well before any prosecution evidence existed. In a case analysis published in PM Network in September 2004 – almost a decade before the first arrests – this author identified three structural problems with MOSE: the closed bid process awarding the work to a single consortium without open competition; the cost trajectory already drifting from an initial estimate of around €2 billion toward €3.7 billion; and the foreseeable environmental risk of stagnation of polluted water behind closed barriers.[16] The recommended countermeasures were a clear ethical foundation with sanctions, a high level of transparency comparing execution against baselines, open and fair competition in procurement, and continued engagement with all stakeholders for alternative solutions. None of those recommendations described knowledge requiring access to insider information. They described what a competent observer could see in 2004.

Investigations and the arc of the proceedings

Investigations into anomalous money flows began with fiscal police checks of consortium member companies in 2008–2009. The first arrests came in February 2013, when executives connected with the project were detained on tax-fraud charges related to false invoicing and on charges of turbativa d'asta (bid-rigging), followed by further investigation. On 4 June 2014, Italian authorities carried out the principal operation, resulting in 35 arrests and more than 100 individuals under investigation.[17]

The judicial arc that followed was long and, for an international audience, requires a brief institutional note. Italian criminal procedure imposes time limits (*prescrizione*) within which proceedings must be concluded; offenses not adjudicated within the limit are extinguished without a finding on the merits. Many MOSE-related charges concerning conduct before April 2012 were ultimately declared time-barred. This is a feature of Italian procedural law, not an exoneration on the facts. It nonetheless means that for a number of public figures named in the original investigations, no court ever ruled finally on guilt or innocence on the merits.

Outcomes for individuals and entities

Stating outcomes precisely is essential. The principal outcomes on the public record include the following.

The individual dispositions, taken one by one, are not the structural story; taken together, they are. Among the public figures named in the original investigations were a former Italian minister of infrastructure, a former president of the Veneto region, a former Veneto regional councilor for transport, a former mayor of Venice, a then-Member of the European Parliament, two successive former presidents of the supervising agency Magistrato alle Acque, and the longtime president of the Consorzio Venezia Nuova himself. The dispositions distributed across the standard outcomes of Italian criminal procedure: a first-instance conviction (on an associated Porto Marghera matter), several plea agreements (*patteggiamenti*) with sentences served, acquittals on the merits (in one case with the court finding *il fatto non sussiste*), counts declared time-barred under *prescrizione* without adjudication on the merits, and two cases that were never brought to final judgment because the defendant had died – one in a road accident, one of advanced dementia in California after cooperating with prosecutors.

What matters for project business practice is not which outcome is attached to which individual, but the shape of the distribution itself: a wave of arrests covering ministerial, regional, municipal, parliamentary, supervisory, and consortium roles simultaneously, resolved across every available procedural channel, with a non-trivial fraction left judicially unresolved on the merits. That is the signature of a closed concession touching every level of public administration above and around it – and it is the reason the case is read structurally rather than personally.[18][19][20]

On the corporate side, the vast majority of consortium member companies entered into plea agreements (typically resolving counts through financial penalties without further trial). The Consorzio Venezia Nuova, as a corporate entity, was acquitted in May 2025 of corporate liability under Italy's Legislative Decree 231/2001, with the court finding “the total absence of any interest or advantage directly attributable to CVN” and attributing the underlying conduct exclusively to its constituent member companies and individual executives. The Court of Cassation had earlier characterized CVN as a party damaged by offenses committed by its senior personnel.[21]

The institutional response

The institutional response was substantial. The Italian National Anti-Corruption Authority (ANAC) formally requested in November 2014 that the Prefect of Rome place CVN under judicial administration. ANAC's letter described, on the basis of the custodial orders then in the public record, *"a diffuse, ramified and consolidated corrupt system within the Consorzio Venezia Nuova, with particular reference to its relations with the supervising body, the Magistrato alle Acque"*.[22] The Magistrato alle Acque itself – an institution dating from the eighteenth century – was dissolved by the national government in November 2014, with its functions reallocated to other bodies. CVN was placed under commissarial administration and entered a long process that has continued through to the 2025 acquittal of the entity at the corporate liability level.

The governance reading

The MOSE record, taken as a whole, supports a careful structural reading rather than a sweeping moral one. What is clearly established by the public record is the following: the project was awarded by direct concession rather than by competitive tender; design, construction and supervision were combined within a single private consortium working with a public authority that, on ANAC's documented finding, was substantially compromised; investigations produced a wave of arrests and a number of plea agreements; some individuals were convicted, some were acquitted, some had charges time-barred; and the corporate consortium itself was, after long proceedings, acquitted at the entity level on the basis that profit accrued to its constituent companies rather than to it.

The structural takeaway for project business practice is independent of which individual was found responsible for what. Three preconditions for capture at the customer–contractor interface were present together:

- The absence of competitive tender, which removes pricing discipline and the constant external pressure that competitors exert by watching one another;
- The absence of role separation between design, construction and supervision, which removes internal contradiction between actors who should be checking one another's work; and
- The absence of independent integrity oversight, which removes the only external mechanism that can detect capture once it has occurred.

Where all three are absent simultaneously, a subset of governance functions becomes structurally vulnerable, even where most individual actors are honest and most decisions are properly motivated. The MOSE proceedings, however they ultimately conclude on individual liability, are a reference case for that structural lesson.

It is also worth recording the engineering and operational achievement that sits alongside that lesson. The barriers have been raised in earnest since 2020 and have repeatedly held back exceptional high-water events that would otherwise have flooded St Mark's Square and the historic city; the Collegio's own ex-ante cost-benefit analysis projected a positive net present value across most scenarios, and the project is on track to avoid the great

majority of high-water damage costs over its operating life. The structural lessons of MOSE's procurement and oversight regime are real, and so is the protective function the completed system now performs for a UNESCO heritage city.

Case Three: Lesotho Highlands Water Project

A small country, a large project, a documented outcome

The Lesotho Highlands Water Project (LHWP) is one of the largest civil engineering schemes ever undertaken on the African continent. Conceived to transfer water from the Maluti Mountains of Lesotho to the Gauteng region of South Africa via a network of dams and tunnels, it has been delivered in stages since the 1980s with World Bank financing for major components. The Katse Dam alone is among the tallest in Africa.

Figure 4: The Katse Dam in Lesotho, the central part of the project

It is also the project where the Kingdom of Lesotho successfully prosecuted European, Canadian and Italian contractors and consultants. The chief executive of the Lesotho Highlands Development Authority, Masupha Ephraim Sole, was convicted in 2002 by the High Court of Lesotho of accepting undisclosed payments from contractors and consultants over a period running from 1988 to 1998. The High Court conviction was sustained by the Lesotho Court of Appeal in 2003. Sole was sentenced to eighteen years' imprisonment, reduced to fifteen on appeal.[23] The case originated in routine financial audits and developed through forensic analysis of Sole's foreign bank accounts, into which the payments had been deposited. Mutual legal assistance from Switzerland, with later assistance from the European Anti-Fraud Office (OLAF), was material in establishing the documentary trail.

Convictions and pleas

Four foreign companies were convicted or pleaded guilty in Lesotho courts on charges relating to the payments to Sole. The disposition of each is a matter of public record.

- Acres International Limited (Canada) was convicted in 2002 by the High Court of Lesotho on two counts of bribery; on appeal, the Court of Appeal in August 2003 sustained the conviction with a fine of approximately R15 million.[24]
- Lahmeyer International GmbH (Germany) was convicted in 2003 on six of seven counts of bribery; the Court of Appeal sustained that disposition in March 2004 with a fine of approximately R12 million. The seventh count was not sustained.[25]
- Schneider Electric SA, as legal successor to Spie Batignolles (France) following a 1995 merger, pleaded guilty in February 2004 on sixteen counts of bribery and was fined approximately R10 million.[26]
- Impregilo SpA (Italy) pleaded guilty in February 2006 to a charge of attempting to defeat the ends of justice (not to bribery as such); it was fined R15 million. Jacobus Du Plooy, an intermediary, also pleaded guilty in associated proceedings.[27]

The structural mechanism the courts identified

Guido Penzhorn SC, lead Crown counsel in the LHWP prosecutions, set out in a 2004 paper to the Institute for Security Studies the structural mechanism the prosecution had documented in court. Multinationals seeking contracts on the project, he reported, *"almost invariably, it would seem, rely on so-called representative agreements"* under which a local intermediary is engaged ostensibly to perform lawful services, with payment contingent on the contract being secured – what Penzhorn calls the *"no duck no dinner"* arrangement.[28] The Lesotho courts, per Cullinan AJ, held that an agreement of this kind, particularly where the agent operates outside the formal bidding process, may be one that *"has bribery written all over it"*, with the question turning on the facts of each case.

Penzhorn's further finding is consequential for any owner reading these cases. On the LHWP record, he wrote, *"it was the contractor/consultant that through these agreements with the middleman set the corrupt transaction in motion"* – not, as the European narrative often runs, a demand emanating from the recipient. That direction-of-initiation finding belongs to the public record of the LHWP cases. Whether and to what extent it generalizes beyond those cases is a separate empirical question.

The institutional aftermath

The World Bank, which had financed substantial portions of the project, conducted its own administrative debarment proceedings. Acres International was debarred for three years in July 2004.[29] Lahmeyer was debarred for seven years in November 2006, reducible to three on satisfactory remediation; the firm was released from debarment in August 2011 after adopting a Compliance Management System.[30] The Bank's process attracted public criticism for its delay: between Acres' 2002 conviction and the 2004 debarment, and between

Lahmeyer's 2003 conviction and the 2006 debarment, both firms continued to receive Bank-financed contracts.[31]

In 2007 World Bank President Paul Wolfowitz commissioned an independent review of the Bank's Department of Institutional Integrity, chaired by former US Federal Reserve Chairman Paul Volcker. The Volcker Panel reported in September 2007 to the new Bank President Robert Zoellick. Its recommendations led to the restructuring of the Department of Institutional Integrity into the Integrity Vice Presidency, the creation of an Independent Advisory Board (2008), and the harmonization of cross-debarment processes across multilateral development banks (2010). The LHWP cases were a substantial part of the institutional context for that reform.[32]

The governance reading

The LHWP record supports a structural reading that complements MOSE rather than duplicating it. Where MOSE shows the customer side of the interface compromised by the institutional design of the project – a single concessionaire combining design, construction and oversight in close relations with the supervising authority – LHWP shows the customer side compromised at the focal point of one individual, who was approached over an extended period through intermediary structures by multiple contractors and consultants on the other side of the interface.

Where a single official sits at the focal point of contractor selection and contract administration, with limited independent oversight and limited transparency in agency arrangements, the integrity of that interface depends on the integrity of that individual. Multinational firms whose competitors are willing to engage in payment arrangements through agents face commercial selection pressure to do likewise, unless the enforcement risk in the host and home jurisdictions is credible enough to make abstention the dominant strategy. The Lesotho judiciary made that calculation harder in a way few other jurisdictions had managed at the time.

The judgments are part of the canon of international anti-corruption jurisprudence – not because the legal reasoning was unprecedented, but because the institutional courage to apply it was rare.

Case Four: Sydney Light Rail And The Customer Side Under Stress

Why this case is different

The first three cases concentrate the analytical weight on the contractor side of the customer–contractor interface, with the customer side appearing primarily as the institution that was either disciplined (Panama) or compromised (MOSE, Lesotho). That weighting reflects the cases that have produced the most fully documented public records, but it risks suggesting that the customer side is structurally the more virtuous party. It is not. The customer side can also go rogue, in distinctive ways: by withholding material information at tender; by allocating risk asymmetrically and then refusing to recognize variations; by mobilizing political pressure to characterize legitimate contractor claims as opportunism; by failing to provide site access, permits, or interfaces with adjacent contractors that the contract requires; and by withholding undisputed payments to leverage disputed ones. Each of these failure modes is a way for the customer side of the interface to mutate, with consequences that fall first on the contractor and then on the project itself.

Figure 5: Sydney CBD and South East Light Rail in service.

The Sydney CBD and South East Light Rail project provides a recent, fully documented example of customer-side stress at the interface. The case is useful for an Asia-Pacific audience because it took place in a sophisticated common-law jurisdiction with strong courts and a free press, removing any temptation to attribute the difficulty to weak host-country governance.

Project context

The project, a 12-kilometer light rail line connecting Circular Quay in central Sydney to the south-eastern suburbs of Randwick and Kingsford, was procured as a Public Private Partnership (PPP) by Transport for New South Wales (TfNSW). The successful consortium, ALTRAC Light Rail, comprised Transdev as operator, Alstom for rolling stock and systems, Capella Capital as financial sponsor, and the Spanish construction group Acciona as design-and-construct contractor. Financial close was reached in February 2015. The headline contract value was approximately AUD 1.6 billion, with target opening in March 2019.[33]

By 2018 the project was running well behind schedule and substantially over budget. The original AUD 1.6 billion budget had drifted to an estimated AUD 2.1 billion and the opening date had slipped by approximately a year. The Reserve Bank of Australia governor Philip Lowe, in a public address, cited the project as illustrating inadequate oversight of major Australian infrastructure procurement.[34]

The dispute

In April 2018 Acciona filed a claim of approximately AUD 1.1 billion in the New South Wales Supreme Court against Transport for New South Wales, alleging misrepresentation. The substance of the allegation, reported in court documents and contemporaneous press, was that TfNSW had not disclosed the actual extent of underground utility relocation work that the project would require, and that the materials provided to bidders during tender – principally information attributed to Ausgrid, the New South Wales electricity distributor – significantly understated the work that would in fact be necessary. According to Acciona's claim, the actual requirements communicated by Ausgrid only after contract close included extensive work on more than one hundred utility pits, additional service relocations, and additional spare conduits. Acciona alleged that, had the true scope of the utility-relocation work been disclosed at tender, it would not have entered the design-and-construct contract on the terms agreed.[35]

Transport for New South Wales denied the allegations. The then Minister for Transport, Andrew Constance, publicly characterized Acciona's claim as *"outrageous"* and as *"an attempt to fleece the NSW Taxpayer"*. The Minister also raised a structural defense: that Acciona had no privity of contract with TfNSW, since the head contract was with the ALTRAC consortium, with Acciona engaged through ALTRAC.[36] That privity question was itself one of the substantive issues that would have had to be resolved had the matter gone to judgment.

Resolution

In June 2019 the parties reached a global settlement. Transport for New South Wales entered into a revised PPP arrangement with the ALTRAC consortium. The settlement package was reported to involve up to AUD 576 million in additional costs over the extended PPP term to 2036, and to resolve more than AUD 1.5 billion in legal claims. Acciona withdrew its AUD 1.1 billion misrepresentation claim from the New South Wales Supreme Court. ALTRAC's private-sector shareholders agreed to inject substantial additional equity. AUD 129 million of the settlement amount was reportedly held against delivery of revised milestones, with passenger services targeted for late 2019 and early 2020.[37]

The most important point about the resolution, for present purposes, is the following: because the parties settled before the Supreme Court adjudicated the misrepresentation claim, the merits of the allegation against Transport for New South Wales were never tested in court. Acciona's allegation that material information about utility relocation was withheld at tender remains exactly that – an allegation, with the merits unresolved. The structural lessons that follow do not depend on the merits being established judicially. They depend on the documented fact that a major project in a sophisticated jurisdiction reached a state

in which a substantial international contractor publicly alleged customer-side misrepresentation, the public-sector owner publicly denied it, and the parties chose settlement over judgment.

The governance reading

Sydney Light Rail illustrates several distinct patterns at the customer–contractor interface. First, on utility-risk allocation in PPPs: the actual extent of underground services in mature urban environments is rarely known with precision at the tender stage, and the question of which party bears the cost of discovering and relocating them is a recurring source of dispute on light-rail and metro projects internationally. Where the owner has, or could obtain, better information than the bidders and the contract is silent or ambiguous about disclosure obligations, the structural conditions for a misrepresentation dispute are present even where neither party intends one. The structural lesson is that owners on urban infrastructure projects should treat utility-risk allocation as a first-order interface question, not a residual one – disclosed thoroughly, allocated explicitly, and priced rather than disclaimed.

Second, on political pressure at the interface: the use of the language of *"fleecing the taxpayer"* by the responsible minister at the moment a major contractor lodges a claim is a recognizable pattern in publicly-funded projects with electoral sensitivity. From the project-business standpoint, it is corrosive at the interface, regardless of whether the underlying contractor claim is meritorious or opportunistic, because it shifts the conversation from the contractual question of who bears which risk to the political question of who is the villain. Sophisticated owners separate the two: the procurement and contract administration function manages the contractual question, while political communication is conducted in terms that do not pre-judge the contractual outcome. Where they are not separated, both functions are damaged.

Third, on consortium structures and the privity question: TfNSW's defense that Acciona had no contract with the State raises a structural point about PPP procurement that owners and contractors increasingly recognize. The interposition of a project-company SPV between the ultimate owner and the actual builder is a feature of PPP design, not an accident of it. It allocates risk to the SPV and protects the owner from many forms of direct claim. But where the SPV is undercapitalized relative to the disputes it might face, the practical consequence is that genuine grievances at the build level have nowhere realistic to go except through the SPV, which the head-contract structure may make difficult or impossible. That structural feature deserves attention at the contracting stage rather than at the disputes stage, when it is too late to redesign.

Fourth, on settlement as the resolution mode: the parties settled before judgment, and the AUD 576 million extra-cost figure carried by TfNSW is not a finding that the State did anything wrong. It is the price at which the State and the consortium chose to close the dispute and complete the project. That is a rational resolution for both sides – judgment carries litigation risk for both, and an operational light rail line is more valuable to all parties than a finding on the merits. But it leaves the structural questions open, which is why the case continues to be cited by commentators on Australian infrastructure procurement. Settled disputes do not produce precedent; they produce paid bills.

Patterns Across The Four Cases

The four cases differ in scale, geography, public-private structure, conduct alleged and outcome reached. Treated together, they suggest a small number of recurring structural conditions whose presence raises the probability that the customer–contractor interface will function poorly. Each can be addressed through governance design. None of these observations attributes wrongdoing beyond what the legal and regulatory record establishes; they describe structural vulnerabilities that owners, contractors, lenders and oversight bodies can sensibly design against.

The interface goes rogue from both sides

Three of the cases (Panama on the contractor-conduct dimension, Lesotho, MOSE) concentrate analytical attention on the contractor side. Sydney concentrates it on the customer side. The structural truth the four together suggest is that the interface is a two-sided surface, and pathologies on either side impose stress that the other side must absorb. Owner-side pathologies – insufficient disclosure, asymmetric risk allocation, political defensiveness – produce contractor distress, claims and disputes. Contractor-side pathologies – aggressive bidding, intermediary arrangements, captured oversight – produce owner distress, expropriation risk and reputational impairment. Symmetric vigilance is the appropriate posture.

Closed or compromised procurement

MOSE was awarded by direct concession under a special legal regime that derogated from competitive-tender requirements. Lesotho involved formally competitive procurement that was nonetheless influenced through agency relationships before contracts were awarded. Panama's procurement was competitive on its face, with the dispute concerning post-award commercial conduct. Sydney's procurement was a competitive PPP tender; the alleged failure was on the disclosure side rather than the integrity side. In two of the four cases, the absence or compromise of competitive procurement is the entry point for everything that follows. Competitive tender, even when imperfect, is a structural integrity mechanism rather than a procedural nicety.

Captured or stressed oversight

In MOSE, ANAC's documented finding described senior officials at the supervising public authority as substantially compromised in their relations with the consortium. In Lesotho, the chief executive of the public development authority was convicted of accepting undisclosed payments. In Sydney, the structural question is different: the public authority's defensiveness in the face of a substantial contractor claim suggests an oversight environment under political stress rather than under capture. Both kinds of stress damage the interface. Independence – structurally enforced, not merely declared – and political insulation of the contracting function are the conditions of possibility for the customer side of the interface to function well.

Blurred roles and asymmetric information

MOSE entrusted design, construction, and maintenance to the same private consortium, with the supervising public authority insufficiently independent. Lesotho involved consultants and contractors operating in close institutional proximity across feasibility, design, construction, and supervision contracts. Sydney's PPP structure interposed a project-company SPV between the State and the actual builder. Each of these arrangements blurs roles in different ways. The structural device of role separation – between client, designer, builder, supervisor, and operator – is a defense against many failure modes; the interposition of an SPV is a defense against others. The lesson is not that any one structure is right, but that whatever structure is chosen, its consequences for information flow, dispute resolution, and accountability deserve explicit design attention rather than inheritance from precedent.

Aggressive commercial behaviour at the bid

Panama was won at a price below other compliant bids by a wide margin, which experienced observers noted at the time. MOSE was driven by cost trajectories that diverged from initial estimates by a factor of four. Sydney was bid at a price that subsequently required an additional approximately AUD 500 million in headline budget and an additional AUD 576 million in settlement to bring to completion. Aggressive bidding and aggressive disclosure each produce downstream pressure that the interface must absorb. Abnormally low bids deserve abnormally close scrutiny on both sides – by the owner who receives them and by the contractor's own internal price-justification process.

Forum selection that exposes asymmetry

Each case illustrates the role that the dispute resolution forum plays in shaping behavior throughout the project life-cycle. Panama: ICC arbitration with a Miami seat, applying Panamanian substantive law within the procedural conventions of international construction arbitration, produced documentary discipline that the contractor consortium's narrative did not displace. MOSE: Italian criminal procedure, with the substantial qualification of *prescrizione*, produced disclosures and convictions over more than a decade. Lesotho: Lesotho criminal courts produced sustained convictions of multinational defendants. Sydney: New South Wales Supreme Court was the available forum, but the parties settled before judgment, so the forum was a backdrop pressure rather than an adjudicating presence. Forum choice and forum use are governance choices that shape behavior from the contracting stage forward.

Implications For Project Business Practice

The four cases suggest a small number of practical disciplines that owners, contractors, lenders, and oversight bodies can adopt. None of these disciplines is novel. Their value lies

in being applied together, consistently, with the understanding that they are integrity infrastructure rather than procedural decoration.

For owners

Use competitive tender wherever feasible. Treat sole-source justifications with skepticism, even where strategic uniqueness appears to justify them. Where sole-sourcing is genuinely required, compensate with intensified independent oversight. Separate roles structurally – design, construction, supervision, operation – and resist combining them for short-term efficiency reasons without explicit governance compensation. Disclose material information at tender thoroughly and in writing, and recognize that incomplete disclosure is one of the documented routes by which the customer side of the interface produces dispute. Choose dispute resolution fora that prize documentary discipline and procedural neutrality. Conduct integrity due diligence on consortium members, not only on the lead venturer. Insulate the contracting function from political communication: the procurement and contract administration function manages contractual questions, political communication is conducted in terms that do not pre-judge contractual outcomes.

For contractors

Recognize that an aggressively low bid is a commitment that must be delivered on the technical merits, not closed through claims, accommodations, or relationship leverage. Where the customer side is genuinely failing to meet its disclosure or cooperation obligations, document the failures contemporaneously and use the contractual escalation mechanisms early; the cost of waiting until disputes become large enough to litigate is asymmetric. Conduct integrity due diligence on consortium partners; the legal, regulatory, and reputational exposure of joining a consortium with a weak compliance partner is asymmetric to the upside. Maintain a Compliance Management System of the kind the World Bank now requires for release from debarment; this is no longer optional infrastructure for serious international participation.

For lenders, financiers, and oversight bodies

Independent integrity oversight should be structurally embedded in major project financing, not reserved for incidents that come to light. The Volcker Panel's 2007 report on the World Bank Department of Institutional Integrity, and the institutional reform that followed, marked an inflection point on the financier side. Cross-border cooperation among regulators works: the OLAF–Switzerland–Lesotho cooperation in the LHWP cases is an example of what can be achieved when host-country, contractor-country and financier-country authorities pool their evidence and their procedural reach. The era of effective single-jurisdiction enforcement is past for projects of significant cross-border scale.

Conclusion

The customer–contractor interface in cross-organizational project work is the surface across which the project actually exists as a business relationship. Everything that flows in either direction – money, scope, decisions, information, claims, risk, reputation – passes across that surface. When the surface is well-governed, the project tends to deliver something resembling what its sponsors and contractors agreed to, on terms not too distant from those they signed. When the surface is poorly governed, the project can mutate into a vehicle for outcomes none of the original parties would have signed up for, that have a tendency to outlast the project itself in the form of regulatory proceedings, criminal cases, civil claims, political consequences and reputational impairment.

The four cases examined here illustrate four distinct ways in which structural vulnerability at the interface can produce poor outcomes – and four distinct distributions of pathology between the contractor side and the customer side. Panama showed a contractor consortium that bid aggressively and met an unusually disciplined owner. MOSE showed the customer side compromised by the institutional design of a closed concession. Lesotho showed the customer side compromised at the focal point of a single official by coordinated approaches from contractor-side intermediaries. Sydney showed the customer side under stress, with material disclosure at tender alleged to have been incomplete and the contracting function under public political pressure. Treated together, the cases suggest that the interface is symmetric in its vulnerabilities: pathologies of either side produce stress that the other is forced to absorb.

Closed or compromised procurement, captured or stressed oversight, blurred roles, asymmetric information, aggressive commercial behavior, and forum choice that fails to embed documentary rigor are recognizable conditions of vulnerability on either side of the interface. The countermeasures – competitive tender, independent oversight, role separation, thorough disclosure, integrity-aware procurement, political insulation of the contracting function, and forum selection by sophisticated parties on both sides – are equally recognizable disciplines.

Project Business is the business of projects that cross organizational boundaries under contract. The integrity of that boundary is not an ethical adornment to project business. It is the boundary itself. When the boundary holds, the discipline works. When it does not, the costs are felt across every party who depends on the project – owners, contractors, financiers, regulators, and the public who funded or rely on what was promised. The good news is that watching that surface from both sides is a learnable discipline. The countermeasures are known, they are practical, and they compound. Each project where they are applied makes the next one easier. Watching that surface – from both sides – is what governance is for, and it is what makes Project Business worth practicing.

A Call To Action – From Contract Parties To Project Partners

The four cases in this article are different in geography, structure and outcome, but they converge on a single proposition. The customer–contractor interface is not a procedural seam to be managed; it is the place where the project actually exists as a shared business. Treated as such, it can be designed, tended and improved. The invitation, then, is plain: choose to behave at that interface as a partner rather than a counterparty, and design the surrounding governance so that partnership is the easier choice.

Five commitments make that choice concrete on the next project you touch.

- **Compete openly, then complete together.** Use competitive tender wherever it is feasible, and once the contract is signed, treat the other side as the partner you chose, not the counterparty you must manage. Reward delivery, not posture.
- **Disclose what you know, in writing, at tender.** Owners share material site, utility, geological and historical information with the same rigour they expect bidders to apply in pricing. Contractors document gaps in disclosure as they arise, not three years later when the gap has become a claim.
- **Separate the roles – or compensate explicitly when you cannot.** Design, construction, supervision and operation belong in different hands wherever the structure allows. Where they must be combined, build in independent integrity oversight as the explicit counterweight, not as an afterthought.
- **Insulate the contracting function from the political weather.** Procurement and contract administration manage contractual questions on contractual terms. Political communication is conducted in language that does not pre-judge those questions. When the two are mixed, both are damaged – and the project pays the bill.
- **Invest in the people who can hold both halves.** Project Business asks for project managers who are also commercially literate, and commercial leaders who understand how projects actually deliver. Develop them deliberately, give them seats at the table, and let them build the trust that turns a contract into a partnership.

None of these commitments is exotic. All of them are within reach of any project, on any continent, starting on any Monday morning. Project Business is a craft, and crafts get better with practice. Let us practice it well – and let the bridges we build between organizations carry the weight we ask of them.

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Appendix: What Is Project Business?

Many of today's projects are no longer internal endeavors. In a world shaped by global supply chains, outsourcing, and cross-border collaboration, projects are increasingly delivered by networks of companies. These projects are not just technical undertakings – they are commercial ventures.

Project Business arises when two or more companies team up to perform a project under contract. It operates at the boundaries between organizations and often involves diverse legal systems, cultures, and moral compasses. Some project networks are simple; others are complex and fragile ecosystems with dozens, sometimes hundreds of organizations involved.

Though long overlooked, Project Business contributes an estimated 20% to 30% of global GDP and employs more project managers than internal projects. It deserves far more attention – not only for its scale but for the unique challenges it poses.

Traditional project management handbooks typically address internal projects within organizations. By contrast, project business takes place across corporate boundaries, introducing commercial, legal, and relational complexities that such works only partly cover. Project business (cross-corporate, customer-contractor) has different challenges and rules – success depends here not only on planning and execution, but on commercial acumen, legal awareness, and a deeply cooperative mindset. Trust must be built among parties with differing interests and asymmetric power to enable collaboration toward shared success.

The risks in Project Business go beyond deadlines and deliverables – they include cash flow instability, legal exposure, reputational damage, and contractual disputes. Where information is asymmetrical and objectives diverge, the project manager must act as negotiator, strategist, and builder of partnerships.

† Note On Sources And Method

This article examines four projects in which the customer–contractor interface, in different ways, did not operate as intended. The cases involve allegations of serious wrongdoing, allegations of misrepresentation that were not adjudicated on the merits, and commercial disputes that did not necessarily entail wrongdoing at all. The discipline of the article is therefore the following. Statements about specific persons or organizations are made only where supported by the public record of court judgments, plea agreements, regulatory sanctions, arbitral awards, settled litigation, or sworn admissions in legal proceedings. Where charges were dismissed, defendants acquitted, proceedings became time-barred without adjudication on the merits, or matters were settled before judgment, those outcomes are reported alongside the original allegations or charges. Where matters remain in proceedings, that is stated. The analytical commentary at the end of each case study is offered as the author's reading of the structural lessons; it does not impute wrongdoing beyond what the judicial, regulatory and settlement record establishes.

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About The Author

Oliver F. Lehmann
Munich, Germany

Oliver F. Lehmann, MSc, ACE, PMP, is a project management educator, author, consultant, and speaker. In addition, he is the owner of the website Project Business Foundation, a non-profit think tank for professionals and organizations involved in cross-corporate project business.

He studied Linguistics, Literature, and History at the University of Stuttgart and Project Management at the University of Liverpool, UK, where he holds a Master of Science Degree (with Merit). Oliver has trained thousands of project managers in Europe, the USA, and Asia in methodological project management, focusing on certification preparation. In addition, he is a visiting lecturer at the Technical University of Munich.

He has been a member and volunteer at PMI, the Project Management Institute, since 1998 and served as the President of the PMI Southern Germany Chapter from 2013 to 2018. Between 2004 and 2006, he contributed to PMI's *PM Network* magazine, for which he

provided a monthly editorial on page 1 called "Launch," analyzing troubled projects around the world.

Oliver believes in three driving forces for personal improvement in project management: formal learning, experience, and observations. He resides in Munich, Bavaria, Germany, and can be contacted at oliver@oliverlehmann.com.

Oliver Lehmann is the author of the books:

- "Situational Project Management: The Dynamics of Success and Failure" (ISBN 9781498722612), published by Auerbach / Taylor & Francis in 2016
- "Project Business Management" (ISBN 9781138197503), published by Auerbach / Taylor & Francis in 2018.

His previous articles and papers for PM World Journal can be found here:

- https://pmworldlibrary.net/authors/oliver-f-lehmann