

Supporting Councils in developing a sound, consistent & effective   
approach to managing their diverse range of contracts

CONTRACT MANAGEMENT

**GUIDELINES**

Introduction

Effective procurement practice is becoming an increasingly important focus for Local Government in Victoria. Councils are working on improving their procurement performance to drive cost savings, improve probity, deliver improved outcomes, and meet their broad range of council objectives. A key element of procurement practice that is now coming under increasing scrutiny is post-award contract management.

This reflects a new focus on contract management across both the public and private sectors, as organisations shift from a view of contracts as simply “pieces of paper” to living documents that need close carefully planned management.

There is now broad recognition that the growing emphasis on agreeing deals has not always flowed into consistent and effective management of post-award contracts. Major service contracts for example are not always routinely reviewed to confirm if they are delivering value for money. As increasing priority is given to procurement, insufficient attention is still being paid to the on-going management of contracts. Yet many of the risks and costs associated with contracts can occur during the post-award contract management period.

This is particularly relevant for Councils, who often have a wide range of staff managing a diverse and complex range of contracts, dealing with everything from waste management and road construction to stationery and IT. By committing to developing a sound, consistent and effective approach to contract management across their organisation, councils can not only better manage risks, they can reduce costs and significantly improve outcomes.

Purpose of the Guidelines

These Guidelines are designed to support Councils in developing a sound, consistent and effective approach to managing their diverse range of contracts. The Contract Management Guidelines deliberately focus on the activities associated with the operational phase of the contract after the contract has been awarded and is up and running. However, it is fully acknowledged that successful contract management is significantly dependent on what happens during the tendering and award phases. For example, the quality of the original specification included in the tender documentation, and the agreed terms and conditions, play a critical role in enabling the effective management of the contract. Therefore, procurement planning during the tendering, contract award and the contract management phases should be seen as a continuum, with effective contract management planned from the very start of the procurement process.

The Guidelines are designed not only to support the application of good practice within a project, but also to support the development and application of an effective overall organisational approach to contract management.

Guidelines Structure:

Section A – Contract Management Principles - Establishing the principles and setting the foundation for effective contract management

1. What is Contract Management?

2. Contract Management and the Procurement Life-cycle

3. Organisational requirements for contract management

Section B - The Contract Management Procedures Manual - The practical application of effective contract management principles

1. Planning for Effective Contract Management

a. Contract Establishment

b. Determining the Contract Management Approach

c. Identifying and Managing Risks

2. Contract Management Practice

a. Contract Mobilisation

b. Contract Administration and Record Keeping

c. Contract Management Roles and Responsibilities

d. Managing Relationships

e. Performance Management

f. Contract Monitoring

g. Negotiating Contract Variations

h. Managing Contract Disputes

i. Ethical Business Conduct and Conflict and Interest

j. Contract Completion

How to use these Guidelines

The Guidelines are designed to provide up-to-date guidance for Council contract management practice. Some suggestions on how the document could be used are as follows:

• Copied onto Council’s intranet as is and used in full to provide both guidance and procedures.

• Tailored and integrated into Council’s existing procurement process framework and procedures manual.

• Used to provide the basis for the development of induction and ongoing contract management training.

section A   
**Contract Management Principles**

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SECTION A – Contract Management Principles

A1. What is Contract Management?

Good contract management is the process that ensures both parties to a contract fully meet their respective obligations as efficiently and effectively as possible, in order to continually deliver both the business and operational objectives required from the contract.

Furthermore, successful contract management is defined as existing when:

• The arrangements for service delivery continue to be satisfactory to both customer and supplier;

• Expected business benefits and value for money are being delivered and realised;

• The supplier is co-operative and responsive;

• All parties know their obligations under the contract;

• Disputes are rare; and

• The contract is fully compliant and satisfies both legislative and audit requirements.

A2. Contract Management and the Procurement Lifecycle

There are five key stages of the procurement life cycle, ranging from the initial identification of need and subsequent planning phase, right through to the long term management of the contract.

Contract Management in the context of the Procurement Lifecycle

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Identify need  and planning** | **Tender and  quotation  process** | **Evaluation  of offers and negotiation** | **Contract  award** | **Contract  management** |
| Successful contract management is significantly  dependant upon what happens during the planning,  tendering, evaluation and award phases | | | | • Planning phase  • Contract establishment  • Contract admin  • Contract management roles and responsibilities  • Managing relationships  • Performance management  • Negotiate contract variations  • Managing contract disputes  • Ethical business conduct  • Contract completion |

Figure 2: Contract Management in the Context of the Procurement Lifecycle

The contract management phase of the procurement life cycle often receives the least attention and effort until problems arise. However, if we take a typical three-year IT services project and look at the elapsed time by phase, a clear picture is painted of the importance of the contract management phase and the need for both parties to devote appropriate effort and resources.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 2-3 months | 1 month | 1-2 months | 1 month | 36 months |
| Planning | Requesting Offers | Evaluation and Negotiation | Award | Contract Management |

Figure 3: Profile of time against Procurement Lifecycle Phase for a typical three year IT services project

The importance of the contract management phase is further reinforced when we consider where the output of the procurement project occurs – the delivery of the required goods or services.

This is true for the Council, but also for the supplier, because performance in this phase may have an influence on whether future business will be won or lost. Not only performance in terms of delivering the required goods or services in full, on time and to specification, but also in terms of the relationship built with the Council and the added value it delivers.

A3. Organisational Requirements for Effective Contract Management

Councils must have in place a range of elements that will support good practice in managing every one of their diverse range of contracts. Improving practice across the range of contract types and contract managers involved requires a holistic planned approach, such as that demonstrated successfully by many Councils in improving OH&S performance over recent years.

Key Organisational Elements for Consideration:

Leadership

Councils should prioritise contract management and provide leadership at all levels across all Departments to ensure buy-in and a commitment to improvement. Key areas for consideration include:

• Clear overall ownership of contract management is established across the organisation, with a Senior Officer charged with responsibility for driving organisation-wide contract management performance.

• Oversight and support for contract management practice and performance is assigned to the Procurement Team to ensure a co-ordinated and consistent approach.

• Contract Management Guidance and Procedures should be aligned with the procurement policy and integrated with the procurement manual and any other relevant processes.

• Appropriate systems and processes are in place to capture and report on key data and lessons at a project, category and organisational level.

• Regular reporting to the Executive Group should take place on contract management performance, issues and opportunities.

People and Skills

Contract management responsibilities need to be clearly identified and people in these important roles supported to develop and execute their skills appropriately. Key areas for consideration:

• A Contract Management Induction and Training Program is established and all contract managers have been inducted and received training in council’s contract management procedures, prior to taking responsibility for managing a contract/s.

• Experienced contract managers are appointed for key contracts.

• Contract managers are clearly nominated for each contract and their roles and responsibilities within each project are understood.

• Dedicated resources are assigned within procurement and within the Business Area to ensure appropriate time and attention can be paid to effective contract management.

• Contract management responsibilities are clearly identified in position descriptions.

• Contract managers have clear objectives and reporting lines and their performance is managed through reviews and appraisals.

• The contract manager has appropriate delegated authority to manage the contract effectively.

Processes, Documentation and Technology

Consistent record-keeping and administrative processes are vitally important to ensure projects are delivered as planned. Underpinning the successful and consistent application of good contract management practice is a range of processes, practices and central expertise supported by practical and well-understood technology. Key areas for consideration:

• A clear set of contract management guidance and procedures is in place, readily accessible and reviewed on a regular basis.

• A clear records management process is in place for all contract documentation.

• Hard copy contracts and soft copy files are stored and logged, and are easily accessible when required

• A contract register is in place, centrally maintained and updated regularly.

• Contract management software is used consistently for recording all agreed contract information.

• There are clear mechanisms in place for identifying key contract ‘trigger points’(e.g. notice periods, insurance renewal requirements) and responsibilities for responding to these ‘trigger points’ are clearly understood.

• There is a well understood audit plan in place to ensure the contract remains fully compliant.

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section B   
**Contract Management Practice**

a. Contract Establishment

Successful contract management is dependent on a number of steps being undertaken effectively during the planning and contract establishment phases. Some of the key issues that will determine the long term success or failure of contract management include:

• Planning – issues such as the type of specifications, the number of contractors, the length of contracts and the role of sub-contractors should be included in procurement planning.

• Specification development – Clear, well written specifications that incorporate measurable KPIs, and allow suppliers to respond confidently in their tenders can reduce the risk of contract disputes, cost blow-outs and poor outcomes.

• Style of the procurement process – The relationship that is developed during contract establishment will flow into the contract management phase.

• Realistic contracts – Contracts where one party feels particularly disadvantaged by the terms and conditions or other commercial arrangements can create problems during the contract management stage.

• Contract transition planning – Well planned and executed processes will ensure that expectations, roles and responsibilities are clear in the transition to the contract management phase.

SECTION B - Contract Management Practice

It is important that contracts are actively managed throughout their life to help ensure supplier performance is satisfactory, stakeholders are well informed and all contract requirements are met.

B1. Planning for Effective Contract Management

Planning for the management of the contract commences in the procurement planning phase and continues right through evaluation and contract negotiation. The key stages are featured in figure 4 below:

Figure 4: Planning for Effective Contract Management

b. Determining the Contract Management Approach

The approach to contract management should be specifically assessed for each contract and documented in a well-defined Contract and Supplier Management Plan. (A sample plan is shown in Appendix 2). The Plan should assign roles and responsibilities and establish clear deliverables and outputs.

The contract management approach documented in the Contract Management Plan should be based on an assessment of key issues such as:

• Contract value;

• Contract complexity;

• Scale of risk and potential for risk mitigation through sound contract management practice;

• Strategic importance of the contract;

• Potential benefits and increased value available through contract management practice;

• Overall Market maturity and specific supplier capability and experience; and

• Specific council experience in managing these contracts.

The approach to contract management and the associated resources allocated will vary depending on the level of risk and potential benefits available.

c. Identifying and Managing Risk

To assist in determining the contract management approach, a Contract Management Risk Assessment should be undertaken, considering possible issues such as:

|  |  |
| --- | --- |
| Sources of Risk | Examples of Risk |
| Contract management capability | • Failure to have sufficiently skilled and experienced resources to effectively manage the contract(s)  • Lack of recognition of the importance of contract management  • Failure to act on Supplier under-performance |
| Supplier performance | • Failure to provide contract deliverables on time, to agreed quality standards  • Failure to adhere to agreed budget  • Failure to comply with all contract provisions, for example, privacy, security and record keeping  • Supplier unable to deliver due to financial collapse or loss of resources  • Fraud and/or unethical conduct by the Supplier |
| Changes in circumstances and/or requirements | • Contract changes not dealt with as contract variations  • Supplier not prepared to agree to contract variations to accommodate changes in Council requirements  • Changes in circumstances not managed in a timely manner |
| Stakeholder relationships | • Stakeholders not consulted and/or kept informed about contract performance  • Changes in stakeholder expectations not communicated effectively  • Differing stakeholder expectations |

Risks should be considered and assessed as part of the preparation of the Contract and Supplier Management Plan. For contracts with more significant risks, a Risk Mitigation Plan may need to be developed and periodically reviewed and updated throughout the life of the contract.

Where a contract is to be managed by multiple Council departments , a plan may assist with coordination among team members and stakeholders. Issues discussed above should be addressed by the plan or checklist developed to guide contract management.

B2. Contract Management Practice

There are ten key elements to be considered as part of good contract management practice. These include:

a. Contract Mobilisation

b. Contract Administration and Record Keeping

c. Contract Management Roles and Responsibilities

d. Managing Relationships

e. Performance Management

f. Contract Monitoring

g. Negotiating Contract Variations

h. Managing Contract Disputes

i. Ethical Business Conduct and Conflict and Interest

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a. Contract Mobilisation

Contract mobilisation includes those key contract execution and transition steps, that begin with the awarding of the contract to the successful provider. Successful contract mobilisation can ensure that the ‘building blocks’ for a successful contract are created.

While the written contract is a record of each party’s obligations, it is not designed as a day to day operational management document for the contract. This is the role of the Contract and Supplier Management Plan. While the Contract and Supplier Management Plan should be agreed and formalised following contract negotiation, it should also act as a living document that continues to be updated throughout the life of the contract.

The Contract and Supplier Management Plan typically includes:

a. A summary by date of key milestones and deliverables, key individuals and their responsibilities (both the Council and the supplier);

b. A schedule of risks that have been identified and are being monitored and managed;

c. Reporting requirements and KPI’s;

d. Processes around how some of the contractual obligations are to be achieved; and

e. Contract variation processes.

The Contract and Supplier Management Plan should assign people, time and resources to the contract management process. Early meetings with the supplier should seek to ensure that the Contract Management Plan is aligned between Council and the contract provider.

Broad issues to address in the mobilisation of the contract include:

• Health & Safety, eg ensuring the Contractor’s systems meet our standards

• Operational, eg ensuring the Contractor’s work plan is credible

• Commercial eg ensuring the Contractor gets paid the right amounts

• Relationship eg ensuring we manage the person to person interface

Contract Mobilisation Checklist

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Mobilisation | Action | One off | | On-going | Who is responsible |
| No | Yes | How often |
| Commercial | • Distribute Contract documents |  |  |  |  |
| • Establish Contract file in accounts payable |  |  |  |  |
| • Establish supplier engagement method within the contract (eg. PO, Catalogue, Purchase Card) |  |  |  |  |
| • Set-up system to monitor expenditure under the Contract |  |  |  |  |
| • Receive, check and file insurance certificates and financial guarantees |  |  |  |  |
| Health & Safety | • Review Contractor's corporate and / or local Health & Safety Management System (incl. Health & Safety policy) |  |  |  |  |
| • Review Contractor's Health & Safety plan and legal documents (e.g. Health & Safety cases, Health & Safety check list, etc.) |  |  |  |  |
| • Receive, check and file Health & Safety Management System certificates (e.g. ISO14001, ISO9001) |  |  |  |  |
| • Reconcile Health & Safety and Contractor's Health & Safety procedures |  |  |  |  |
| • Conduct site inductions for Contractor staff |  |  |  |  |
| • Conduct Health & Safety pre-execution survey / audit |  |  |  |  |
| • Review of Contractor's compliance with site policies |  |  |  |  |
| • Review Contractor's compliance to Health & Safety training requirements |  |  |  |  |
| Operational  Performance | • Verify compliance with Council standards  • Verify compliance with scope of services  • Verify compliance with Council policies  • Establish kick-off meeting with Vendor  • Organise site offices, facilities, catering , access to sites (E.g Health & Safety induction training)  • Receive check and file Quality Management System certificates (e.g. ISO9001)  • Establish schedule for regular meetings, field visits, inspections, reviews and audits  • Establish Contract objectives and key performance indicators  • Assess Contractor Performance and report in Contractor Performance Assessment Report |  |  |  |  |
| Relationship | • Establish reporting structure and formats |  |  |  |  |
| • Supplier & Council Contract Management personnel appointed |  |  |  |  |
| • Establish roles and responsibilities |  |  |  |  |
| • Establish lines of communication |  |  |  |  |

b. Contract Administration and Record Keeping

Contract administration covers the formal governance of the contract and changes to the contract document. It is concerned with the mechanics of the relationship between the Council and the supplier.

Good contract administration is important for the successful management of any contract and also ensures that audit and probity requirement are met by:

• Maintaining an updated contract file, including: a hard, signed copy of the contract that is easily accessible when required and all on-going correspondence and contract information.

• Using contract management software to record key information, such as supplier contact details and the scope of services they provide to the Council.

• Ensuring there is regular reporting of contract information, including payments, compliance levels, performance metrics and variations

The following is a list of documents that may need to be created and retained during the contract management phase.

• Copy of the contract signed by both parties

• Risk assessments

• Contract management plan or checklists

• Records of payments

• Records of performance

• Variations to the contract

• Assistance or expert external advice received

A sample contract management checklist is shown in Appendix 3. The checklist is intended as a guide for all Contract Managers however some contracts will not warrant all steps to be applied.

c. Contract Management Roles and Responsibilities

A factor to consider in developing contract management plans is the type and level of resource to manage the contract. In general, high value contracts with a greater operational risk may require considerable resources, while managing more sophisticated risk often requires higher skill levels and capability, rather than resources alone.

Ensuring that the right people are in place to carry out the contract management activities is crucial. To be successful the contract manager (or team) must:

• Have a detailed knowledge of the specification, governing contract and other relevant issues such as SLAs and KPIs.

• Actively participate in the tender process or have a full handover from the staff responsible for the tendering/contract award.

• Have the appropriate contract management skills, commercial awareness and industry expertise to manage the contract and resolve any issues.

• Hold the necessary delegated authority to monitor the financials and ensure variations are appropriately approved by Procurement and in accordance with Council requirements.

The table below outlines typical roles and responsibilities split between procurement and the operational contract manager:

|  |  |  |
| --- | --- | --- |
| Area of Responsibility | Contract Manager Role | Procurement Role |
| Supplier Management | • Day to day management of the supplier  • Perform regular operational meetings with supplier  • Resolve operational issues as they arise  • Monitor performance data and Address non-conformance | • Ensure signed contract is in place between both parties  • Monitor spend and compliance to approved contract |
| Invoicing and Payment | • Ensure invoices comply with contracted rates  • Ensure payment is made to supplier within payment terms  • Invoice disputes and dispute resolution | • Ensure invoices are compliant and paid according to the terms of the contract  • Manage contract related payment disputes |
| Contract Administration | • Participate in the establishment of and understand the operation of the Contract and Supplier Management Plan  • Place purchase requisitions  • Organise work requests  • Advise the Procurement Team of any changes in scope/product/service supplier | • Establish and reconfirm the Contract and Supplier Management Plan  • Process purchase requisition and issue PO  • Ensure a contract file is maintained that meets audit requirements  • Negotiate changes in scope/product/service and associated terms and pricing in consultation with the contract manager |
| Compliance and Monitoring | • Comply with contract terms  • Engage with Procurement and or supplier to resolve supplier/end-user generated complaints regarding contract compliance | • Ensure two-way communication with the supplier. Facilitate resolution of unresolved issues that occur in between review meetings by:  • Bringing the Business Owner & Supplier together to solve issues  • Ensuring agreement on action plans between the Business |
| Continuous Improvement | • Formulate, implement and monitor improvement plans stemming from regular contract review meetings and noncompliance issues to ensure supplier is performing at expected levels/KPI’s | • Facilitate improvement plans stemming from regular contract review meetings to ensure Supplier performing at expected levels/KPI’s |
| Contract Review – Lessons Learnt | • Participate in strategic contract review to determine future of contract at expiry | • Facilitate strategic contract review meetings to determine future of contract at expiry (e.g.: contract extension, new tender process etc.) |

d. Managing Relationships

Relationship management underpins successful contract management. A sound basis for the relationship should have been established in the earlier stages of the procurement lifecycle. If the nominated Council manager is new to the contractual arrangement, efforts will need to be made to understand the relationship that exists between the Council and the supplier. It is particularly important for the manager to understand the background to the relationship and be aware of any problems or issues that have arisen at earlier stages of the procurement process.

From a Council perspective, one of the key elements in relationship management is deciding on the appropriate type of relationship based on where the category and the contract sit in its supplier portfolio analysis. Not all supplier relationships will be the same.

The type of contract management relationship with any given supplier depends on the following:

• Number of suppliers in the market place

• The type of relationship the Council wants with a supplier – long term strategic vs. transactional

• The good or service to be provided and complexity of requirements

• Duration of contract

It is important to establish and maintain a constructive relationship with the Supplier and have regular communication. Providing positive and constructive feedback will assist in maintaining such a relationship.

A typical approach to managing relationships adopted in a long-term services contract is outlined below:

|  |  |
| --- | --- |
| **Overall responsibility** | • Each party nominates one person with the appropriate skills and experience as its representative to be responsible for the co-ordination and management between the parties over the life of the contract. |
| **Weekly performance review meetings** | • Nominated representatives, including the supplier’s service delivery manager and the Councils contract manager meet formally to review performance; aimed at discussing and resolving any minor issues relating to the performance of the contract. |
| **Contract management senior level meeting** | • At least quarterly, or otherwise agreed, a formal meeting is held. The meeting comprises senior representatives from the Council and the supplier. The purpose is to formally monitor performance of the contract, consider any ways in which services may be improved, amendments to service levels and resolve, where possible, any issues that remain unresolved from the weekly contract meetings. |

Relationship management is focused on keeping the relationship between the two parties’ open and constructive, resolving or easing tensions and identifying problems early.

Relationships should always be managed in a professional manner and be based on cooperation and mutual understanding taking into account the need for probity and ethical behaviour.

e. Performance Management

Performance management ensures that the contract is well understood by both parties. A performance management framework should be established that provides a comprehensive framework with agreed targets for the supplier to meet or exceed.

The key components of a performance management framework will include:

• Standards, including the specification of goods or services are documented in a clear and measurable way;

• Clearly established measures (KPIs) are established that relate directly to the standards set in the original contract;

• A regular review meeting schedule that allows discussion of the supplier’s performance and encourages feedback and problem solving;

• Documented processes to address issues raised and set actions, targets and responsibilities of improvement;

• Incentives and sanctions that allow the contract manager to motivate the supplier;

• Termination provisions that allow the contract to be terminated in the event of sustained poor performance;

• Relationship management processes that encourage parties adopt a constructive approach to problem resolution rather than an adversarial one.

Performance management must be undertaken throughout the life of the contract and for all contracts, whether straightforward or complex. Along with performance indicators and standards, arrangements for monitoring and assessment should have been set out and agreed in the contract along with action that would result from non-performance.

f. Contract Monitoring

Contract monitoring focuses on collecting and analysing information to provide assurance to the Council that progress is being made in line with agreed timeframes and towards providing the contract deliverables. Key Performance Indicators (KPIs) should be clearly set within the contract and then measured, reported and monitored on a regular basis.

Regardless of how the contract monitoring is performed, accountability for accepting contract deliverables remains with the Council. Information provided by a supplier for monitoring purposes should be reviewed and audited, as necessary, to ensure its accuracy and reliability. It can also often be tested by capturing feedback from end-users regarding the quality of the goods and services they have received.

It is important to focus monitoring activity on key deliverables; very detailed monitoring can be both costly and unnecessary and unduly shift the focus away from achieving contract outcomes. This may mean establishing priorities for what will be measured at specific time intervals. Collecting too much information is also costly and the Council may not have the resources to analyse it to assess performance adequately.

The following case study discusses a situation involving too many performance indicators.

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| --- |
| Case Study: Too many performance measures  A Council had specified comprehensive performance information to be provided under the contract. The Supplier fully complied with the requirement. Each month the contract manager received by email a report of nearly 100 pages of detailed statistics on all aspects of the contract for the previous month. After the first few months, the report was only used as the basis for authorising payments. It was not useful for a higher level assessment of performance or of potential problems, as it contained so much information, with no analysis or indication of whether corrective action had been taken on any service shortfalls. The contract manager negotiated the addition of appropriate management summaries to give an understanding of the overall performance and evidence of effective management by the Supplier. |

The Contract Manager also has responsibility for ensuring that council complies with its responsibilities under the contract. The success of the contract for example may depend on it being used exclusively by all council buyers. This will require regular monitoring of internal compliance.

Details of areas that need to be monitored include:

• Specific goods or services provided on time to the required quality;

• Client or user satisfaction;

• Performance against contract requirements;

• Invoicing and payments; ; and

• Council contract compliance.

g. Negotiate Contract Variations

Provisions to allow and regulate reasonable contract variations should be a standard feature of all contracts. The ability to vary the contract should be controlled by the Council and should only occur in defined circumstances. It is accepted practice for the variation mechanism to provide for variations to be agreed between the Council and the Supplier in writing through a written formal amendment of the contract. A sample contract variation form is shown in Appendix 4.

Any proposed variations should be assessed to ensure that they do not breach legislation, procurement policy and financial delegation levels. The reasons for the variation should be clearly documented. A clearly understood governance structure should be in place to ensure variations are approved and signed off independently of the Contract Manager. Procurement should be involved in negotiating significant variations.

Variations should not be used to mask poor performance or serious underlying problems and the effect on original timeframes, deliverables and value for money should be assessed. If the effects are significant, senior management and other stakeholders may need to be consulted and/or advised.

Changes to contractual arrangements have the potential to affect the scope and viability of the contract for either or both parties and making substantive variations to a contract will require some of the actions and issues involved in developing the original contract. They should therefore be planned accordingly. Councils should be alert to the risk that multiple changes made to a contract over a period of time may re-shift the overall allocation of contract risk or transfer particular risks to the Council.

A variation is a formal amendment to the terms and conditions within or outside the intent of the Contract. A variation is a change to the original scope of work which has been agreed by both parties. The effect of the variation will have implications on time, cost and quality.

Variations may include the following to Contract will be required for the following:

• Change in scope of work (positive and negative)

• Change in execution of the work

• Change in resources or facilities required

• Revision of rates

• Extension of the duration of the contract

• Settlement of a claim arising from the contract

The table below provides a checklist of the important areas to consider when managing contract variations:

|  |
| --- |
| Key issues to consider when managing contract variations include:  • Following the terms and conditions as stated in the contract  • Fully assessing the reasons for the proposed variation, and whether this may indicate an emerging or actual performance problem  • Assessing the impact of the proposed variation on the contract deliverables, particularly whether the variation or the work it represents is actually required OR whether it was part of the original contract deliverables  • Determining the effect the proposed amendment will have on overall contract price  • Properly documenting details of the variation and its impact and meeting any reporting requirements such as updating the Council contract register |

h. Managing Contract Disputes

During the contract management phase, a disagreement becomes a dispute when it is not possible for the parties to resolve it without resorting to a formal resolution mechanism. Generally, what a dispute is and when it’s deemed to have occurred is defined in the contract, often in a dispute resolution clause.

Many disagreements and disputes arise when the parties cannot agree on issues related to the interpretation of contract provisions, the definition of deliverables, meeting performance standards and/or the effect of unexpected events. It is important that any possibility of dispute or an actual dispute be recognised at an early stage and addressed as quickly as possible. Avoiding the escalation of disagreements can impact on contract deliverables and reduce the costs to both parties.

However, where a dispute arises, the Contract Manager’s role is to protect the Council‘s interests in all cases. There should be clear governance processes in place to manage contract disputes, including the roles and responsibilities of the Contract Manager, Procurement and Senior Management.

The forms of dispute resolution can include the following:

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| --- | --- |
| Negotiation | Negotiating between the Council and the Supplier is the most common approach to resolving disagreements and disputes. The intention of the negotiation is to reach a mutually acceptable solution, where both sides consider they have gained the best possible result in the circumstances. It is important that one party does not consider they have been unduly pressured to agree to a particular solution as a result of the negotiation as this can lead to an escalation or reappearance of the dispute at a later stage. |
| Mediation | Mediation involves the use of a neutral third party to assist in resolving the dispute. The mediator does not impose a decision on the parties in the way a court or arbitrator does, but instead seeks to help the parties resolve the dispute themselves. Mediation is usually regarded as a faster, less formal and less costly process than court proceedings or arbitration. |
| Arbitration | The aim of arbitration is to obtain a final and enforceable result without the costs, delays and the formalities of litigation. Arbitration proceedings are private, can be held at a mutually convenient time and the actual proceedings are less complex than litigation. |
| Litigation | Litigation is the act or process of contesting a lawsuit or seeking redress through the courts. It can be an expensive and time consuming procedure and is generally taken when other avenues of dispute resolution have not been successful or are not available. Other approaches to resolving disputes or Supplier defaults should therefore be considered prior to litigation. |

i. Ethical Business Conduct and Conflict of Interest

The relationship with the Supplier is a critical element of achieving the required outcomes and issues associated with ethical behaviour are most likely to arise in this context.

Judgements on ethical issues will often involve a number of potentially competing considerations including the need to comply with Council, procurement policy and legislative guidelines while maintaining a constructive working relationship with the Supplier.

In line with the procurement policy, the recommended approach is to decline all offers of gifts or benefits, no matter how small or seemingly harmless.

The following case study outlines two scenarios involving employment-related conflicts of interest.

|  |
| --- |
| Case Study: Managing conflicts of interest  Scenario 1  At the mid-point of a large, complex contract, David, the son of the contract manager accepted long-standing employment with the Supplier. The Supplier was a large company and David’s responsibilities did not involve any direct involvement in the provision of services to the Council.  The Council decided that this situation could be effectively managed by taking the following actions:  • Requiring the contract manager to provide formal advice of his son’s employment arrangement  • Requiring the Supplier to confirm in writing that David had no direct involvement in providing services under the contract; and requiring the Supplier to advise the Council if this situation changed, and  • Formally reminding the contract manager that information in relation to the contract should only be conveyed to others on a strictly ‘need to know’ basis.  Scenario 2  At the mid-point of a large, complex contract, Carol, the partner of the contract manager was appointed by the Supplier to a senior management position within the company. One of Carol’s responsibilities was to oversee the Supplier’s responsibilities for the provision of services to the Council. The contract did not require the Supplier to consult the Council about such appointments.  The Council argued that the Supplier had created a potential conflict of interest situation and therefore should have been consulted before making the appointment. The Supplier countered that because Carol was involved in a management capacity and not directly involved in providing the service the situation could be effectively managed, and they were not prepared to change Carol’s responsibilities.  Despite the potential effect on the contract and consideration of various mitigation strategies, including the greater involvement of another manager in managing the contract, the Council decided that another contract manager should be appointed to manage the contract.  The Supplier accepted this experience could have an impact on future relationships and agreed to a contract variation requiring the Supplier to consult the Council before engaging key people that could give rise to a potential or actual conflict of interest. |

j. Contract Completion

The most common way a contract ends is where each party performs according to the terms of the contract, that is, the contract is discharged through due performance. Contracts for the provision of goods may not specify an end date but obligations under the contract are usually considered to be complete following the delivery and acceptance of the last item(s) required under the contract. Acceptance implies that the goods delivered have met the agreed standards.

Contracts for the provision of services may specify an end date when all contract deliverables have to be provided. The contract ends through due performance if the services are delivered in line with contract standards by the due date. In both goods and services contracts, contract closure should be completed as soon as possible after all obligations have been met.

Steps and related tasks to be considered in completing the contract are set out in the table below.

|  |
| --- |
| Verify all contractual obligations have been successfully met. This can include the need to:  • Review the statement of contract deliverables to ensure that goods or services have met contract requirements  • Arrange for the return of all required documents, material, information and records used or generated during the contract that are the property of the Supplier  • Arrange the return of all equipment or other goods provided to the Supplier and check that it is in a satisfactory condition  • Ensure to the extent possible, that any issues that may result in a claim against the Council are resolved  • Return any financial and other guarantees and securities, including any deeds to the appropriate party  • Record any intellectual property rights, including licences and the delivery by the Supplier of all material expressions, information embodying intellectual property rights, any relevant documentation, technical data or reports in a form that enables access by the Council. Any instructions on the use of intellectual property should also be noted  • Make appropriate arrangements for the receipt and storage of material and documents returned by the Supplier.  • Make all final payments payable under the contract.  • Make arrangements in regard to warranties available under the contract.  • Ensure all access rights or arrangements to premises and systems are terminated or revoked  • Undertake post contract analysis, evaluation and reporting. This may include the need to:  • evaluate contract performance  • document lessons learned, and  • update policies or procedures, where required. |

Supporting Councils in developing a sound, consistent & effective   
approach to managing their diverse range of contracts

section C   
**Appendices**

Appendix 1 - Glossary of Terms

**Term Definition**

Act Local Government Act 1989.

Commercial in Confidence Information that, if released, may prejudice the business dealings of a party e.g., prices, discounts, rebates, profits, methodologies and process information.

Contract Management Effective contract management is the process that ensures both parties to a contract fully meet their respective obligations as efficiently and effectively as possible, in order to continually deliver both the business and operational objectives required from the contract.

Council Staff Includes full-time and part-time Council Staff, and temporary employees, suppliers and  
 consultants while engaged by the Council.

Probity Within Local Government, the word “probity” is often used in a general sense to mean “good process.” A Procurement process that conforms to the expected standards of probity is one in which clear procedures that are consistent with the Council’s policies and legislation are established, understood and followed from the outset. These procedures need to consider the legitimate interests of suppliers and ensure that all potential suppliers are treated equitably.

Category Management A ‘Category’ is an area of spend determined by known market boundaries separating different products, services or industries. Category management recognises that suppliers within a certain market are likely to have similarities which enable a tailored approach to procurement.

Procurement Procurement is the whole process of acquisition of external goods, services and works. This   
 process spans the whole life cycle from initial concept through to the end of the useful life of an asset (including disposal) or the end of a service contract.

e-Procurement e-Procurement is integral to the overall development of procurement processes and Involves the use of an electronic system/s to acquire and pay for supplies, services` and works.

Tender Process The process of inviting parties to submit a quotation by tender using public advertisement,   
 followed by evaluation of submissions and selection of a successful bidder or tenderer.

Appendix 2 - Contract and Supplier Management Plan

1.1 Contract Summary

|  |  |
| --- | --- |
| Contract Name |  |
| Start and Finish Dates |  |
| Contract Value |  |

1.2 Owners / Key Representatives

|  |  |  |
| --- | --- | --- |
| Nominated contact | Role | Responsibility |
|  | Procurement |  |
|  | Contract Manager |  |
| Supplier Details |  |  |

1.3 Level of Management Required

Use the Contract and Supplier Management Assessment tool to determine whether the level of management required for the contract and supplier should be HIGH / MEDIUM / LOW. The assessment considers the potential impact on business based on criticality, dependency and the number of expected customers.

High

|  |  |
| --- | --- |
| Leverage Items  (MEDIUM) | Strategic Items  (HIGH) |
| Routine / Non- critical Items  (LOW) | Bottleneck Items  (MEDIUM) |

Low High

1.4 Contract Objectives

|  |
| --- |
|  |
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|  |

1.5 Risk Assessment

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Risk Ref. | Risk | Consequence | Likelihood | Risk Mitigation Action | Responsible | Date |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
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|  |  |  |  |  |  |  |

1.6 Performance Management Framework – KPIs and SLAs

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1.7 Mobilisation Plan

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1.8 Variations Process

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1.9 Contract Compliance

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|  |

1.10 Escalation Process

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| --- |
|  |

1.11 Exit Plan

|  |
| --- |
|  |

1.12 Review Meetings

|  |  |
| --- | --- |
| Proposed Dates | Actual Dates |
|  |  |
|  |  |

Appendix 3 - Contract Management Checklist

This checklist is intended as a guide for all Contract Managers however some contracts will not warrant all steps to be applied. The checklist must be read in conjunction with the Contract Management Guidelines. Should there be any queries contact the Procurement Department for further advice.

|  |  |  |
| --- | --- | --- |
| Contract Name:  Contract No:  Contract Manager: |  | **Legend:**  CM Contract Manager  PD Procurement Department  RM Risk Management Department  Con Contractor |

Pre-Commencement Stage

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Actions | Who | Completed  Yes No | | Date Completed | Comment |
| 1. Contract Documents | | | | | |
| Prepare and Send Letter of Acceptance | PD |  |  | / / |  |
| Prepare contract documents and arrange signing and sealing | PD |  |  | / / |  |
| Arrange for contract files | PD |  |  | / / |  |
| Develop appropriate administration files | CM |  |  | / / |  |
| Read and understand both specification and terms and conditions of contract | CM |  |  | / / |  |
| 2. Transition Plan | | | | | |
| Implement Transition Plan by convening a meeting with incoming and outgoing contractors to discuss roles and responsibilities | CM |  |  | / / |  |
| Prioritise all transition activities and confirm timeframes and milestones with all parties | CM |  |  | / / |  |
| Involve and communicate with all relevant parties as per nominated transition activities | CM |  |  | / / |  |
| 3. Contract Management Plan [CMP] | | | | | |
| Prepare CMP, sign off and file | CM |  |  | / / |  |
| 4. Insurance | | | | | |
| Obtain all required Insurance Certificates of Currency as per tender document | PD |  |  | / / |  |
| 5. Security/Retention | | | | | |
| Obtain undated Irrevocable Bank Guarantees for amounts as per tender document | PD |  |  | / / |  |
| Confirm retention amounts and set up in payment schedules | CM/ PD |  |  | / / |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Actions | Who | Completed  Yes No | Date Completed | Comment |
| 6. Key Performance Indicators [KPIs] | | | | |
| Read contract for requirements | CM |  | / / |  |
| Develop auditing system using KPI’s and measuring matrix | CM |  | / / |  |
| Ensure staff are familiar with system and auditing process | CM |  | / / |  |
| Forward copy of proposed auditing system to Contractor | CM |  | / / |  |
| 7. Risk Assessment and OH&S Plan | | | | |
| Obtain copies of Contractor’s Risk Management & OH&S Plans | CM |  | / / |  |
| Consult with OHS dept re audit process for Contractor OH&S | CM/RM |  | / / |  |
| Set OH&S audit process and ensure staff are familiar with process | CM/RM |  | / / |  |
| Develop OH&S audit template | CM/RM |  | / / |  |
| Use risk management system to develop a contingency plan based on nominated and other risks | CM/RM |  | / / |  |
| 8. Contract Meeting | | | | |
| Facilitate a contract management meeting to discuss all pre-commencement requirements | CM/ Con |  | / / |  |
| Document all agreed outcomes of the contract management meeting | CM/ Con |  | / / |  |
| Determine the agenda and frequency for future meetings in consultation with contractor | CM/Con |  | / / |  |
| Ensure that the contractor has the appropriate specifications/drawings eg correct versions etc | CM/Con |  | / / |  |
| 9. Induction Program | | | | |
| Conduct an induction program in association with contractor | CM/ Con |  | / / |  |
| Arrange with Finance and Risk Management to be included in Induction process. | CM/ Con |  |  |  |

Post Contract Commencement Stage

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Actions | Who | Completed  Yes No | Date Completed | Comment |
| 1. Audit Contractor OH&S Compliance | | | | |
| Undertake an OH&S compliance audit of contractor | CM |  | / / |  |
| Forward copy of audit results to Contractor and record any non-conformances | CM |  | / / |  |
| Notify Risk Dept. of any breaches and determine appropriate actions | CM / RM |  | / / |  |
| Meet with contractor to discuss non-conformances and agree on remedial actions | CM / RM |  | / / |  |
| Prepare agenda and forward invitation and agenda to contractor | CM |  | / / |  |
| Record minutes of meetings including any subsequent actions to be carried by either party | CM |  | / / |  |
| Forward copy of minutes of meeting to contractor | CM |  | / / |  |
| 2. Contract Meetings | | | | |
| Prepare agenda and forward invitation and agenda to contractor | CM |  | / / |  |
| Record minutes of meetings including any subsequent actions to be carried by either party | CM |  | / / |  |
| Forward copy of minutes of meeting to contractor | CM |  | / / |  |
| 3. Payment Claims | | | | |
| Upon receipt of claims ensure that works completed are in accordance with claims. | CM |  | / / |  |
| For construction works – ensure that you comply with the requirements of the Building & Construction Security of Payments Act 2002 | CM |  | / / |  |
| Ensure that payments are made in accordance with Finance Dept. procedures | CM |  | / / |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Actions | Who | Completed  Yes No | Date Completed | Comment |
| 4. Performance Auditing | | | | |
| Conduct regular contractor performance audits in accordance with specification | CM |  | / / |  |
| Record audit results and provide a copy to contractor | CM |  | / / |  |
| As an agenda item for Contract Meetings discuss outcomes and how any under-performances may be improved | CM |  | / / |  |
| Conduct annual review of nominated KPI’s with Contractor to ensure continued relevance to delivery of services including any changes to scope etc | CM/Con |  | / / |  |
| 5. Contract Extensions | | | | |
| With service contracts, be aware of nominated notification periods to contractor as to Council’s intentions to extend or not | CM |  | / / |  |
| Collate all audit outcomes and generate a report on overall performance with extension options and recommendation for consideration by appropriately authorised manager | CM |  | / / |  |
| Notify contractor in writing of Council’s intention regarding extension | CM |  | / / |  |
| Engage the contractor to discuss any variations either party may seek for additions/reductions to service delivery | CM |  | / / |  |
| Undertake a final contract review with incumbent contractor and key stakeholders to recognise any opportunities for future improvement | CM |  | / / |  |
| Record all minutes of the meeting and provide contractor with copy | CM |  | / / |  |
| If option to extend is awarded revise and amend Pricing Schedule/s to reflect any variations that have been imposed on extension of contract | CM |  | / / |  |
| Get sign off of amendments by appropriately authorised senior manager | CM |  | / / |  |
| Notify relevant departments [eg. Procurement, Finance] of expenditure changes | CM |  | / / |  |
| Notify contractor in writing of providing updated copy of revised Pricing Schedules | CM |  | / / |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Actions | Who | Completed  Yes No | Date Completed | Comment |
| 6. Contract Expiry/Transition Out | | | | |
| Develop transition out plan in conjunction with contractor | CM/Con |  | / / |  |
| Conduct contract meeting to consolidate actions, responsibilities and timeframes | CM/Con |  | / / |  |
| Engage incumbent contractor in any relevant transition meetings with new contractor | CM/Con |  | / / |  |
| Take receipt of all intellectual knowledge belonging to Council | CM/Con |  | / / |  |
| Conduct exit audit with outgoing and incoming contractors to identify outstanding work and overall standard of relevant assets | CM/Con |  | / / |  |
| Carry out de-briefing meeting to determine positive and negative aspects of services/works. This meeting should include contract management staff, procurement, contractor and other stakeholders | CM/PD/ Con |  | / / |  |
| Negotiate any final payments based on incomplete or sub-standard works | CM/Con |  | / / |  |
| Make arrangements for any Securities to be returned to outgoing contractor | CM/Con |  | / / |  |
| Pay out security at Practical Completion based on specified percentages as per contract | CM |  | / / |  |
| Return remaining securities upon completion of defects liability period | CM |  | / / |  |

Appendix 4 - Contract Variation Form

Contract No:

Contract Title:

Contractor:

Superintendent:

|  |  |  |
| --- | --- | --- |
| Variation number: | Date: / / | |
| Description of proposed variation and reason: | | |
| Will the variation be at an additional cost to original contract amount? | Yes | No |
| If yes – date quotation for variation is to be received by: | / / | |
| Contractor’s Response | | |

|  |  |
| --- | --- |
| Description of variation: | |
| Costings: \*Remove whichever does not apply | |
| Original contract value | $ |
| \*Time/\*Works variation cost | $ |
| Other variation adjustments to cost | $ |
| Revised contract value | $ |
| Contract Dates: | |
| Original Practical Completion | / / |
| Additional time required due to variation | / / |
| Other variation adjustments to time | / / |
| New Date of Practical Completion | / / |
| Signed on behalf of the Contractor:  Date / / | |

|  |  |  |
| --- | --- | --- |
| Council Response | Yes | No |
| Purchase Order No:  (Contractor to quote P/O and Variation numbers on tax invoice) |  |  |
| Is the variation within budget?  If not, then proceed to appropriate Manager for approval. |  |  |
| Does the variation substantially change the original scope of the contract?  If Yes, a new procurement process is required |  |  |
| Is there a change in the risk of the contract as a consequence of the variation?  If so alter any risk management plans in place. |  |  |
| Approval:  (As per Financial Delegation Authority) | Date | |
| Manager | / / | |
| Procurement/Manager: | / / | |
| Group Manager / CEO: | / / | |

Appendix 5 – References

LOCAL GOVERNMENT PROCUREMENT BEST PRACTICE GUIDELINE

Please click here to view the document

BEST PRACTICE GUIDE FOR TENDERING AND CONTRACT MANAGEMENT

Please click here to view the document

VICTORIAN GOVERNMENT PURCHASING BOARD (VGPB)   
– Procurement Portal: Contract Management Policy

Please click here to view the document

MAV Model Procurement Policy

Please click here to view the document

MAV Guide to Doing Business with Local Government

Please click here to view the document