Australian Government
Department of Finance

# Australian Government Contract Management Guide

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# Executive summary

It is important for officials to actively manage contracts throughout the contract's life to ensure that all contract requirements are met. Proper contract management throughout the contract's life ensures both the supplier's and the entity's performance under a given contract is satisfactory, proactively manages and resolves issues and disputes that arise during contract performance and keeps stakeholders well informed.

This guide provides practical process guidance to support effective contract management at a practitioner level for Commonwealth entities. The information contained in this guide provides general advice only, does not form Commonwealth policy, is not a substitute for legal advice and should be read in conjunction with your entity-specific policy or guidance on contract management.

Similar to all other elements of the procurement lifecycle, the nature and extent of contract management activities will vary depending on the size, nature, complexity and risk of each contract.

The guide is divided into several sections including an overview of the environment contract management takes place in, the four steps of contract management covering planning for contract management, starting up a contract, managing contract performance and closing a contract, and appendixes providing additional information on standing offers and common contract provisions. Each section provides information and guidance on activities and considerations officials should undertake as part of good contract management.

## The context of contract management

Contract management in the Australian Public Service (APS) does not take place in isolation. It takes place in the context of a legislative and policy framework which includes obligations of APS officials under the Public Service Act 1999, the Public Governance, Performance and Accountability Act 2013 and their associated rules, the Commonwealth Procurement Rules, procurement connected policies, Accountable Authority Instructions and Resource Management Guides. To properly manage a contract officials should have a strong understanding of their obligations and responsibilities under these frameworks. This guide provides an overview of these legislative and policy frameworks.

In addition to understanding the context contract management takes place, officials should also be aware of the type of contract they are managing. The contract's level of complexity, value and risk will all have an impact on how officials manage it. This guide provides four broad categorisations of contracts, transactional, routine, complex and strategic. Each of the steps of contract management listed below identify activities that officials may need to undertake in their management of contract and map these activities against the categorisation of the contract.

## Plan the management of the contract

Conducting proper planning when undertaking contract management is vital for your success in managing your contract. Having the correct plans in place will enable you to identify risks, conflicts and other issues in advance and treat them effectively.

In the planning for contract management section there are a number of activities that should be completed to set up good contract management processes. These activities include:

- Ensuring throughout the whole procurement and contract management lifecycle that systems are in place to manage probity and ensure ethical behaviour.
- Identifying the roles and responsibilities that will be carried out as part of managing the contract and ensuring officials who undertake these roles have the appropriate skills.
- Developing a contract management plan, containing key information about how the contract will be managed over its life.
- Identifying and assessing risks and for more complex contracts, developing a formal risk management plan, documenting identified risks, their likelihood and impact, and strategies to mitigate the risks.
- Considering and developing any other plans that may be required such as a communication or stakeholder engagement plan, a probity plan, a skills transfer plan, disposal plan, etc.
- Where an existing contract is in place, this is also the time to ensure that transition plans are developed in the event a different supplier is identified through the procurement.

# Start-up the contract

Once a suitable supplier has been identified it is time to move to the contract start-up phase. This is the time when a lot of the administration processes that were set out in the planning phase are put into action. Activities during this phase include:

- Reviewing the contract thoroughly to ensure a clear understanding of each party's obligations and the outcomes to be achieved and updating the contract management plan accordingly.
- Setting up contract administration procedures to assist in verifying deliverables, ensuring correct invoicing, making timely payments, tracking expenditure and ensuring appropriate documentation of decisions.
- Setting up proper contract information management systems for identifying, gathering and recording relevant information.
- Ensuring effective communication management processes are in place, including identifying communication channels, response timeframes, and escalation procedures.
- Reviewing and updating plans regularly to ensure that all details are current and relevant.
- Where required in a contract, providing the supplier with agreed access, assets, information and security clearances (where required).
- Conducting a contract start-up meeting.

# Manage the contract

Once the contract is established it is important to actively manage it and the supplier's performance. It is during this phase that the value for money identified through the procurement will be realised or lost.

There are several activities and considerations to undertake during this phase of contract management. These activities and considerations include:

- Making yourself aware of, and using, advisers within your entity (such as procurement specialists, and technical, probity or legal advisers) to assist with contract management.
- Avoiding unintentional contract changes, particularly through the principle of estoppel or inadvertently waiving a right under the contract.
- Building and maintaining an effective professional working relationship with your supplier. This involves regular communication, understanding each other's expectations, and addressing any issues promptly.
- Monitoring and managing performance to ensure that the supplier meets the contract requirements and delivers the expected outcomes.
- Managing delivery and acceptance of the goods or services including verifying that the goods or services are received on time, within budget and are fully compliant with contract specifications.
- Understanding what parts of the contract are completed by subcontractors and what impacts this could have on the management and delivery of your contract.
- Implementing the contract administration processes identified during the contract start-up phase.
- Managing risks identified in the planning phase of contract management and identifying and managing new and emerging risks as the contract progresses.
- Periodically reviewing the contract to assess if you are meeting the contract outcomes, and that the contract continues to accurately reflect your entity's requirements.
- Managing complaints from both the entity and the supplier as they arise. This may involve talking to parties to resolve the issue or relying on contractual dispute resolution processes.
- Managing contract variations, extensions and renewals ensuring that any changes to the contract are properly documented and agreed upon by all parties.

# Close the contract

The final phase in managing any contract is ensuring it is properly closed out. Most contracts close because they have been satisfactorily completed, where both parties have completed all their obligations under the contract and/or the end of the term of the contract has been reached, this is often called ‘expiration’. However, sometimes you will end a contract before it has been completed. This is called termination of a contract which can carry risks. If you are considering terminating a contract, you should seek legal advice.

Activities in the contract closure phase include:

- Considering and managing contract transition issues if you still require the goods or services after the completion of the contract.
- Ensuring the contract is closed out in accordance with the terms and conditions in the contract.
- Conducting a final contract review with the supplier.
- Identifying and recording ‘lessons learnt’ to understand which areas of the contract performed well and other areas that could be improved for future arrangements.

# Additional information in this guide

In addition to the sections on managing a contract, this guide provides useful information on standing offer arrangements in Appendix A and Common Contract Provisions in Appendix B.

Standing offers are established by entities for frequently sourced goods or services. A standing offer arrangement consists of a Deed of Standing Offer with a supplier, enabling the entity to obtain particular goods or services where prices and contractual terms are already agreed upon. These arrangements often involve multiple suppliers for the same or similar services, commonly referred to as a ‘panel’. Procuring from a standing offer arrangement provides efficiencies by mitigating the ongoing costs of tendering for frequently used goods or services. Most standing offer arrangements include an official order or work order, forming a contract between the parties for specific goods or services. Entities must still consider value for money each time goods or services are purchased under a standing offer arrangement. Additional guidance or specific business rules may apply to standing offers, and details of current arrangements can be found on the **AusTender website**.

# Introduction

To deliver its programs, the Australian Government awards on average 75,000 contracts each year with an annual total value which has grown from $40 billion in 2012-13 to $99 billion in 2023-24.[1] Good contract management is an essential component in achieving value for money.

Each contract must be managed in accordance with its terms and conditions, commensurate with the scope, scale and risk of the relevant requirements. Should an issue arise in relation to a specific contract, or you require advice on the application of the aforementioned arrangements, you may wish to seek advice from your:

- contract manager or approving delegate
- central procurement area
- legal area within your entity.

## Who should use this guide?

Officials who are working in any stage of the Procurement Life-cycle or involved in managing a contract may find this guide helpful.

You might pay invoices, provide technical advice, liaise with suppliers, obtain quotes, manage contracts or be the delegate who approves procurement activities. In fact, if you are involved in any way with government contracts, or planning a procurement, you need to know your obligations and effective contract management techniques.

The guide is divided into the steps of contract management and within each step we have listed the activities and considerations that will help you to manage your contract effectively. Along with information about the activity, you may also see:



Additional information



Tips



Key Steps



Further reference material

The guide helps you to identify different levels of complexity for contracts based on characteristics and risk profiles and a table at the start of each phase provides guidance on which activities are required for each level of complexity.

1 Figures available on the **Department of Finance Website**, Statistics on Australian Government Procurement Contracts reported from AusTender. These figures only refer to procurements valued at $10,000 and above.

# What is a contract?

A contract is a legally enforceable agreement between two or more parties that details each party's rights and obligations in performance of that contract. Some examples of common contracts used by Commonwealth entities are detailed in this guide.

At its most basic, a contract requires an offer, acceptance of that offer and consideration:

- the parties to the contract must have both intended to be legally bound
- the terms of the contract must be certain
- each party must have the capacity to enter into the contract.

For most Commonwealth contracts, officials should be aware that specific contract templates apply. While a contract does not necessarily need to be in writing to be enforceable, the **Commonwealth Procurement Rules (CPRs) paragraph 7.4** state that contracts should be in written form.

The Commonwealth Contracting Suite (CCS) can be used to create a Commonwealth Contract for procurements under $1 million. The CCS is mandatory for procurements under $200,000 by all non-corporate Commonwealth entities except in specific situations outlined in the Resource Management Guide No.420 - Mandatory use of the Commonwealth Contracting Suite for procurements under $200,000. For more information about the CCS please see the Department of Finance website.

Your central procurement team will be able to advise what template or contract form you should use.

# What is contract management?

Contract management refers to all the activities undertaken by an entity, after the contract has been signed or commenced, to manage the performance of the contract (including any corrective action) and to achieve the agreed outcomes. Sound contract management is essential to achieving the anticipated value for money outcomes from a procurement.

Each contract will be different. The aim of contract management is to ensure that all parties meet their obligations to deliver the objectives of the contract. In a simple procurement, the focus of contract management may be on ensuring the goods or services purchased are provided on time, to the agreed standard, at the agreed location and for the agreed price. For a more complex or strategic contract, contract management may also look at other aspects of the contract, such as performance management or continuous improvement regimes, integration with existing systems or assets, implementation of technological or industry advancements or innovations. For these contracts, sophisticated relationship management skills and experience may be required.

It is important that contracts are managed consistently and actively throughout their life in accordance with their terms. This will ensure that supplier performance is satisfactory, stakeholders are well informed, and all contract requirements are met thereby ensuring that the contract delivers the anticipated value for money outcomes. For more information about determining value for money, please see the **Department of Finance** website.

Contract management does not necessarily end when the deliverables are achieved and the term expires, there may be further actions that are required such as: transition out activities; knowledge transfer and additional training; return of equipment; and disposal of assets.

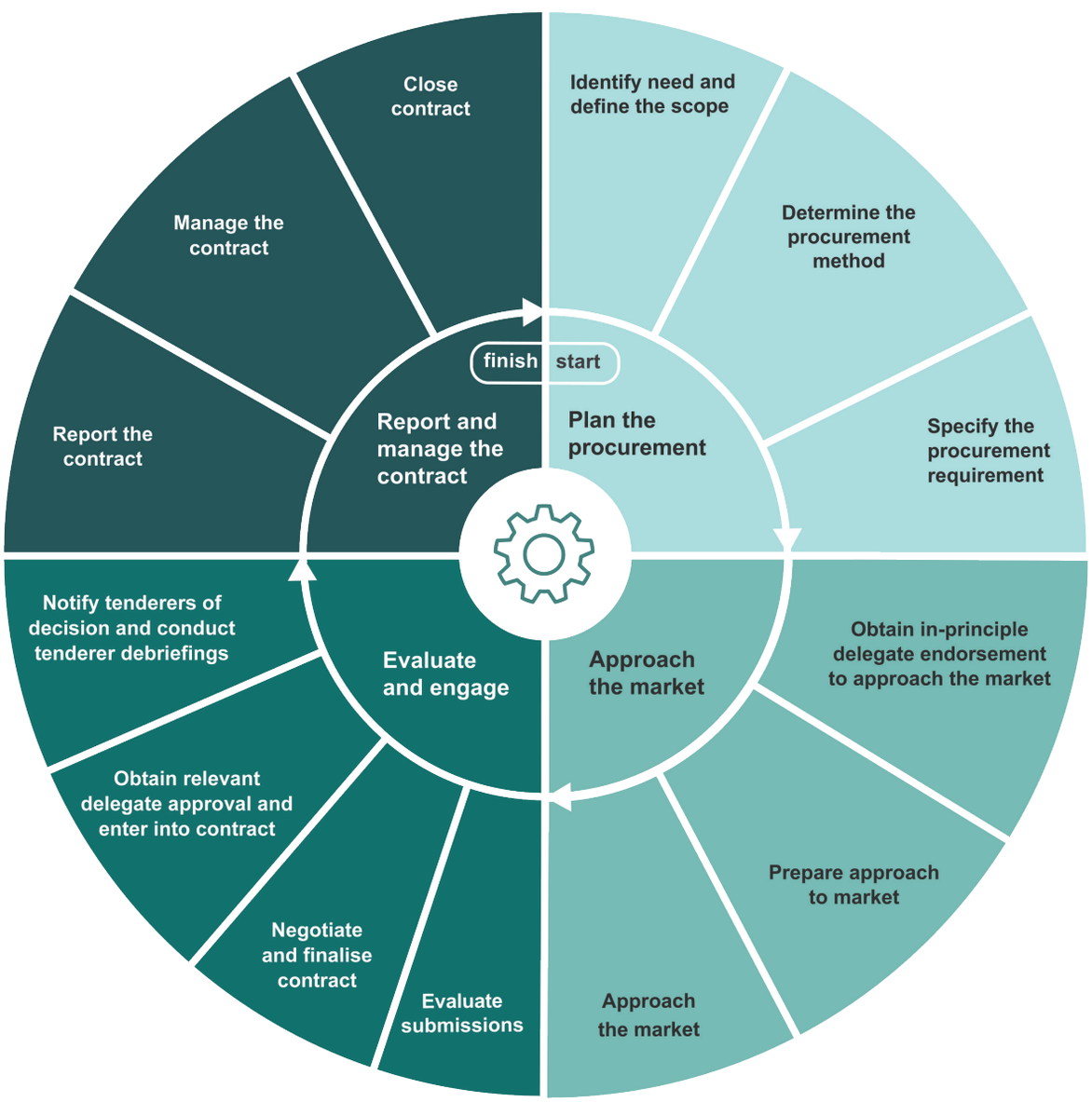
Contract management may be carried out by a dedicated contract manager, by a small contract management team, or collectively by the integrated activities of a business unit. In any event, the selection of the right contract manager for a complex contract is a critical task and a significant contributor to whether the contract is successfully performed. The role of the contract manager is to proactively manage the activities and relationships required for the performance of the contract.

# What are the phases of the procurement lifecycle?

The Department of Finance has developed a four phase, thirteen step procurement lifecycle model. This model aims to make each stage in the lifecycle clearer. Whilst your entity may use a slightly different version the general phases and steps will remain consistent. Importantly, contract management represents a significant activity in the procurement lifecycle.

The lifecycle represents what officials need to do. How officials undertake each step, to ensure value for money outcomes requires a structured and effective approach, including but not limited to:

- **Clear objectives and scope**: Clearly define the objectives, deliverables, and the scope of the contract. Ensure all parties have a mutual understanding of expectations.
- **Communication**: Maintain open and transparent communication between parties throughout the contract lifecycle. Address issues promptly and ensure all stakeholders are informed.
- **Comprehensive documentation**: Thoroughly document all aspects of the contract, including terms, conditions, performance metrics and any changes.
- **Performance monitoring**: Regularly monitor and assess the performance of all parties involved against contract requirements.
- **Risk management**: Identify potential risks and develop strategies to mitigate them. Proactively address issues that may impact the successful execution of the contract.



Remember that a procurement will not achieve value for money if the supplier does not complete the deliverables in the contract. As contract management is one of the last stages of the procurement lifecycle, the ability to achieve value for money can be dependent upon the procurement planning phase and inclusion of relevant performance metrics or KPIs that can be monitored through effective contract management. Early engagement between relevant business areas, including the procurement and contract management teams, is vital to ensuring that value for money outcomes can be identified and achieved over the procurement lifecycle.

Experienced contract managers can share lessons learned from the previous arrangement and provide advice on developing clearly defined milestones and outcomes that are enforceable under the terms of the contract. Structuring a contract so that the roles and responsibilities of each party are clearly defined, including delivery dates, expected progress, escalation points, and the successful completion of milestones linked to payments can increase the effectiveness of monitoring supplier performance over the term of the engagement.

For more information on procurement process considerations see the **Department of Finance website**.

Contract management can be distilled to the following elements:

- **Contract Governance**: establishing the stakeholder engagement mechanisms, oversight arrangements, frequency of due diligence checks, systems, processes, decision making and reporting.
- **Performance Management**: the measuring, monitoring, and assessment against agreed performance measures to enable early indication of, and response to, performance issues. The monitoring and assessment of deliverables to enable acceptance and achieve contract outcomes.
- **Supplier Relationship Management**: putting in place collaborative engagement mechanisms with the supplier.
- **Contract Administration**: the administrative activities undertaken to support day-to-day contract activities, meet legislative requirements for records management, and establish an audit trail to meet transparency requirements.

# The legislative and policy framework

When managing contracts, officials operate in a complex environment of legislation and Commonwealth policy.

While the key features of these frameworks are set out below, this information is only provided as an overview. If specific contract management issues arise, you will need to seek contextual legal and/or procurement advice.

## Australian Public Service conduct requirements

| **APS Conduct requirements include:** |
|---|
| • ***Public Service Act 1999*** **(section 10 - APS Values, Section 10A - APS Employment Principles, Section 13 - Code of Conduct)** |
| • ***Crimes Act 1914.*** |

Employees of the APS are trusted by the Government and the community to undertake important work on their behalf. With this trust comes a high level of responsibility that should be matched by the highest standards of ethical behaviour.

The APS Values, APS Employment Principles and the APS Code of Conduct set out the standard of behaviour expected of entity heads and APS employees. They give the public confidence in the way public servants behave including in their exercise of authority. All employees must make themselves familiar with their obligations under the *Public Service Act 1999* (PS Act).[1]

If you do not comply with the requirements of the PS Act or the Crimes Act, you may face criminal, civil or administrative proceedings. Australian Government employees engaged under other enabling legislation such as the Australian Defence Force are bound by similar codes of conduct.

Where contracted staff are involved in managing Commonwealth contracts they must comply with all Commonwealth laws and policies, make conflict of interest declarations, and not act fraudulently. If they breach their contract conditions, an entity can seek remedies under the employment contract or they may face similar legal proceedings.

1 Australian Public Service Commission – APS Values and Code of Conduct in practice. www.apsc.gov.au/aps-values-and-code-conduct-practice.

# Resource Management Framework

The Resource Management Framework consists of the legislation and policy governing the management of the Commonwealth's resources.

| **Resource Management Framework includes but is not limited to:** |
|---|
| • ***Public Governance, Performance and Accountability Act 2013*** **(PGPA Act)** |
| • ***Public Governance, Performance and Accountability Rule 2014*** **(PGPA Rule)** |
| • **Commonwealth Procurement Rules (CPRs)** |
| • **Accountable Authority Instructions (AAIs)** |
| • **Resource Management Guides** (such as **RMG-400 Commitment of Relevant Money, RMG-411 Grants, procurements and Other Financial Arrangements, RMG-414 Contingent Liabilities, Indemnities, Guarantees, Warranties on behalf of the Commonwealth, RMG-417 Supplier Pay On Time or Pay Interest**). |

The ***Public Governance, Performance and Accountability Act 2013*** **(PGPA Act)** underpins the Resource Management Framework.

Under the PGPA Act, the accountable authority of an entity must govern the entity in a way that promotes the proper use and management of public resources for which the authority is responsible (**PGPA Act section 15**). 'Proper' is defined as efficient, effective, economical and ethical (PGPA Act section 8). One of the ways accountable authorities may address this requirement is by issuing accountable authority instructions to officials (PGPA Act section 110).

Accountable authorities are also able to enter, vary and administer arrangements (which include contracts, agreements, deeds and understandings) relating to their entity, as per **PGPA Act Section 23 (1)**. The accountable authority is able to delegate this power to officials.

The PGPA Act also imposes a number of general duties on officials, including a duty of care and diligence and a duty to act honestly, in good faith and for a proper purpose. When exercising powers delegated to them, and performing their functions and duties, officials need to ensure they are complying with these general duties, as well as any directions accompanying delegations and applicable accountable authority instructions.

These requirements will all be relevant to officials with responsibility for contract management.

# Procurement Framework

The Commonwealth Procurement Framework is a subset of the Resource Management Framework. The CPRs are the foundation of the Commonwealth Procurement Framework.

| **Procurement Policy Framework includes:** |
|---|
| ✔ **Commonwealth Procurement Rules (CPRs)** |
| ✔ **Resource Management Guides** (such as RMG-417 Supplier Pay On-Time or Pay Interest Policy) |
| ✔ **Procurement Connected Policies** (as set out on the **Department of Finance website**) |
| ✔ **Department of Finance web based guidance** |
| ✔ **Whole of Government Tools and Templates** (such as AusTender, the Commonwealth Contracting Suite (CCS), ClauseBank and BuyRight – available at the **Department of Finance website** |
| ✔ **Entity specific guidance and tools, such as Accountable Authority Instructions (AAIs), better practice guides, handbooks and templates.** |

The CPRs provide the policy framework for process requirements in relation to procurement. Achieving value for money is a key component of the CPRs.

Value for money in a procurement process requires a comparative analysis of all the relevant financial and non-financial elements of each proposal throughout the whole procurement cycle. The core principle of value for money is supported by **open-competition, non-discrimination, efficiency, effectiveness, economical and an ethical use of resources.**

Within a procurement process, the delegate will have approved a proposal based on its value for money proposition. Value for money is first assessed at the evaluation phase of a procurement but is not fully realised until the completion of the contract. Effective contract management will assist in achieving the realisation of the value for money proposition. This underpins the contract management practices set out in this guide. For more information on value for money, see CPRs section 4.

# Other legal requirements

Once duly signed by both parties, your contract is a legally enforceable document, governed by Australian contract law. This means there are legally binding obligations and rights assigned to both parties. Contract management is the process by which you ensure that each party upholds their obligations under the contract.



## Electronic signatures

There are circumstances in which a contract may not be in written form and not all contracts with the Commonwealth as a party will have an Australian jurisdiction as the governing law.

It is important to seek legal advice about these factors as appropriate.

It is important that correct signing and witnessing processes (where witnessing is required) are followed when signing a contract to ensure that the contract is legally enforceable.

When considering electronic signing of contracts by the parties, your entity will likely have its own policy on what is acceptable, including any digital signature requirements. The law allows electronic signing to be used for many types of documents and by a broad range of entities (for example see *Electronic Transactions Act 1999 (Cth)* and corresponding state and territory Acts, s110A *Corporations Act 2001*). For more general information about applicable execution requirements and electronic signatures, contact your central procurement area, legal area or read further guidance from the Australian Government Solicitor: **Legal briefing - Execution of commercial documents | AGS**.

There are a range of other policy, legislative and regulatory requirements that may be relevant to your contract depending on the subject matter, value and/or location of the contract, including, but not limited to:

- privacy
- work health and safety
- confidentiality
- taxes and other duties
- security
- quality and fitness of purpose
- records management.

Many of these requirements will be addressed (either directly or indirectly) in the contract. More detailed information on common contract provisions is included in Appendix B.

Depending on the nature of your contract there are other policies in addition to Procurement Connected Policies which may be applicable. You will need to develop and monitor strategies to ensure compliance with these policies.

# What type of contract are you managing?

This guide supports people who manage a wide range of contracts, including those formed as follows:

### Commonwealth Contracting Suite (CCS) Contract

- The CCS is an online interactive suite of smart forms designed to assist procurement officials prepare procurement documentation for Commonwealth procurement.
- The CCS is mandatory for use by non-corporate Commonwealth entities (NCE) for procurement under $200,000 (including GST) except for specific circumstances as detailed in **RMG-420 Mandatory use of the Commonwealth Contracting Suite for procurement under $200,000**.
- Officials are encouraged to use the CCS for contracts valued up to $1 million.
- Corporate Commonwealth entities (CCE) are encouraged to use the CCS as appropriate.
- If your contract has been created through the CCS then it will be a short contract with simplified terms and language and will be easy to understand with regard to responsibilities and obligations for both you and the supplier.
- The CCS has mandatory components: the Approach to Market, and the Commonwealth Contract. The CCS is drafted in plain English and aims to make contract management as easy as possible.

### Entity's Standard Form Contract

- Some larger entities have developed their own contract templates. These may be longer form contracts for when the CCS is not being used. This means that contracts will be standardised and reflect the entity's approach to procurement.
- Entities need to ensure that templates are regularly updated to reflect any changes to legislation or policy.
- Contextual advice on managing these contracts will generally be available from your entity.

### Digital Sourcing Model Contract

- The Digital Transformation Agency (DTA) has a suite of contracting templates. These are suitable for sourcing Information and Communication Technology (ICT) products and services that are not covered by an Australian Government arrangement.
- More information on these templates is available from **BuyICT.gov.au**. In the first instance, engage with your central procurement area or ICT procurement team. Following this, the DTA can be contacted for contextual contract management advice.

### Bespoke Purpose Designed Contract

- Occasionally, an entity may have a requirement that raises issues or involves risks or requirements that require a bespoke arrangement. This will require the entity to develop a contract that reflects these requirements and will often involve input from legal, procurement and technical specialists. These are usually high risk or specialised contracts. When considering bespoke contracts, it may be appropriate to seek legal advice to ensure that the terms and conditions of the contract are legally enforceable.
- Management of these contracts may require assistance from specialist advisers.
- **ClauseBank** holds a wide range of pre-drafted contract terms for use within existing contract templates or bespoke contracts valued above $200,000.

## Standing Offer Arrangements and Panels

- Standing offer arrangements are established by entities for frequently sourced goods or services. A Standing Offer Arrangement consists of a Deed of Standing Offer (DoSO) with a supplier that enables the entity to obtain particular goods or services where the prices and contractual terms are already agreed. It is common for entities to put in place standing offer arrangements with a number of suppliers for the same or similar services – this is commonly referred to as a 'panel'. Generally the DoSO will be the same for each supplier under the panel. The person (or team) who manages the standing offer arrangement is generally referred to as the panel manager.
- Procuring from a standing offer arrangement provides efficiencies as it mitigates the ongoing costs to the supplier and the entity to continually tender for frequently used goods or services.
- Most standing offer arrangements will provide an official order or a work order for the entity to issue to a supplier for specific goods or services – with this forming a contract between the parties for those goods or services. Value for money must still be considered each time goods or services are purchased under a standing offer arrangement and the entity issuing the official order is responsible for its management to ensure that the value for money is achieved.
- Your entity may have additional guidance or specific business rules which will apply to standing offers and their use, contact your central procurement team or relevant advice area for more information.
- Details of current standing offer arrangements can be found on the **AusTender website**.

## Coordinated Procurement Arrangements (e.g. Whole of Australian Government)

- Australian Government coordinated procurement arrangements are established for a number of reasons, including to give effect to policy decisions, to collectively procure goods and services in common use across entities to leverage the purchasing power of the Australian Government, to improve consistency and control, and to deliver savings and efficiencies.
- Australian Government arrangements may take the form of a contract or standing offer. These contracts and arrangements have been variously established by lead entities including the Department of Finance and the DTA. Contract management processes vary for different arrangements. If you are managing your entity's purchasing from a whole of Government arrangement, you will need to clearly understand the processes for purchasing from that panel. The panel management team will be able to assist you.
- Most Australian Government arrangements are mandatory for use by non-corporate Commonwealth entities and opt in for corporate Commonwealth entities. A list of these can be found on the **Department of Finance website**.

## Cooperative Procurement Arrangements

- Sometimes, a number of different entities will have a similar requirement for goods or services. Cooperative procurement enables such entities to obtain goods or services jointly through the one arrangement. This can be achieved through a joint approach to the market and/or when an entity establishes a contract or standing offer that allows other entities to access it (often referred to as 'piggybacking').
- Cooperative procurement can make better use of resources across entities and also for potential suppliers. Efficiencies may be derived from several entities coming together and implementing and maintaining one arrangement in lieu of many. This can reduce the number of administrative processes and share the procurement and contract management process workload. It may also be able to leverage better prices and service arrangements and can reduce the number of tenders for which a potential supplier will need to bid for.
- However, care needs to be taken to ensure that there is sufficient alignment between each entity's requirements to ensure that the cooperative procurement delivers value for money for each entity in the context of their particular requirements.
- For more information please see the **Department of Finance website**.

# Simple types of contracts




## Purchase order

- For transactional or routine purchases an entity may issue a purchase order. This should be based on the Commonwealth Purchase Order Terms (available on the **Department of Finance website**) and contain a simple description of the goods or services required. Generally, this is issued to a supplier and does not require their signature. However, it is recommended that a link or copy of the relevant Purchase Order Terms are provided to the supplier to ensure they are aware of the terms and conditions, particularly if signatures are required. A purchase order will still create a legally binding contract but is unlikely to require the level of management required by more complex contracts.




## Vendor terms

- Acceptance of a vendor agreement is also a form of contract. These are often found with requirements such as venue hire, software licensing, product warranty and when you click on the 'I agree' to online terms and conditions. These will generally contain clauses that will require the entity to sign up to vendor term, including contingent liabilities. Your entity may have specific requirements or processes to address purchases of this nature.
- **RMG-417 Supplier Pay on Time or Pay Interest** policy will apply to this procurement unless the supplier's contract payment terms are shorter than those set out in RMG-417.
- Appendix 2 of this guide provides additional information on a range of potential contract management issues including contingent liability provisions. For more information about this please see **Indemnities, guarantees and warranties by the Commonwealth (RMG 414)**.



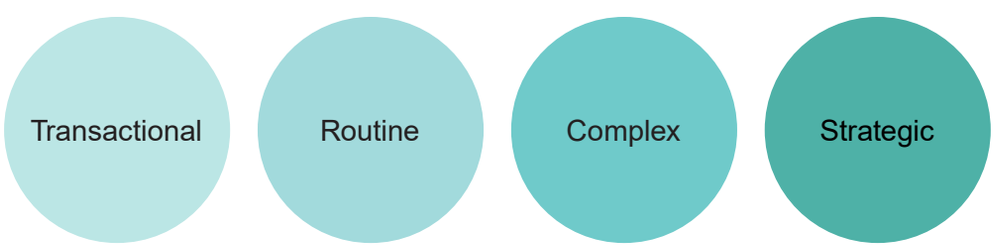
## Credit card purchase

- The Australian Government payment card policy promotes payment cards as the preferred payment mechanism for eligible payments to suppliers for amounts under $10,000. This is subject to the supplier being able to accept payment by credit card. Where practicable, payment should be made at the point of sale. A tax invoice (receipt) must be provided by the supplier for the payment. In this instance, a formal written contract is not required. Further guidance on this policy can be found in **RMG-417 Supplier Pay on Time or Pay Interest**.
- Payments by credit card rarely require complex contract management processes.

# How complex is your contract?

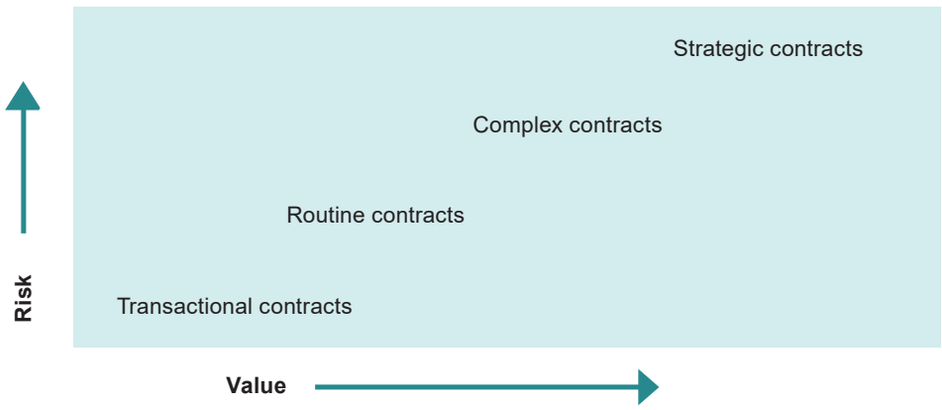
The following terms are used in this guide to describe contracts based on the level of complexity, the risk profile and the value. These terms are intended as a guide only – each entity will have its own context and operational environment that will inform its approach to assessing and categorising risk.

In this guide we use the following terms to categorise contracts:




Determining the appropriate level of complexity will inform your contract management strategy and focus your attention on the key activities within the management of your contract in a way that is proportional to the risk profile of your contract.

# Categorisation of contracts




The table below identifies the characteristics or qualities of each type of contract. You should assess which category your contract aligns with. These qualities are only indicators that your contract may fall into a certain category. Your contract does not have to meet all the characteristics and may meet characteristics from more than one category. You will need to use your judgement as to whether your contract fits into one category or another. If you are deciding between two categories, it is recommended you apply the categorisation with the higher risk level.

The tables at the beginning of the sections for each contract management step will assist you in identifying which activities are appropriate based on this categorisation.

## Table 1 – Categorisation of contracts

The characteristics below are only indicators of each type of category. You will need to assess which category best aligns with your contract.

| Qualities | Transactional | Routine | Complex | Strategic |
|---|---|---|---|---|
| **Key Defining Factors** | The goods or services:<br>• will most likely not have a statement of work<br>• often low value, low risk<br>• are readily commercially available, off the shelf<br>• may be a one-off purchase<br>• are able to be readily sourced from numerous suppliers<br>• do not require any special handling, modification or adaptation. | The goods or services:<br>• will most likely have a statement of work<br>• generally below the procurement threshold (see Section 9.7 of the CPRs)<br>• are readily commercially available<br>• are able to be sourced from numerous suppliers<br>• do not require any special handling, modification or adaptation. | The goods or services:<br>• generally valued above the procurement threshold (see Section 9.7 of the CPRs)<br>• are commercially available<br>• are able to be sourced from a number suppliers<br>• will most likely have a statement of work or complex specification<br>• may require some special handling, modification or adaptation. | The goods or services:<br>• are generally high value and high complexity but some lower value procurements may be strategic for reasons other than price<br>• are sourced via a complex open tender or staged sourcing approach<br>• are available from a limited number of suppliers in the market<br>• may need to be created or developed specifically for the procuring entity or require extensive modification or adaptation if commercially available<br>• will have an involved statement of work or complex specifications. |

| Qualities | Transactional | Routine | Complex | Strategic |
|---|---|---|---|---|
| **Risk Profile** | Very low risk. Formal risk assessment not required. | Generally low risk. May need to identify and analyse risks. Consider current controls and if any additional actions are required. Findings and mitigation strategies will need to be documented. | May present medium or high risks. Will need a formalised risk assessment or management plan that will require:<br>• identification<br>• analysis (likelihood / consequence)<br>• evaluation (controls and prioritisation)<br>• treatments<br>• documentation of findings and mitigation strategies.<br>Risks may need to be actively managed. | May present high risks which may include political or stakeholder risks. Will need a formalised risk management plan that will require:<br>• identification<br>• analysis (likelihood / consequence)<br>• evaluation (controls and prioritisation)<br>• treatments<br>• documentation of findings and mitigation strategies.<br>Risks will need to be actively managed. |
| **Delivery** | Usually transactional contracts will involve a single delivery to one location. | It may involve a single delivery of higher cost items or deliveries to a number of sites over longer periods. | Delivery will most likely be phased over a number of milestone events over longer periods. Formalised acceptance procedures should be established. | Delivery will most likely be phased over a number of milestone events over longer periods. Acceptance will be based on formalised procedures within the contract. |
| **Payment** | Payment will often be made by credit card, or on invoice immediately after the delivery and acceptance of the goods or services. | Payment is usually made in arrears on invoice after the delivery and acceptance of the goods or services and total costs may be progressively paid over time as deliveries are received. | Payment arrangements may be more complex, and will generally include partial payments, milestone payments or other staged payment approaches. These contracts may also contain a reduction in payment for under performance. | Payment arrangements are usually complex and will include staged payment, milestone payment and/or earned value payment approaches. These contracts may also contain incentive payments or reduction in payment for under performance. |
| **Performance Monitoring** | Performance monitoring is based on common sense checking that the goods or services were as ordered and correctly received. | Performance monitoring is usually based on common sense checking but should be supported by processes such as spot audits, acceptance checks and referring to the contract to be sure that the goods and services were as specified and correctly received. | Performance monitoring is usually formalised, and may involve progress reports from the supplier, progress and performance meetings with the supplier and may draw on performance indicators or service level agreements in the contract. | Performance monitoring is formalised, and usually involves progress reports from the supplier, progress and performance meetings with the supplier, and draws on performance indicators or service level agreements in the contract. |
| **Timeframe** | Short term. | These contracts usually extend for short periods, typically between a few days up to a couple of months but may also involve larger quantities of off-the-shelf goods or services over longer periods. | These contracts typically extend from a few months to several years. | These contracts are generally longer term and may run for several years. |

| Qualities | Transactional | Routine | Complex | Strategic |
|---|---|---|---|---|
| **Contracting methodology and template** | Purchase order, email or verbal acceptance of quote. | Purchase order, CCS contract or may be sourced from a panel. | CCS contract, purpose-built contract or may be sourced from a panel.<br>For ICT requirements, **the digital sourcing contract templates** (from DTA) may be appropriate. | Purpose built bespoke contract or entity specific template.<br>For ICT requirements, **the digital sourcing contract templates** (from DTA) may be appropriate. |
| **Organisational Impact** | These goods or services are not critical to the operation of the entity, which could operate reasonably without them. | These goods or services are not usually critical to the operation of the organisation, which could operate for a reasonable period without them. There may be some inconvenience if the goods or services are delayed. | These goods or services are usually important, but not critical, to the operation of the entity or may be important in managing risks facing the entity. There would be some impact on the way the entity operates if the goods or services were delayed, and there could be considerable inconvenience, but this would not usually prevent the achievement of major entity goals. | These goods or services are vital to the achievement of major entity goals and may be significant for managing risks or seizing opportunities. There would be significant, noticeable and unacceptable impact on the way the entity operates if the goods or services were delayed. |

Examples of how contracts may be categorised:

- catering for a meeting or workshop would generally be transactional, however, catering for a large public event may be complex
- labour hire would generally be routine, however, as they pose a number of security, interest and information risks their level of categorisation may increase
- a contract for office furniture would generally be routine, however, if this is part of an office fit-out then it may be complex
- the customisation and integration of a software system would generally be a complex contract, however, if the contract is for the development and implementation of large entity specific software applications then this may be strategic.

The Department of Finance has **guidance** on distinguishing between a contract for services and a contract for consultancy services.

If you are unsure about how to categorise your contract, then contact your central procurement area for assistance.

## Due diligence

Due diligence refers to a broad range of checks and analysis that an entity or procuring official should consider when undertaking a procurement and engaging suppliers. Due diligence is relevant in all stages of the procurement life cycle including contract management and should be considered as part of assessing risk. It is important to keep detailed records and documentation in relation to due diligence actions.

A relevant entity may need to consider conducting additional due diligence during contract management due to events or new information being made available, such as:

- unexpected invoices or changes to bank account details
- verification of invoices against acceptance criteria specified in the contract
- tracking against contractual or agreed milestones
- changes in a supplier's ownership – this includes undertaking the same degree of due diligence checks for the new ownership, that were conducted for the original supplier
- changes to subcontracting arrangements
- changes to key personnel
- changes in the security clearance status of key personnel or individuals or organsiations contracted to the Australian Government. This may also apply to supply chains and contractors
- supplier performance issues or evidence of financial distress
- Notification of Significant Events
- negative media attention or audit findings relating to a supplier
- tip-offs or complaints about poor supplier performance or unethical conduct.

Additional areas of risk include, where applicable:

- ongoing monitoring of insurance
- ongoing monitoring of guarantees, certificates and licensing requirements
- ongoing monitoring of qualifications and accreditations
- monitoring environmental sustainable practices.

Due diligence at the contract management stage is not just reactive, and proactive steps should be taken to ensure successful delivery of the procurement.

# What are the steps of contract management?

Contract management activities take place in four key steps, however, planning for contract management should happen before the contract is signed and be considered as part of the procurement planning. Each step requires very distinct activities depending on the type of contract Plan being managed. The level of contract management should be commensurate with the complexity and risk profile of the contract you are managing. For example, transactional and routine contracts may only require simple processes compared to a complex or strategic contract. The contract management activities table at the start of each section will help you to identify which activities are appropriate for your contract. The decision on which activities should be included as part of the contract management arrangements should be made using sound judgment in consultation with subject matter experts and based on the complexity and risk profile of the particular contract.

The following steps are based on the procurement lifecycle:

| | |
|---|---|
| Step 1 | **Plan the management of the contract**<br>In this step planning activities are undertaken with the procurement process. As you plan, evaluate and negotiate the contract, you need to consider the way in which the contract is drafted, delivery and acceptance issues, performance management regimes etc. It is important to include consultation with relevant stakeholders when planning your contract management activities. Effective planning will have an impact on how the contract is managed and contribute to a successful outcome. As part of this step the most appropriate contracting model and the contract manager need to be identified. |
| | **Contract award** |
| Step 2 | **Start up the contract**<br>In this step the procurement transitions into the contract management phase of the procurement lifecycle and the the contract manager identifies the key roles and management activities needed to effectively manage the contract throughout its entire term. This step should involve a focus on managing probity as well as allocation of accountability for the different contract management activities. This enables a sensible allocation of risk and resources to the contract and helps minimise the risk of contract failure. Early identification of roles and responsibilities will maximise the potential for value for money outcomes and help to establish a positive relationship with the supplier. This step may also include transition out activities with a previous supplier. |
| Step 3 | **Manage the contract**<br>In this step the main part of the contract is performed and the required goods or services are delivered. Good stakeholder and supplier relationship management will enable the Australian Government to obtain the full benefits of the contract and achieve the value for money outcomes identified during the procurement sourcing process.<br>Good stakeholder and supplier relationship management will ensure performance management issues are recognised and resolved quickly. Effectively monitoring a supplier's performance will enable the Australian Government to obtain the full benefits of the contract and achieve the value for money outcomes identified during the procurement process. |
| Step 4 | **Close the contract**<br>In this task contractual obligations and liabilities between the parties are finalised. It may also include transitioning to a new supplier for goods or services. Proper review in this task will allow the procuring organisation to measure if value for money was achieved during the life of the contract. It also enables identification of process improvements or developments ensuring continuous improvement of the procuring organisation's processes and may contribute to better value for money in future procurement processes through lessons learnt. |



# 1 Plan the management of the contract

Conducting proper planning when undertaking contract management is vital for your success in managing your contract. Having the correct plans in place will enable you to identify risks, conflicts and other issues in advance and treat them effectively.

The table below lists the activities for planning the management of the contract. Your categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

| Activities during planning the management of the contract stage include: | | Transactional contract | Routine contract | Complex contract | Strategic contract |
|---|---|---|---|---|---|
| **1.1** | **Behaving ethically** | Required | Required | Required | Required |
| **1.2** | **Assess risk** | Required | Required | Required | Required |
| **1.3** | **Develop a contract management plan** | May be required | Recommended | Required | Required |
| **1.4** | **Develop risk management plan** | May be required | Recommended | Strongly recommended | Required |
| **1.5** | **Develop other plans if required** | Not required | Recommended | Strongly recommended | Required |
| **1.6** | **Consider and manage any contract transition issues** | Not required | Recommended | Strongly recommended | Required |
| **1.7** | **Skills development** | Required (if applicable) | Required (if applicable) | Required (if applicable) | Required (if applicable) |

# 1.1 Behaving ethically

If you are employed under the Australian Public Service Act or other enabling legislation you have a responsibility to behave ethically. This extends to procurement activities including contract management.

Contracted staff involved in contract management will have clauses built into their employment contract ensuring they comply with Commonwealth laws and policies, declare conflicts of interest and not act fraudulently. It is important to have an understanding of ethical behaviour and integrity. Do not behave or conduct yourself in a manner that would or could jeopardise the integrity of yourself, the department and/or the supplier. This includes allowing labour hire/contract staff to actively work or process payments for their own contracts. The contracted staff member may be in breach of their contract if they do no uphold these obligations.

Ethical behaviour:

- ensures transparency, integrity and accountability in a procurement process
- gives suppliers confidence in their dealings with the government
- can reduce the cost of managing risks associated with fraud, theft, corruption and other improper behaviour
- supports confidence in public administration.

Ethical considerations to keep in mind when undertaking contract management might include:

- the need to uphold the APS Values and Code of Conduct
- the need to achieve the contract outcomes
- the need to maintain a positive working relationship with the supplier
- whether an actual or potential conflict of interest exists, real or perceived
- whether you need to put in place reasonable and cost-effective mitigation arrangements to address actual or potential conflicts of interest.

As a contract manager, you should ensure all individuals materially involved with the management of a contract make a conflict of interest declaration and update it on a regular basis, particularly for longer term contracts. Ensure you get an update to the conflict of interest declaration if their circumstances change or as required by your Entity's Accountable Authority Instructions or other obligations.

The **Commonwealth Supplier Code of Conduct** (the Code) outlines the Commonwealth's minimum expectations of suppliers and their subcontractors while under contract with the Commonwealth. The expectations in the Code cover ethical behaviour; corporate governance; business practices; and health, safety, and employee welfare. These expectations do not supersede or alter a supplier's existing legislative, policy, regulatory or other contractual obligations.

The Code is mandated through CPRs paragraph 6.12 which states that all relevant entities must incorporate the Code into all Commonwealth forms of contract. All Commonwealth forms of contract entered into from 1 July 2024 must contain the Code clauses. An Accountable Authority may determine that a contract should not include the Code, in part or in full, and document the basis for this decision.

To enable enforcement and management of the Code, provisions in request documentation and standard clauses for Commonwealth contracts have been developed and are available in the **Commonwealth Contracting Suite** and within **ClauseBank**.

There may be clauses in your contract that require supplier personnel to identify, disclose and appropriately manage any conflicts of interest.



## Want to know more about behaving ethically?

You can read more about the APS Values, Code of Conduct and conflict of interest:

- on the APSC **web site**
- by downloading the document **APS Values and Code of Conduct in Practice**
- by downloading the **Department of Finance Resource Management Guide 203: General duties of officials**
- on the Department of Finance website has guidance for **Ethics and Probity in Procurement** and also **Procurement Policy Note - Ethical conduct of tenderers and suppliers**.

## Types of conflict of interest

A conflict of interest occurs where there is a direct conflict between the current official duties of an employee and their existing private interests.

A real conflict of interest occurs where there is a conflict between the public duty and personal interests of an employee that improperly influences the employee in the performance of his or her duties.

An apparent conflict of interest occurs where it appears or could be perceived that private interests are improperly influencing the performance of official duties, but this is not in fact the case.

A potential conflict of interest occurs when there is potential for the private interests of an employee to influence the performance of their official duties in the future, although there is no current conflict.

Officials responsible for managing contracts should consider and disclose any interest that may give rise to conflict of interest (real or apparent), as soon as possible following the appointment as contract manager or contract delegate. If no interests are identified, this should be recorded

Some definitions from: **The Australian Public Service Commission website**.

## Conflict of interest

Conflict of interest considerations should not prevent an entity from engaging with the market during the procurement planning stage. There are many benefits to engaging with the market when planning your procurement. You should check with your legal or probity team on how best to manage this.

### Common conflicts of interest

Some of the most common conflict of interest situations that can arise during contract management are:

- **Accepting an offer of gifts, hospitality or other benefits:** If your supplier offers to take you out for a meal, offers you a bottle of wine or a corporate gift or invites you to attend an event as their guest, this may be a conflict of interest. Your entity will have a policy about acceptance of gifts, hospitality and benefits and you must ensure you comply with this policy. Generally, you should avoid accepting gifts, hospitality or other benefits from a supplier whose contract you manage, have managed in the recent past or will be managing in the immediate future. If you are uncertain about accepting a gift, hospitality or other benefit, you should check with your manager and refer to your entity's guidelines.
- **Accepting an offer of employment:** If you are offered or accept employment from the supplier whilst you are managing their contract you should let your manager know, even if you don't intend to accept the offer.
- **Relationship with the supplier:** you may have a conflict of interest if you, a member of your family or a close friend is employed by or has a substantial interest in the supplier. This could include:
    i. a financial interest in the company such as shares, dividends, investments, loans or other payments or debts
    ii. through direct employment, being a director, sitting on a board, or being a sub-contractor
    iii. through a friendship.

If this occurs, you should notify your manager.

- **Relationship with a direct competitor within the same industry:** If you, a family member or close friend has a financial relationship, friendship or is employed by a direct competitor in the same industry it may appear to others that you are biased against the supplier. If this occurs, you should notify your manager.

**Implications of conflicts of interests**

If a conflict of interest occurs, it may:

i. predispose you to act favourably towards a supplier, including overlooking supplier under-performance, or reacting more favourably to requests for contract variations
ii. make it difficult for you to manage under-performance with a supplier
iii. be seen by other potential suppliers as a sign of an inappropriately close relationship
iv. be seen to undermine the integrity, fairness and impartiality of the contract management process.

Conflicts of interest are common and do not imply misconduct. However, if you don't declare a conflict of interest or don't manage it appropriately, it may be viewed as wrongdoing. Ensure that you comply with any specific requirements outlined in your entity's conflict of interest policies.

## National Anti-Corruption Commission

The National Anti-Corruption Commission (NACC) is an independent Commonwealth agency. The NACC detect, investigate and report on serious or systemic corruption in the Commonwealth public sector, and also educate the public service, and the public, about corruption risks and prevention.

The NACC operate under the **National Anti-Corruption Commission Act 2022** which defines its jurisdiction and what corrupt conduct is.

The NACC investigates allegations of **serious or systemic corrupt conduct** within the Commonwealth public sector. This includes conduct that occurred before or after it was established.

The NACC can investigate conduct of:

- any person that adversely affects a public official's honest or impartial exercise of powers or performance of official duties
- a public official that involves a breach of public trust
- a public official that involves abuse of office
- a public official or former public official that involves the misuse of documents or information they have gained in their capacity as a public official.

Your entity will have its own measures and procedures for the prevention and reporting of fraud and corruption however, **the NACC website** contains more information about the agency and reporting and investigating corruption.

# 1.2 Assess risk

Managing risk is an essential part of procurement and contract management. Paragraph 8.1 of the CPRs note that risk management comprises the activities and actions taken by a relevant entity to ensure that it is mindful of the risks it faces, that it makes informed decisions in managing these risks, and identifies and harnesses potential opportunities. You will need to assess the risks that may affect the performance of your contract and its ability to achieve the desired value for money for outcomes.

**Risk** is defined in **ISO31000:2018 Risk Management** as 'the effect of uncertainty on objectives'. An effect is a deviation from the expected outcome – positive or negative. Risk is often expressed as a combination of the consequences of an event and the associated likelihood of occurrence.

In contract management, **risk management** refers to the activities that you undertake to manage and control your contract with regard to risk.

Identified risks must be incorporated into your contract management plan. Where significant risks have been identified, officials should also develop a separate risk register or risk management plan to document relevant treatments and mitigation strategies consistent with your entity's broader Risk Management Framework. As risk levels may change over the life of a contract, officials must ensure that contract management plans and risk management plans are continuously monitored and updated as required.

Contract managers should identify the risks associated with delivering the contract and analyse the seriousness of those risks and likelihood of them occurring. Timely and accurate risk identification and assessment is important in managing risks and allows for the development of innovative, flexible and appropriate mitigation strategies. The next step is to consider existing risk controls that are already in place and evaluate whether they are sufficient to manage the risk without taking additional measures. If not, then risk treatments need to be applied. The **risk controls** and **risk treatments** aim to prevent the risk from occurring (if possible), and/or to minimise the consequences if any risk events do eventuate. Obligations placed on the supplier and the allocation of responsibility for particular issues under the contract will often form part of these controls and treatments – and so effective contract management will assist with managing these risks.

As the contract manager, it is your job to deal promptly and effectively with any risk events that occur during the life of your contract. All officials with a role in managing the contract also play a part in managing risk and identifying emerging issues. This includes ensuring that if your entity is impacted by a risk that the supplier is managing, the entity should seek to ensure that the supplier is taking adequate measures to manage the risk and seek regular updates.

Risks may specifically relate to the goods or services you are receiving (for example, Environmental, Work Health & Safety risks in a cleaning contract or using unqualified trainers to deliver training programs), or they may relate to the contract management process itself (for example loss of key staff, staff having insufficient expertise in contract management or failure to adequately check deliverables or pay invoices on time).

## Sources of risk

Common sources of risk that should be considered and monitored over the life of the contract include, but not limited to:

- financial
- reputation
- technical
- work health and safety
- opportunity
- contractual
- legal
- supplier compliance
- regulatory assurance
- fraud
- governance
- probity risk
- supply chain risk
- heritage risk
- security (personal and physical and cyber security)
- quality outcomes.

Shared risks should also be considered in contract management. A shared risk exists where more than one party is exposed to, or can significantly influence, the risk. Most contracts will involve shared risks and a key consideration will be the types and level of risk that will be assumed by each of the parties to the contract.

The CPRs paragraph 8.4 note that, as a general principle, risks should be borne by the party best placed to manage them; that is, relevant entities should generally not accept risk which another party is better placed to manage. Similarly, when a relevant entity is best placed to manage a particular risk, it should not seek to inappropriately transfer that risk to the supplier.

Identified risks will be incorporated into your contract management plan or, if the risks are substantial, into a separate risk management plan.

Your approach to managing risks for individual contracts should be consistent with your entity's broader risk management framework.

## Key risk management terms

**Risk identification** is the process of finding, recognising and describing risks. Risk identification involves the identification of risk sources, risk events, their causes and their potential consequences. Risk identification can involve historical data, theoretical analysis, informed and expert opinions and stakeholder's needs.

**Risk analysis** is the process used to comprehend the nature of risk and to determine the level of risk. Risk analysis provides the basis for risk evaluation and decisions about risk treatment.

**Risk evaluation** is the process of comparing the level of risk against risk criteria, such as those commonly contained in a risk evaluation matrix (for example extreme risk, moderate risk or negligible risk). Risk evaluation assists in decisions about risk treatment.

**Risk assessment** refers to the process of undertaking risk identification, risk analysis and risk evaluation.

**A risk control** is any process, policy, device, practice or other action that is put in place to regulate or modify the likelihood or consequence of a risk. They can be preventative, detective or corrective in nature.

**A risk treatment** is the additional action undertaken to treat a risk in response to a risk evaluation where it has been agreed that the risk is outside of the entity's tolerance, the controls in place are ineffective and further mitigation activities are required.

Risk definitions from: Commonwealth of Australia, Department of Finance, Commercial and Government Services, "Resource Management Guide 211 Implementing the Commonwealth Risk Management Policy – Guidance. See **Glossary of Terms**.

## Want to know more about risk management?

Further information about risk management is available from:

**Comcover in the Commonwealth Risk Management Policy 2023**

Department of Finance **Resource Management Guides**

Standards Australia guidance for the international standard **ISO 31000:2018 Risk Management Guidelines**.

When identifying risks it may be useful to consult with stakeholders, technical staff or users. You should consider all aspects of your contract, including the management of your contract, and assess whether there may be exposure to any risks. Some common sources of risk and examples of risks are listed in the table below (this is not a definitive list and you will need to consider risk in the context of your contract).

| Sources of Risk | Examples of Risks |
|---|---|
| **Conflict of Interest** | • Conflict of interest declarations not signed by entity officials or specified personnel working on the contract.<br>• Deeds of confidentiality not signed or agreed to by the supplier/specified personnel.<br>• Failure to effectively monitor conflicts of interest and confidentiality breaches.<br>• Lack of contractual mechanisms to enforce corrective action following a breach. |
| **Systems, procedures and guidance** | • Multiple systems that are not integrated and/or require multiple entry of the same data.<br>• Systems that are not supported by appropriate procedures and/or guidance material.<br>• Different systems containing incomplete and/or conflicting contract data.<br>• Absence of required contract delegations.<br>• Inability to collect data that supports assessment of supplier performance. |
| **Roles and responsibilities** | • Unclear and/or misunderstood roles and responsibilities for aspects of contract management.<br>• Supplier lacks capacity or specified personnel are not suitably qualified (can arise when key personnel change during the contract). |
| **Contract management capability** | • Lack of understanding of relevant government and/or entity procurement policies and reporting requirements relating to contracts.<br>• Lack of experience in the management of contracts.<br>• Lack of recognition of the importance of contract management.<br>• Insufficiently skilled and experienced resources available to effectively manage the contract.<br>• Lack of training in contract management.<br>• Failure to act on supplier under-performance.<br>• Fraud and/or unethical conduct by staff. |
| **Supplier performance** | • Failure to effectively manage supplier performance.<br>• Supply chain issues.<br>• Failure to provide contract deliverables on time and/or to the agreed quality standards.<br>• Failure to adhere to the agreed budget.<br>• Failure to comply with all contract provisions, for example privacy, security, record keeping.<br>• Fraud and/or unethical conduct by the supplier. |

| Sources of Risk | Examples of Risks |
|---|---|
| **Changes in circumstances or requirements** | • Contract changes not dealt with as contract variations.<br>• Supplier not prepared to agree to contract variations to accommodate changes in entity requirements.<br>• Changes in circumstances not managed in a timely manner. |
| **Stakeholder relationships** | • Stakeholders not consulted and/or kept informed about contract performance.<br>• Changes in stakeholder needs and/or expectations not communicated to contract manager.<br>• Differing and/or conflicting stakeholder expectations.<br>• Risks inadvertently transferred from Supplier to entity.<br>• Ineffective relationship management affecting supplier performance. |
| **Contract materials information and records** | • Failure to provide required materials or information to the supplier.<br>• Failure of the supplier to return or destroy all materials, information and records in the agreed timeframe and through the agreed processing (ensuring compliance with the Protective Security Policy Framework).<br>• Failure of the supplier to share information or data in the possession of the supplier owned by the Commonwealth or relevant to the operation of the contract. |
| **Payment** | • Failure to pay supplier invoices in a timely manner.<br>• Failure of the supplier to provide correctly rendered invoices.<br>• Submission by the supplier of an invoice for unforeseen or unapproved additional costs. |
| **Transition arrangements** | • Failure to undertake appropriate planning for transition in/out arrangements.<br>• Failure to appropriately manage transition from the outgoing supplier.<br>• Not commencing arrangements for a new procurement in a timely way.<br>• Service disruption.<br>• Probity issues with procurement process for replacement goods or services after the contract end date, particularly where existing supplier is retendering.<br>• Not addressing performance problems with an outgoing or existing supplier. |
| **Achieving value for money** | • Not addressing performance problems with a supplier.<br>• Ineffective supplier management and performance management.<br>• Not applying lessons learned from previous contracting activities.<br>• Contract variations degrading value for money.<br>• Not gathering data to allow determination of whether value for money was achieved.<br>• Not reviewing contracts and learning lessons from improvement opportunities.<br>• Not linking value for money achieved in a contract with the contract renewal process. |
| **Information and cybersecurity risks** | • Failure to have appropriate security controls and measures in place to protect Commonwealth data such as the failure of the supplier to meet the requirements of the Protective Security Policy Framework and *Information Security Manual* (ISM).<br>• Failure to comply with the *Privacy Act 1988* (Cth) including the Australian Privacy Principles, such as a failure to protect the privacy of Commonwealth officials and any personal information that the supplier may come across or have in their possession.<br>• Failure to have supplier personnel appropriately security assessed and trained to ensure the protection of Commonwealth data.<br>• Failure to consider ICT System Security Assessments (and the like) or Privacy Impact Assessments cost (and who is responsible for that cost) in procurement planning.<br>• Failure to prevent, mitigate and manage cyber security incidents, such as attempts by malicious cyber actors to breach ICT systems of service providers. |

# 1.3 Develop a contract management plan

A contract management plan contains key information about how the contract will be managed over its life to ensure that value for money is achieved. It should be a working document that assists you to manage the contract. Your contract management plan should reflect the level of complexity and risk associated with your contract. Transactional and routine contracts may not need a written contract management plan. More complex or higher risk contracts would usually require a detailed contract management plan.

Your contract management plan should draw together all the practical details required to manage your contract effectively and easily. It should not duplicate or replicate contract information, but instead provide references to agreed interpretations, relevant clauses, and other supporting information to help you manage the contract. This is to ensure that, should information change in the contract or other documents, it is not contradicted by the contract management plan. You should use your entity's contract management plan template if available.

| **A contract management plan should contain:** | |
|---|---|
| **Key activities** | A summary of key activities to be completed (including milestones/dates, contract expiry, notice periods, extension options, contract review timings and processes etc) and who is responsible for each activity. |
| **Roles and responsibilities** | A list of the main individuals involved in the contract, their positions, contact details and their responsibilities (for both the procuring entity and the supplier). |
| **Risk management** | Details of risks that have been identified and how and by whom they will be managed (for more complex contracts this may be a separate risk management plan and/or risk register). |
| **Contract governance** | Details of stakeholder engagement, contract oversight, process for the escalation of issues or disputes, internal reporting including content, frequency, and distribution of any reporting within the procuring entity, for example, monthly reporting to the senior management team. |
| **Supplier reporting** | The frequency and content of the supplier's reporting and timeframes for acceptance of reports including details of the reporting from subcontractors. |
| **Meetings** | A schedule of meetings and any standing agenda items, the process for the production and agreement of minutes and turnaround times. |
| **Performance management** | Details of how performance will be managed, including the reporting of Key Performance Indicators (KPIs) or Service Level Agreements (SLAs), how data will be gathered, verified and calculated, details of remedies or withholds etc. |
| **Delivery and acceptance** | Details of the acceptance process or specifics around the delivery of goods or services including standards to be met and audit requirements around those standards, compliance certificates etc. |
| **Payments arrangements** | Details of pricing including payment terms, milestones payments etc. |
| **Specified personnel** | Details of any specified personnel including position, supervisor, security clearances etc. |
| **Supplier access and security** | Detailing requirements for:<br>• access to facilities or information systems<br>• access and storage of assets<br>• access, recording or storage of information or data, including personal information (as defined in the *Privacy Act 1988* (Cth))<br>• security requirements, including personnel, information/data or cyber<br>• compliance with the PSPF, ISM, the *Privacy Act 1988* and any entity specific information security requirements (including in relation to cyber security)<br>• the reporting of any suspected or actual security or privacy incidents (including in relation to the Notifiable Data Breaches scheme under the *Privacy Act 1988*)<br>• the timeframes and process for review of any Security Plans, ICT System Assessments, Data Breach Response Plans (and the like) that are in place. |
| **Insurance and guarantees** | Details of any insurance certificates, bank guarantees, indemnities or Statements of Tax Record provided by the supplier, any expiry or renewal dates and storage location details. |
| **Contract variations** | Details of the process as defined in the contract for requesting variations to the contract and details of delegates. |
| **Extension options or contract renewal** | Details of options and information about review of the contract and the process for extending the contract as well as the lead-time needed for any re-tender or contract renewal. |



## Contract management plans

A contract management plan should reflect the contract's complexity and risk profile and contain key information about how the contract will be managed over its life to ensure that objectives are met and value for money is achieved. A contract management plan facilitates a consistent, coordinated and effective approach to the management of the arrangement and will help the official establish good contract governance. A contract management plan can include a summary of key activities to be completed, roles and responsibilities, identified risks and how the risks will be managed.

Developing a contract management plan can provide numerous benefits such as:

- ensuring performance is monitored through the use of milestones, indicators or reports
- clearer coordination between business areas where required (e.g. performance data being provided at regular intervals to Contract Manager)
- opportunities for early intervention in the case of supplier under performance.

A contract management plan can be developed while the contract terms are largely settled and before the contract is executed. This will allow an approving delegate to review the contract management plan as part of their consideration when signing the contract.

# 1.5 Develop a risk management plan

A risk management plan provides a systematic approach to identifying, assessing, evaluating and treating risks that are associated with your contract. You will have assessed these risks in the first step at section 1.2. Your entity may have established risk management processes and standardised templates in place.

A risk management plan specifies the approach, the activities and resources to be applied to managing the risks and will typically include:

- a summary description of the risks
- an assessment of the controls that are already in place to manage each risk
- an assessment of the likelihood of each risk occurring and the consequence if the risk occurs
- an evaluation of the overall level of risk, which can then be compared with entity guidelines to determine whether the risk is acceptable, and whether the risk needs further treatment
- a description of any risk treatments that will be applied, including a sequence of activities
- process for reporting and escalation
- assignment of responsibilities
- timeframes for activities and reviews.

Risk management should be an ongoing activity throughout your contract, and while transactional and routine contracts may not require a formal written risk management plan, you should still consider and document any risks and remediation actions as they arise.

You should complete risk management plans in accordance with your entity's risk management framework using any entity specific templates.

| **Key steps in this activity include:** |
|---|
| ✔ Identify risks (see step 1.2). |
| ✔ Analyse risks (likelihood and consequence) to determine the severity of each risk (extreme, high, medium, low). |
| ✔ Evaluate risks including:<br>• identification of current controls and their effectiveness<br>• if any additional controls or treatments are required<br>• assess the tolerability of each risk to determine which risks need treatment and the relative. |
| ✔ Planning and documenting risk controls, treatments and mitigation strategies and assigning responsibilities. |
| ✔ Documenting the timeframe or circumstances when you will need to do a risk review (e.g. bi-annually or before issuing any contract variation) and any process for reporting and escalation. |

# 1.6 Develop other plans if required

Most contract risks and issues can be documented in your contract management plan or your risk management plan. Where significant risks are identified, consider preparing, on a scaled basis, a plan to formally address these risks. These plans are often contract management tools that are either embedded or referenced in the contract (to make them contractually binding). If required, draft and agree necessary plans as early as practicable to guide contract management processes.

| Other plans that you may consider developing: | |
|---|---|
| **Transition plans** | If the contract is replacing an existing contract for similar goods or services, you may require a "transition in" plan at the commencement of the contract. Similarly, you may need a plan to "transition out" at the end of the contract. These plans detail transition tasks, timeframes, resources, communications, risks and management strategies. Transition plans and activities should be agreed to by both parties and actively monitored. For more information on transition plans at the end of the paragraph on contract transition issues see step 1.6. |
| **Communications or Stakeholder engagement plan** | This formally defines who should be given what information, when that information should be delivered and what communication channels will be used to deliver the information. |
| **Skills transfer plan** | Your contract may contain provisions that require the supplier to ensure relevant skills and capabilities are transferred to the entity before expiry of the contract. Implementing a skills transfer plan will allow you to outline and agree on the types of mechanisms that the supplier will utilise to deliver effective knowledge transfer (i.e development of a manual, training sessions, job shadowing) |
| **Probity plan** | A probity plan details the mechanisms for assuring probity within the establishment and management of the contract. Probity is the evidence of ethical behaviour, defined as demonstrated integrity, uprightness and honesty in the process. Conflict of interest mechanisms should also be outlined in the probity plan. |
| **Fraud control plan** | This details fraud risks within the procurement and measures to mitigate the risks. |
| **Security plan** | Security risks can arise from the supplier accessing facilities or data or needing to integrate their products with entity systems etc. The supplier may have to meet very specific security policies and requirements. A security plan details mandatory security (and information security) standards and procedures to be followed and required risk mitigation measures. It may also cover the protection of personal information, cybersecurity issues or data breach and incident response plans, if applicable. There may also be consideration of how often these plans will be reviewed during the contract. |
| **Supply chain risks plan (e.g. disruption of supply or modern slavery):** | Aspects of your supplier's supply chain could be geographically, ethically or environmentally unsound particularly in certain industries. This may result in the contracted goods not being delivered or reputational damage to your entity. A supply chain risk management plan details procedures for monitoring your supplier's supply chain and addresses any issues. |

The APS Strategic Commissioning Framework states that the core work of the APS must be done by our core workforce – APS employees. This expectation will wind back outsourcing and its impacts on the skills held and used in APS agencies. The framework should be used by decision-makers leading teams or functions. Principle 5: Maximise the benefits and minimise the risk of any external arrangements, states that Core APS work should be delivered by APS employees. Where labour hire contractors or consultants are procured for a core and enduring function due to extenuating circumstances (see principle 4) the agency must also take steps to build the skills of APS staff to avoid perpetuating capability gaps. The role and/or function must be transitioning to the APS over time, including transfer of knowledge, capabilities and models.

Risk mitigation approaches when procuring external expertise require good contract and supplier management. This also includes consideration and articulation of knowledge transfer requirements, managing access to sensitive information, and the conduct expected of personnel working on the project or service including upholding similar values and behaviours to those expected of APS employees in the APS Values. For more information please see the **APSC website.**

| Other plans that you may consider developing: | |
|---|---|
| **Disposal plan** | An entity must dispose of goods in a manner that is lawful, efficient, economical, ethical and environmentally sustainable. If the goods received under your contract require specialised disposal treatment you may require a disposal plan. In some cases, the supplier may be contracted for the eventual disposal of the goods, but your entity will remain accountable for how the disposal occurs. |
| **Business continuity plan** | For high risk and complex contracts that are sensitive to the operations of your entity, consideration should be given to the development of a business continuity plan to outline what needs to function at a minimum during a potential disruption. |

# 1.7 Consider and manage any contract transition issues

Sometimes your contract will be for the supply of similar goods or services to those supplied previously. The new contract may be with the same supplier or with a different supplier. Even with the same supplier, often the contract will be different, for example, you may have modified your requirements or the supplier may have developed an innovative way to fulfil your requirements.

Whenever you are managing a new contract for goods or services that have previously been supplied to your entity, you should identify what is required to transition effectively from one contract to another. If the transition arrangements are complex, you may need to develop a separate written transition plan considering the contractual obligations under both the old and the new contracts.

| Some typical transition considerations are: |
|---|
| ✔ Confirm the transition in and transition out obligations in the contract, including Commonwealth data disengagement procedures and ownership of data at completion. |
| ✔ Obtain a transition in and transition out plan from the incoming and outgoing supplier and ensure each meets the obligations under the relevant contract and your entity's needs. |
| ✔ Prepare a timeline of activities/events, including change over periods. |
| ✔ Identify resource requirements. |
| ✔ Identify key roles and responsibilities and how these change with the transition. |
| ✔ Note specific differences between the previous contract and the new contract. |
| ✔ Identify who needs to know what details about the new arrangement and what communication channels you will use. |
| ✔ Consider training needs for staff if the requirements are new or significantly different, or supply arrangements will change. |
| ✔ Identify and manage risks such as:<br>• maintaining a continuous supply of goods or services during the transition<br>• managing and minimising the effects associated with the changes on users<br>• managing the outgoing supplier's performance through to the conclusion of their contract. |
| ✔ Retrieve any Australian Government assets, documents or information provided to the outgoing supplier and provide those, as required, to the new supplier. |
| ✔ Identify any intellectual property rights within the old contract and assess the suitability or any risks for the transition to the new contract. |
| ✔ Arrange access for the new supplier to facilities or systems, including security clearances, and terminate access for the old supplier. |
| ✔ Identify additional transitional arrangements that may need negotiation with the incoming or outgoing supplier. |
| ✔ After the transition and final deliverables are satisfactorily received, approve final payment to the outgoing supplier. |

## 1.8 Skills Development

Contract management requires a broad range of knowledge and skills. Assess if you and the people on the contract management team have the necessary skills and knowledge to manage the contract. If not, consider organising training to address any shortfalls, obviously the sooner the better, as there are lead times to build appropriate capability.



### Transition – if there is a new supplier

When the new contract is being provided by a new supplier, the most important thing is to try to facilitate a smooth transition from the old to the new. Do your best to encourage a cooperative approach between the two suppliers but note that realistically, the two suppliers are likely to be commercial competitors.

You will need to carefully manage the outgoing supplier to make sure they meet their obligations and do not impede the incoming supplier from delivering the specified goods and services. Make sure you are clear on the transition obligations in both contracts so that they can be enforced. A detailed transition plan should outline roles and responsibilities and guide the transition process.



### Transition – if there is no change in supplier

Even when the new contract is being provided by the same supplier, there are likely to be differences between the previous contract and the new one. You need to ensure that everyone (you, the users and the supplier) are clear about any differences, including:

- changes in scope of the goods or services
- changes in the mode of delivery
- changes in timing of delivery
- changes to the contract terms and conditions.

Think about who needs to know about the changes and keep them informed. A matrix of changes could be considered for the purposes of a separate transition plan or transition checklist. In the early stages of the new contract, you should monitor contract performance closely to make sure that the supplier is not simply doing what they have always done but is delivering the goods and services under the terms and conditions of the new contract.

Consider, on a cost benefit basis, whether you need to develop a separate transition plan or transition checklist for your contract.



### General skills that contribute to effective contract engagement include:

- ability to understand contract terms and conditions
- negotiation skills and planning
- communication with influence and writing with persuasion
- risk management
- financial analysis and elevation
- conflict management and dispute resolution
- stakeholder and relationship management
- ability to develop performance frameworks and monitor supplier performance.



# 2 Start-up the contract

The table below lists the activities for the start-up the contract step. Your categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

| Activities during starting-up the contract include: | | Transactional contract | Routine contract | Complex contract | Strategic contract |
|---|---|---|---|---|---|
| 2.1 | **Review contract** | Required | Required | Required | Required |
| 2.2 | **Set up contract administration** | Recommended | Strongly recommended | Required | Required |
| 2.3 | **Set up contract information management** | Recommended | Strongly recommended | Required | Required |
| 2.4 | **Set up contract communication management** | Not required | Recommended | Strongly recommended | Strongly recommended |
| 2.5 | **Confirm contract management roles and responsibilities** | Recommended | Strongly recommended | Required | Required |
| 2.6 | **Review and update plans** | Not required | Recommended | Required | Required |
| 2.7 | **Provide the supplier with agreed access, assets, information and security** | Required (if applicable) | Required (if applicable) | Required (if applicable) | Required (if applicable) |
| 2.8 | **Conduct contract start up meeting** | Not required | Recommended | Strongly recommended | Strongly recommended |

# 2.1 Review contract

Good contract management requires a complete set of the contract documentation and a clear understanding of each party's obligations under the contract. If you are managing a contract (work order) under a DoSO, make sure you have a copy of that deed to understand the obligations of that supplier. If you were not involved in the sourcing process talk to the sourcing team to understand any significant issues or risks relating to the contract and the procurement process, particularly details of any tender negotiations and rationale for any changes. The procurement team will also be able to detail the drivers for the assessment of value for money so you will understand what provisions you should keep an eye on during the contract performance phase.

Obtain a copy of the supplier's tender response to understand factors around what they have offered and any additional details on how the costs were broken down or inclusions that are factored into the price. It is important to ensure that the financial delegate or S23(3) delegate has approved the expenditure and appropriate records have been maintained.

| **Key steps in this activity include:** |
|---|
| ✔ Review the contract. |
| ✔ Ensure you understand what is to be delivered under the contract and the outcomes to be achieved by the contract. |
| ✔ Identify the drivers to achieve value for money. |
| ✔ Identify all obligations in the contract for both parties. |
| ✔ Identify the rights available to the entity to ensure compliance by the other party such as, delivery and acceptance requirements, reporting, performance criteria (e.g. SLAs or KPI's), process for dealing with unsatisfactory performance, process for issuing breach notices and process for the escalation of issues. |
| ✔ Include relevant information in your contract management plan (see step 1.3). |

# 2.2 Set up contract administration

Clear contract administrative procedures will help all parties understand who must do what, when it has to be done and how it has to be done. These procedures should be clearly set up at the beginning so that everyone starts with a shared understanding.

At the very least, there should be processes to:

- verify that:
    i. deliverables itemised in an invoice have been delivered and accepted by the entity
    ii. the supplier has fulfilled the required obligations under the contract prior to making a payment.
- verify invoices are correct and in accordance with the contract
- ensure payments of correctly rendered invoices are made to the supplier within the time frame stipulated in the contract and in line with the Government's payment policy. Refer to the **Department of Finance website** for more information.
- track expenditure to ensure it does not exceed the value of the contract
- ensure that the S23 delegate has approved the expenditure and this documentation is kept in line with your entity's record keeping requirements.

| **In this phase, you should establish the processes and procedures to:** |
|---|
| ✔ Identify funding source and budget acquittal/accountability/reporting requirements. |
| ✔ Identify the method or process to reconcile and pay invoices, including the level of detail to be provided in invoices (e.g. purchase order numbers, email address for contact officer, description of work etc.), and the format for electronic invoices. Ensure there are processes established to obtain other supporting documents such as evidence of prior travel approvals, time-sheets and incidental receipts. |
| ✔ Set up record keeping and tracking systems (budget, funding, invoicing, performance, contract variations etc.). |
| ✔ Identify and promulgate in advance a schedule of meetings for parties to the contract, end-users and stakeholders, giving the time, place and purpose of the meeting. This gives the best opportunity for the right people to attend contract management meetings. |
| ✔ Identify and promulgate details of any ordering procedures to be followed by users wishing to obtain goods or services under the contract. |

| In this phase, you should establish the processes and procedures to: |
|---|
| ✔ Ensure any new or updated conflict of interest declarations or deeds of confidentiality from relevant personnel (entity and supplier) have been provided (see section 1.1 Behaving ethically). Include reminders of these obligations in agendas for contract management meetings if appropriate. |
| ✔ Ensure all insurances, indemnities, guarantees and Statements of Tax Record required from the supplier have been received, documented and secured appropriately. Set reminders to ask for these documents if they need renewing. |
| ✔ Ensure you have copies of any standards relevant to your contract. |
| ✔ Ensure supplier personnel are on boarded, aware of relevant HR policies, and complete mandatory training required by your entity (i.e. induction programs, behavioural expectations, fraud awareness). Identify any training needs for the contract management team and complete any entity specific and mandatory requirements. |
| ✔ Include relevant information in your contract management plan (see step 1.3). |

## 2.3 Set up contract information management

Proper systems for identifying, gathering and recording relevant information, including decision making and exercising relevant delegations, will help you to manage your contract effectively and provide a clear audit and accountability trail.

| Key steps in this activity include: |
|---|
| ✔ File a signed copy of the contract in your financial management information system and/or your document management system. |
| ✔ Decide how you will register and manage information about key contract activities, for example, meetings with supplier, correspondence with users and internal clients, complaints or variations. |
| ✔ Create a contract register or other documents to track contract performance and keep records. |
| ✔ Develop templates for relevant activities, for example, reporting templates, meeting agendas, standard communication emails etc. |
| ✔ Ensure you retain all contract records for reconciliation and audit purposes. Ensure that sensitive information is stored as per your entity's records management policy. |
| ✔ Include relevant information in your contract management plan (see step 1.3). |

## 2.4 Set up contract communication management

Keep up-to-date details of:

- who to talk to about contract issues
- preferred channels for communication and when to use them (e.g. phone calls, emails, meetings, reports, formal letters)
- agreed response time frames
- how to escalate unresolved issues.

This will help all involved communicate appropriately about contract issues. For more complex or strategic contracts, you may want to maintain a separate communications plan and communications register.

| Key steps in this activity include: |
|---|
| ✔ Identify channels for communication between all parties for different types of contract issues that may arise. Share with all concerned including the supplier where appropriate. |
| ✔ Establish appropriate response timeframes for contract communications (e.g. emails might be acknowledged same day and responded to within 24 hours unless the issue is complex). |
| ✔ Ensure there are details of how and when urgent information will be communicated, such as notifying the entity about suspected or actual security incidents. |
| ✔ Set up contract meeting and reporting schedules. |
| ✔ Establish a correspondence log to ensure you don't miss key contractual dates and you appropriately action all issues. |
| ✔ Include this information in the contract management plan (see step 1.3). |

## 2.5 Confirm contract management roles and responsibilities

It is important that you know who is responsible for key contract management activities and that you allocate appropriate resourcing to the contract.

| **Key steps in this activity include:** |
|---|
| ✔ Review the contract to identify who the nominated Commonwealth and supplier representatives are under the contract and what responsibilities they have. |
| ✔ Ensure any conflict of interest declarations or deeds of confidentiality from relevant personnel (entity and supplier) have been provided (see section 1.1 Behaving ethically). Include reminders of these obligations in agendas for contract management meetings if appropriate. |
| ✔ Clearly define and agree on the roles and responsibilities of the contract management team. |
| ✔ Document appropriate delegates and authorised officers consistent with the contract terms. |
| ✔ Confirm the account manager, operations manager, authorised officer etc. for the supplier. |
| ✔ Confirm specialist advisers (procurement, legal, technical, operational). |
| ✔ Identify stakeholders and end-users. Who is going to accept/own the goods/services? |
| ✔ Determine whether any training or other capability development is required for key people to be able to perform their contract management roles. (This may have been done in Step 1) |
| ✔ Include relevant information in your contract management plan (see step 1.3). |



### Different types of contract meetings

- **Regular progress meetings** that involve the supplier, your contract management team and other key staff from the procuring entity if required. These meetings are to discuss performance, contract events or milestones, changes to user requirements, review risks and to consider proposed actions or responses to current or potential issues.
- **Technical meetings**, as required, that involve specialist technical representatives from the contract management team, the contract manager and the supplier, to review technical reports and performance data and discuss technical issues.
- **Longer-term reviews and audits** to evaluate the achievement of objectives, results against budget, user satisfaction, the extent to which value for money is being achieved and requirements are being met, and how to address any emerging issues.
- **Issue specific meetings** may be required if an issue emerges that, if not addressed promptly, will have significant impact on the management, performance or delivery of the contract.

## 2.6 Review and update plans

Ideally, you will have prepared your contract management plans prior to the contract being awarded. It is a good idea to review these plans at the start of the contract and update them if details have changed. If you haven't developed your plans before the contract has commenced, decide which plans you will need and develop them as soon as possible (see sections 1.3 to 1.5). You should also consider how often these plans will be reviewed and updated during the contract (if applicable) and note these details and time frames in your contract management plan.

| **Plans for drafting or updating (as required):** |
|---|
| ✔ Contract management plan |
| ✔ Risk management plan |
| ✔ Transition plan |
| ✔ Communications plan |
| ✔ Probity plan and register which may cover by extension integrity and fraud controls |
| ✔ Security plan (including physical security and information security [see **Protective Security Policy Framework Policy 6** for more information). Information security may cover cyber security, ICT and privacy considerations. |
| ✔ If required, ICT Security Assessment of any systems or processes used by the supplier (which will hold Commonwealth data) in delivering the contract. |

### Ensure that you comply with the requirements of the Protective Security Policy Framework.

The Protective Security Policy Framework (PSPF) helps Australian Government entities to protect their people, information and assets, both at home and overseas. When assessing the security requirements of your contract, it is important to reference the PSPF.

## 2.7 Provision of security, access, assets and information to supplier

For some contracts, you will need to organise access for the supplier to your facilities, assets, information or data and in some instances, specified personnel may need to obtain security clearances. You may need to arrange access to buildings, information systems, physical documents or other assets.

| **You may need to organise the following:** |
|---|
| ✔ Security clearances for supplier personnel. Your contract should identify which party is responsible for obtaining the security clearance, however in most cases, it will require your entity's sponsorship. Engage with your security area for instructions. In the case of an Australian Government Coordinated Procurement Arrangement, the sponsorship of the AGSVA clearance may need to be centrally sponsored, keeping in mind that many entities also have varying additional security processes which will need to be progressed separately through respective entities. |
| ✔ Access to facilities (office buildings, warehouses etc.). |
| ✔ Access to information systems, networks or data storage facilities. |
| ✔ Access to your information or data in either physical or electronic form. |
| ✔ Access to your assets. |
| ✔ Ensure that you keep a list of all assets, information or data that you provide to the supplier as these will need to be returned or disposed of at the end of the contract. Record this information in your contract management plan. |

# 2.8 Conduct a contract start up meeting

A contract start-up meeting is a good way to begin a contract as it allows you to establish a working relationship with your supplier and to develop a shared understanding of key aspects of the contract, including commercial, operational, performance and administrative expectations.

Where travel is an issue, remember contract management activities should be commensurate with the size and complexity of your contract, and holding meetings via video- or tele-conference may be better options.

| **A contract start up meeting typically covers:** |
|---|
| ✔ Introduction of key people and establishing relationships with suppliers and relevant third parties. |
| ✔ Develop a shared understanding of the contract – commercial, operational and performance aspects. |
| ✔ Agree roles and responsibilities of key people including assigning responsibility for risk management. |
| ✔ Confirm timing of contract deliverables and milestones. Note that time frames for the delivery of milestones should be detailed in your contract. Other key events may be identified between you and the supplier or the contract may require a procurement schedule to be produced by the supplier. |
| ✔ Discuss transition issues and how to manage them. |
| ✔ Discuss and agree how the suppliers performance will be managed and consider establishing a performance management framework for complex and strategic contracts. |
| ✔ Agree how to manage the contract relationship including communication, regular meeting details, issues, disputes, variations and escalation. This may include discussion of an entity's notification expectations, e.g. of security incidents, key points of contact and out-of-hours contacts if urgent attention or action is required. Refer to contract documentation for details on any of these processes where applicable. |
| ✔ Clarify invoicing and payment arrangements in line with the contract terms (e.g. email address for delivery of invoices and required supporting evidence). |
| ✔ Ensure compliance with the **Supplier Pay on-Time or Pay Interest Policy (RMG 417)** |
| ✔ Housekeeping tasks that have not been actioned earlier such as:<br>• ensuring insurance certificates, bank guarantees and Statements of Tax Record are delivered<br>• ensuring deed of confidentialities and conflict of interest forms are signed and delivered<br>• clarifying processes for security clearances and discussing information and data security obligations in the contract and how often these will be reviewed<br>• detailing requirements for access to facilities, assets, information or data<br>• clarifying requirements for any entity specific mandatory training. |



# 3 Manage the contract

The table below lists activities that may be relevant during contract performance. Your categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

| Activities during manage the contract step include: | | Transactional contract | Routine contract | Complex contract | Strategic contract |
|---|---|---|---|---|---|
| 3.1 | **Using advisers** | Recommended | Strongly recommended | Strongly recommended | Strongly recommended |
| 3.2 | **Unintentional Contract Changes – waiver and Estoppel** | Strongly recommended | Strongly recommended | Strongly recommended | Strongly recommended |
| 3.3 | **Building and maintaining effective professional working relationship with your supplier** | Recommended | Strongly recommended | Strongly recommended | Strongly recommended |
| 3.4 | **Measuring and managing performance** | Recommended | Required | Required | Required |
| 3.5 | **Managing delivery and acceptance** | Required | Required | Required | Required |
| 3.6 | **Subcontractors** | Required (if applicable) | Required (if applicable) | Required (if applicable) | Required (if applicable) |
| 3.7 | **Performing contract administration tasks** | Required | Required | Required | Required |
| 3.8 | **Managing contract risk** | Required | Required | Required | Required |
| 3.9 | **Contract review** | Not required | Not required | Strongly recommended | Strongly recommended |
| 3.10 | **Managing complaints, disagreements and disputes** | Required (if applicable) | Required (if applicable) | Required (if applicable) | Required (if applicable) |
| 3.11 | **Managing contract variations** | Required (if applicable) | Required (if applicable) | Required (if applicable) | Required (if applicable) |
| 3.12 | **Managing contract extensions or renewal** | Required (if applicable) | Required (if applicable) | Required (if applicable) | Required (if applicable) |

# 3.1 Using advisers

As a contract manager, you may have access to specialist advisers within your entity who can help you with contract management activities. It is better to seek advice from a specialist early to avoid making mistakes.

| Commonly used advisors for contract management: | |
|---|---|
| **Procurement specialists** | Can assist you with questions about the procurement process (including contract management). They can provide advice about the processes you need to follow for contract variations, supplier performance management, contract closure or contract renewal. They can also give you advice around any probity issues that may arise. |
| **Probity advisers** | Can advise on probity issues including conflicts of interest as they arise during a tender process and they may also develop a probity plan which provides guidance on how probity is addressed throughout the procurement life cycle. Probity advisers may be internal or external to your entity, but they should be independent and impartial to your procurement process. You should keep in mind that engaging the same probity adviser on an ongoing basis over several issues increases self-interest and familiarity risks that may threaten actual or perceived independence. |
| **Technical and operational advisers** | Can help you to better understand issues around the subject matter of your contract. For example, these advisers may be able to help you determine whether goods or services provided by the supplier have met the required contractual standard. They can also be helpful in generating possible solutions to complaints and disputes, as well as providing advice in situations relating to the supplier's performance. They may also be able to give you technical advice for issues such as finance and budgeting contracting; facilities; and information and cyber security. |
| **Legal advisers** | Can help you deal with legal issues associated with your contract. For example, you should seek legal assistance if a situation looks like escalating into a formal dispute, if you are thinking about terminating your contract or if you need help in understanding the meaning of a clause in your contract. They can also give you advice around any probity issues that may arise or give advice about privacy issues. |

These advisers may be internal resources available to you or your entity may have existing arrangements in place with other Commonwealth entities or external providers. Depending on the entity, some of this advice may be able to be sourced internally.

It is important to document the advice even if you decide not to act on that advice.

# 3.2 Unintentional Contract Changes – waiver and Estoppel

Contract managers need to understand the legal rules around their contracts. Their actions could unintentionally 'waive' or remove/reduce the Commonwealths rights under a contract, for example by:

- failing to enforce rights, such as claiming compensation for delays
- accepting goods or services that do not meet requirements
- signaling, directly or indirectly to the supplier that certain requirements or deliverables are no longer needed.

If a contract manager believes a supplier has breached the contract, they should not make any statements to the supplier that no action will be taken by the entity, without first seeking additional advice. The contract manager should continue to clearly state the Commonwealth's rights in formal communications so as not to limit future action. While issues should ideally be identified early and resolved through discussion and negotiation, the Commonwealth must retain its ability to enforce its contractual rights if necessary.

It is important to note that an entity cannot reserve its rights forever. At some point, an entity will be taken to have waived its rights in relation to a matter. Accordingly, a decision as to whether an entity will enforce its rights in relation to a particular matter needs to be made within a reasonable timeframe. Ideally, within this timeframe, the contract manager should negotiate a satisfactory resolution of the matter with the supplier, which may result in formal changes to the contract, or some form of deed of settlement to record what has been agreed.

Like 'waiver,' estoppel may prevent an entity from enforcing contractual rights if a supplier reasonably relies on a representation made by the contract manager. For example, if the manager informs the supplier they don't need to meet certain contract terms or won't face consequences for a default, the entity may lose the right to enforce compliance later. Similarly, if a supplier misses a delivery deadline, the entity may choose to terminate the contract. However, if the contract manager grants an extension to the deadline that was missed, the entity may not be able to terminate based on the missed deadline at a later point in time. This doesn't mean extensions should be avoided, but they should be deliberate, negotiated decisions, ideally offering benefits such as lower costs or extra goods in return. Where extensions are granted, it should be specific to the situation, and not be seen as automatically granted when there is a delay.

Contract managers must avoid making informal contract changes, as this can add unexpected obligations for the Commonwealth. Courts have ruled that a contract can be modified through actions, even if the contract states that changes must be in writing. For example, if a contract manager asks a supplier to do extra work or agrees that goods don't need to meet certain specifications, and the supplier acts based on this, a court may decide that the contract has been changed, even if the formal change process wasn't followed.

A good technique commonly used by contract managers to avoid making informal contract changes is to have discussions with the supplier about a potential change, but to make clear that no change to the contract is agreed until it is made in writing and signed by both parties.

This does not mean that contract managers should not make appropriate changes to the contract, where these are needed to ensure the contract performs as intended. However, these changes should be deliberately made, and the contract manager should follow formal contract change process set out in the contract.

| **To avoid unintentional contract changes, contract managers should:** |
|---|
| ✔ Understand and follow the contract terms and conditions. If any parts are unworkable or suboptimal, negotiate changes with the supplier. |
| ✔ Set up strong governance for the contract. |
| ✔ Build and maintain a professional relationship with the supplier and subcontractors. |
| ✔ Know the market and what good business practices look like. |
| ✔ Provide necessary support outlined in the contract, such as information and equipment, and ensure it is returned to the Commonwealth if the contract requires it to be returned. |
| ✔ Process payment claims as outlined in the contract. |
| ✔ Keep thorough written records of interactions, including key decisions, conversations, meetings, and emails. |
| ✔ Manage contract changes properly by negotiating and documenting amendments as required. |
| ✔ Address issues early in a fair and cooperative way. If problems persist, escalate them quickly through the proper channels. |
| ✔ Seek expert legal, financial, or contracting advice when needed. |

## 3.3 Building and maintaining an effective professional working relationship with your supplier.

An effective professional working relationship with your supplier is the cornerstone of contract management. Poor relationships between contracting parties are a significant cause of contract failure or sub-optimal contract performance. Relationship management is about human interaction – the interactions between an entity's personnel and the supplier's personnel. If you have a professional and fair relationship with your supplier and maintain open communication:

- you are more likely to achieve the contract outcomes
- you can identify and resolve problems before they escalate
- you can discuss and resolve issues of non-compliance or under-performance in a constructive way.

| **An effective working relationship is characterised by:** |
|---|
| ✔ Mutual trust and understanding. |
| ✔ Open, clear and honest communication. |
| ✔ Parties that appreciate one another's objectives, strategy and point of view. |
| ✔ A collaborative approach to achieving contract delivery. |

Effective relationship management relies on clear communication, timely and consistent decision-making, and a proactive approach to resolving issues responsibly. A strong working relationship with the supplier helps identify delays or problems early, allowing them to be addressed informally before formal dispute resolution becomes necessary. Maintaining a good relationship does not mean being overly lenient or strict, nor does it involve waiving or altering contractual rights. Instead, it fosters a non-adversarial approach to problem-solving, focusing on the issue itself rather than the individuals involved.

You can establish an effective professional working relationship with your supplier by:

- establishing shared understanding of the contract (a contract start up meeting/workshop is helpful here)
- having clear contract management processes and applying these consistently
- ensuring that key people have good skills and relevant experience to develop and maintain a professional relationship with your supplier
- having clear performance standards, review processes and undergoing corrective actions consistently and promptly when needed.

You might need to strengthen your relationship with your supplier if you experience issues such as:

- poor response times to requests
- lack of a shared understanding about key contract issues
- limited willingness to respond to requests for information or updates on progress
- general dissatisfaction about the helpfulness of the other party.

Avoid adversarial behaviour, as this is not constructive and could damage your relationship.

Your entity may have multiple contracts with one supplier. It may be appropriate to consider a holistic approach to managing your entity's relationship with your supplier. This can have the advantages of leveraging strategic vendor relationships to achieve value for money outcomes for multiple arrangements.

## Relationship management for complex/strategic contracts

A common approach to relationship management has been to measure a supplier's performance by monitoring timeliness of delivery and functionality of the goods delivered. If a problem arises, an entity can terminate the contract and/or claim damages. This method assumes that the goods can be easily sourced from another supplier, making replacement straightforward.

Although the above approach may apply for simple or less complex contracts, in many cases, the scope, scale and complexity of a procurement activity means that damages or termination are not an effective solution, given that there is usually no readily available replacement for the goods or services required. Even if replacement is possible, the option is usually one of last resort because of the time, resources and industry implications of changing suppliers.

For most complex contracts, maintaining a strong working relationship with the supplier is key to successful contract performance. This involves open and honest communication to ensure that the required goods or services are delivered on time, within budget, and to the expected standard. It means establishing trust with the other party so that if monitoring indicates potential delays the problems can be discussed and resolved in a fair and constructive manner.

For more complex or strategic contracts, particularly long-term contracts, you may wish to:

- establish a behaviours charter or relationship management plan to help improve contract outcomes
- consider using Supplier Relationship Metrics to promote open and effective engagement with the Commonwealth.

You can do this formally through the contract (where the contract allows) or less formally as part of the contract management plan or as a standalone document. Make sure you get advice from your central procurement area or legal adviser when preparing these documents.

## Change of contract manager

If at any time during the contract a member of the Contract Management team leaves (resigns or is reassigned) it is imperative that a handover is conducted between the outgoing and incoming Contract Managers, where possible. It may be beneficial to develop a Contract Manager Handover Checklist which will help mitigate risk of failure to effectively manage the contract and provides the best opportunity to minimise any disruption to the department and/or the supplier. Any handover will also provide opportunity for review of contract performance, risks and any lessons learned to date.

# 3.4 Monitor and manage performance

Performance management involves the actions you take to ensure the goods or services are delivered as required under the contract. Good performance management is key to achieving value for money outcomes. Performance management should take place throughout the life of the contract and be based on the performance framework included in the contract.

Performance standards and requirements should be clearly specified in your contract, so you will need to check your contract to understand the performance parameters.

## Milestones and deliverables

An important tool in measuring and managing supplier performance is the appropriate distribution and linking of supplier payments to the satisfactory completion of milestones and deliverables. Milestones and deliverables should have clear entry and exit criteria and due dates. This is important when verifying invoices and time sheets from your supplier, you can ensure that the goods or services which you are paying for directly correspond to the completion of a milestone or deliverable in your contract.

Generally, if there are no specific performance requirements in your contract:

- goods should be new and unused, fit for purpose and inclusive of manufacturers warranties
- services should be provided at a standard expected of an experienced professional supplier of similar services.

| **Performance management involves:** | |
|---|---|
| **Performance measurement** | collecting accurate and timely data on the supplier's performance. |
| **Performance assessment** | deciding whether the supplier's performance meets the standards contained in the contract. |
| **Performance adjustment** | taking appropriate action such as understanding features of good performance, correcting areas of underperformance, or amending the contract requirements to meet changing needs. |

You will not usually need to include complicated performance management activities in transactional or routine contracts. You only need to make it easy to determine whether the goods or services met specification, were delivered on time and within the agreed budget. You may need to include formal performance management approaches in more complex contracts.

| **Typical performance measures for a contract could include:** | |
|---|---|
| **Quality** | the quality of the goods or services delivered compared with the specified quality in the contract. For international or Australian standards, this may also require periodic auditing of compliance by an independent assessor (**CPRs paragraph 7.26**). |
| **Quantity** | the number of items or volume of services delivered compared with the contracted number or volume. |
| **Cost** | the actual costs compared to the cost specified in the contract. |
| **Responsiveness** | the time taken by the supplier to respond to requests, compared with the contracted timeframes (e.g. in a SLA). |
| **Customer satisfaction** | the degree of satisfaction expressed by people receiving goods or services under the contract compared with the expected level of satisfaction (e.g. in a SLA). |

You may collect information about the supplier's performance to identify any gaps between their performance and the performance standards defined in the contract. These measurable indicators may be called KPIs or SLAs. Implementing processes to monitor supplier performance will allow you to determine whether a supplier is meeting their contractual commitments and raise performance issues in a timely fashion. If the supplier is under-performing, the contract manager should engage with the supplier as soon as possible to correct the under-performance.

You should ensure that any information you use to assess the supplier's performance is accurate, fair and verifiable, particularly if this is used to justify actions you are taking in response to unsatisfactory supplier performance. It is important that information requests and reporting requirements are not unnecessarily onerous on the supplier and detract from their ability to deliver the services.

## Resolving performance issues

Early engagement with a supplier to address performance issues is key to successful contract management. Unresolved performance issues can have a significant impact on stakeholder relationships and the delivery of the contract.

Common contractual mechanisms for managing supplier performance may include: KPIs or SLAs, progress reports, scheduled performance reviews, regular supplier meetings and quarterly and/or annual reviews. Remember to review your contract and identify any processes relevant to managing the performance of the supplier.

Some contracts may include a Performance Management Framework which will:

- contain measures to remedy underperformance
- outline expectations for behaviour and ethical conduct
- include incentive payments linked to performance/deliverables/milestones
- set out reporting requirements to verify satisfactory performance.

## Sustainable procurement

Sustainable procurement aims to purchase goods and services which limit adverse social, environmental and economic impacts. This includes considerations such as sustainable design and manufacturing, the cost of operations and maintenance over the life of the goods and services and disposal at the end of the product's useful life. The Australian Government is committed to sustainable procurement practices.

The CPRs require that value for money assessments include consideration of environmental sustainability. Your Approach to Market (ATM) should require tenderers to describe the positive environmental impacts the supplier can offer under the terms of the specific procurement.

Further to this, the Environmentally Sustainable Procurement Policy, which is a procurement-connected policy, requires high value procurements in specific categories to address environmental impacts. This includes reporting and contract management obligations.

Where a supplier includes sustainability commitments or targets in their ATM response, these are to be included in the contract. Any commitments or targets need to be measurable, and the supplier's performance should be monitored through contract management processes such as reports, meetings, site inspections or audits. For procurements that are within scope of the Environmentally Sustainable Procurement Policy, there are mandatory contractual reporting requirements.

The contract management process should also endeavour to encourage and promote continuous improvement and innovation for environmental sustainability.

Further information on **environmental sustainability and related policy obligations**.

## Keeping an open mind on underperformance

Sometimes a supplier's apparent underperformance can be caused by the procuring entity (e.g. if supplier does not get required inputs at agreed times, if supplier's employees cannot access the building, if there are changes to the procuring entity's requirements, if users are asking for services that are not included in the contract).

It is always sensible to approach a performance gap with an open mind – it could be a problem for the supplier to fix, but it may also be a problem for you to fix internally.

## Managing supplier performance

Most contracts are completed without problems, but as a contract manager, you need to be prepared to address supplier performance issues as they arise. Many contract management problems can be avoided by developing an effective working relationship with the supplier.

Both parties should agree on:

- what aspects of performance will be measured
- how they will be measured
- how frequently they will be measured
- who will do the measurement?

This information may be included in your contract.

The data that you collect about the supplier's performance can be used to identify any gap between the supplier's performance and the standards expected and defined in the contract. You need to be confident that the information you use to assess the supplier's performance is accurate, fair and complete.

If performance measurement indicates that there is a gap between the supplier's performance and the expected standard, you must work with the supplier to bridge that gap. This helps to ensure that the Australian Government is getting what it expects and what it is paying for (therefore achieving value for money).

Supplier underperformance can be minimised by having a performance measurement approach that allows prompt and ongoing feedback to the supplier about their performance, particularly regarding timeframes or deliverables. As contract manager, you need to be aware of any signs of potential underperformance so you can address them before they become serious. Prompt action can help prevent the problem worsening. It also lets the supplier know of any potential performance problems early and may make it easier for them to address the issues at low cost and with minimal disruption.

Performance management arrangements contained in your contract might involve:

- discussions to hear the supplier's perspective on the performance gap
- agreeing on corrective actions to get performance back on track
- establishing a process for checking the required improvements are taking place.

Corrective actions could include the supplier replacing or using additional personnel, reporting back more frequently on progress, modifying processes or systems or clarifying the procuring entity's requirements.

Usually responding to issues will not involve a contract variation as the supplier is only providing what they originally agreed to provide for the price already set out in the contract.

## Managing more serious underperformance

If the underperformance is repeated or is more serious in nature, you may need to take formal action. Your contract will include provisions dealing with default and remediation, as well as termination.

Corrective action for serious underperformance could include:

- withholding payments until performance returns to a satisfactory level
- involving senior management from relevant parties in formal discussions
- developing strategies to address the problem, formally documenting them and following up
- implementing other formal mechanisms written into the contract.

You may need to get legal or other specialist advice before taking any of these actions.

To protect the Australian Government's interests, payment for goods and services should always be linked in the contract with satisfactory performance. You should not accept, and therefore should not pay, for goods and services that do not meet the contractual standard.

## 3.5 Managing delivery and acceptance

The role of a contract manager is to ensure the supplier is meeting its obligations under the contract – including that the goods or services purchased under the contract are received on time, within budget and are fully compliant with contract specifications.

If the goods or services do not meet the standard required in the contract, you should notify the supplier immediately and agree on a way forward to ensure they meet the contract standard. The contract may include provisions around acceptance of deliverables and the process for remediation of non-compliant deliverables, so ensure you understand and follow any contractual obligations and processes.

If you fail to address the non-performance with the supplier, it could inadvertently cause a waiver of that conduct/ breach (see section 3.2 Unintentional Contract Changes - waiver or Estoppel).

### Delivery and acceptance

**Delivery** refers to physically receiving the contracted goods or services from the supplier.

**Acceptance** is the term used to describe how the procuring entity determines whether the goods or services meet the contract requirements, and formally accepts them. Generally, the contract will set out the process for acceptance.

General process for acceptance:

1. Check appropriate risk management measures are in place, for example, physical security and storage of goods and whether any insurance arrangements need to be put in place.
2. Ensure the supplier has access to any facilities needed to deliver the goods or services.
3. The supplier should provide the contract deliverables on time, within budget and compliant with contract specifications. This may include providing formal documentation and supporting evidence (e.g. results of internal acceptance testing showing the goods or services meet the contracted requirements).
4. Inspect goods or services or review against the standards or specifications detailed in the contract – your contract will include what you need to do for acceptance (e.g. certification that deliverables meet a certain standard, acceptance testing, spot audits or verification by an independent assessor (**see CPRs paragraph 7.26**). For services, you may need to assess against contractual performance measures such as service levels and compliance with reporting requirements. If you are receiving your goods or services by staged delivery, ensure the full quantity is ultimately delivered.
5. Decide whether to accept or reject the goods or services within contractual timeframes. In some contracts, if you do nothing then the goods or services will be deemed as accepted after a certain period.
6. If goods or services do not meet contractual standards, follow processes set out in your contract. In most cases, this involves notifying the supplier and explaining the reasons for the rejection. The supplier must then remediate the goods or services, generally, at their own expense. It is easier to ensure goods or services are not faulty and meet contract specifications at the delivery stage, rather than later in the process.

### Late, incomplete or unsatisfactory delivery

If you receive goods or services that do not meet the contract standard, you should follow the procedures set out in the contract to resolve the issue.

You may need to seek legal advice to understand the Australian Government's rights under the contract. Avoid doing or saying anything that might have a negative impact on the Australian Government's rights (e.g. do not pay invoices for incomplete, undelivered or unsatisfactory goods or services) until you have sought legal advice.

## 3.6 Subcontractors

Most contracts require suppliers to impose the contractual requirements agreed between the Commonwealth and the supplier on any subcontractors they use to deliver a contract.

If your supplier uses subcontractors, the contractual relationship remains between your entity and the supplier. This means the supplier remains responsible for managing the contract, as well as managing the involvement of any subcontractors. However, you should understand what parts of the contract are completed by subcontractors and what impacts it could have on the management and delivery of your contract.

It is important that you understand who you are doing business with and have access to an overview of the supply chain, including relevant information about subcontractors performing work under the contract. Entities have a responsibility to communicate issues to the supplier when subcontractors are not delivering goods or services consistent with the terms and conditions of the contract.

The **Commonwealth Procurement Rules (CPRs) paragraph 7.21** require that you must be able to make available, on request, the names of any subcontractor(s) who perform part of your contract. Suppliers should inform relevant subcontractors that their participation in a contract may be publicly disclosed. This should be a provision within your contract.

When deciding on whether to approve a subcontractor for use, think about the effect it will have on the contract, including whether it raises any risks and whether the risks identified are acceptable to manage. As an example, subcontractors may have reporting obligations under the *Modern Slavery Act* and it may be necessary to understand any risks in their supply chain.



### Modern slavery risks in procurement

The Australian Government is taking a global leadership role in combating modern slavery through its landmark *Modern Slavery Act* (Cth) *2018* (the Act). The Act, which came into effect on 1 January 2019, requires large businesses, and the Australian Government, to publish annual Modern Slavery Statements outlining their actions to identify, assess and address modern slavery risks in their global operations and supply chains. The Australian Government must submit its annual modern slavery statement by 31 December each year. Statements will capture activities undertaken in the financial year immediately prior to publication.

To support the Government's reporting obligations, entities should take action to identify and address modern slavery risks in their procurement activities. If your contract was assessed as having a high risk of modern slavery then there may be clauses in your contract that require the supplier to notify or report on any modern slavery identified in the supplier's operations or in their supply chain. This may involve the supplier ensuring that personnel have undertaken suitable training and preparing and implementing a modern slavery risk management plan. Contract managers should work with the supplier to implement and ensure compliance with these plans to manage identified risks.

Modern slavery can occur in every industry and sector and has severe consequences for victims, it is important as a procurement official that you have an understanding of the risks which are applicable to your procurement's sector and industry risk as well as supply chain model risks.

The Australian Border Force has produced a modern slavery procurement **toolkit** to assist procurement officers.

# 3.7 Performing contract administration tasks

This phase involves implementing the contract administration processes you developed in Step 2 – Start up the contract. Effective contract administration provides accurate recording of contract information and progress and can help when making decisions around contract performance.

**Some of the key actions to consider include:**

- **Keep up-to-date records** of who to contact. This is important where there is staff turnover (either in your entity or at the supplier's) or when individuals are in different locations. You should ensure all contact details are in your contract management plan.
- **Maintain probity plan and manage conflict of interest and deed of confidentiality declaration**, particularly after any changes in personnel.
- **Manage and update contract documents**, including variations or work orders, etc. This ensures contract documents are easily accessible and accurately reflect any agreed changes at a point in time. This also provides an audit trail (see section 3.11 Managing contract variations).
- **Check on the currency of insurances, guarantees, indemnities and Statements of Tax Record** (if any) as required by the contract. This is part of contract risk management.
- **Maintain the contract management plan.**
- **Maintain other contract plans and schedules.** For example, this may include a regular assessment of compliance with plans (such as security plans) and regular review and updates of the plans.
- **Manage relevant correspondence** relating to the contract, including contract reports, and formal notices or letters to suppliers, etc.
- **Schedule meetings and performance reviews.**
- **Maintain and circulate meeting minutes, file notes and other records** to relevant stakeholders.
- **Ensure all parties follow correct delivery and acceptance processes.**
- **Provide financial control for the contract,** including tracking expenditure (usually via a budget or spreadsheet), verifying invoices for payment and making timely payments to the supplier, etc.
- **Maintain processes for identifying and tracking information regarding intellectual property and confidential information.**
- **Maintain processes to ensure supplier reporting is consistent with their contractual obligations.** For example, regular reporting of data required as part of KPIs or timely reporting of security or privacy incidents.
- **Actively manage risks.** This may be through a risk management plan. **Maintain and update the risk register and risk management plan.** Escalate issues if required.
- **Process and manage contract variations.**

  **Warning:** It is possible to unintentionally vary the contract through conduct (e.g. in an email or through a conversation) so be aware of this risk in all your communications with a supplier (See section 3.2 Unintentional variations and waivers through conduct, and section 3.11 Managing contract variations).
- **Monitor the contract end date and options for extension.** Take timely actions to ensure there is a continuous supply of goods or services required by your entity. Careful management of end dates is important (see section 3.12 Managing contract options or extensions). There may be termination or extension option requirements in your contract that you must follow.

  **Warning:** Once a contract has expired, you cannot exercise an unused option to extend, or vary the contract. If required, you will need to establish a new contract and you should take care in making any promises to an incumbent supplier in any ongoing communications.

## Verifying invoices

When verifying an invoice, you should check:

- the description of goods or services on the invoice matches the description in the contract and the quantity matches a delivery receipt or an acceptance certificate and does not exceed the contracted amount
- the invoice has been correctly calculated (e.g. per unit cost X number of units)
- GST has been correctly applied
- the invoice date is after the goods or services were received (unless in a case where payment in advance has been agreed)
- there are no other obvious errors and the invoice meets any other contract requirements.

In some circumstances, other payment methods may be included in the contract (e.g. milestones, progress or start up payments). If so, you will need to verify invoices according to these terms, which may include things like evidence of milestone achievement and payment amounts.

To mitigate the risk of fraud, it is good practise to have at least two separate people independently verify parts of the invoice payment process. This could include the user verifying if the correct goods or services were received, the contract manager verifying compliance to contract terms, a financial manager approving the payment and another person entering the information into the financial management system. This process should be proportionate to the size and complexity of your contract.

## Making payments

You should only make a contract payment according to the contract provisions. Generally, you should only pay an invoice when:

- you have received the goods or services and they meet the required standards
- the supplier is compliant with the contract and other contract payment terms
- you have received a correctly rendered invoice according to the contract
- you have obtained all necessary authorisations and approvals.

Your contract may require a formal acceptance certificate if the contract has a formal acceptance process.
Your entity may also have additional requirements under its Accountable Authority Instructions. Check with your Chief Financial Officer area.

It is important to make payments on time. Time frames are set out in your contract and should be in accordance with Resource Management Guide No. 417 – Supplier Pay On-Time or Pay Interest Policy. Note that RMG 417 applies to most NCE procurements *"even if a written contract or approach to market fails to include clauses that reflect this policy, or if no written contract exists between the NCE and the supplier"*.

Be aware that if your entity and the supplier have the capability to deliver and receive electronic invoices (eInvoices) through the Pan-European Public Procurement On-Line (PEPPOL) framework and have agreed to use e-invoicing, the maximum payment term is ***5 calendar days*** as specified in RMG 417.

Delayed payments can incur interest and undermine your relationship with the supplier.

## Managing resources

Your entity needs to adequately resource the management of its contracts. This means providing you with senior management support, necessary expert advice and personnel with relevant skills (or the opportunity to obtain them). These skills include contract management, and may include interpersonal, subject matter and project management skills.

## Want to know more about managing resources?

The Department of Finance has issued a range of **Resource Management Guides** that provide you with helpful information.

## Keeping records

You must keep all relevant documents to comply with the *Archives Act 1983* (Cth). Relevant documents include documents that record decisions and/or approvals (including documents with signatures, the signed contract and any contract variations).

You should file documents consistent with your entity's records management practices.

A systematic approach to record keeping at the beginning of a contract will assist your entity to:

- provide evidence of business conducted and decisions made
- respond to Freedom of Information requests
- manage legal and other risks
- meet its accountability obligations.

As such, keeping good records should be seen as an integral part of, rather than incidental to, contract management activities.

## Want to know more about keeping records?

**Resource Management Guide 209** – Guidance for Commonwealth entities on the requirements to keep non-financial records can be **downloaded**.

**PGPA Act Section 41** – a Commonwealth entity must cause accounts and records to be kept that properly record and explain the entity's transactions and financial position.

# 3.8 Managing contract risk

Managing risk is an essential part of procurement and contract management. Contract risk should be actively managed throughout the life of a contract. As the contract manager, it is your job to deal promptly and effectively with any risk events that may occur during the life of your contract, but all officials with a role in managing the contract also play a part in managing risk and identifying emerging issues.

You need to include identified risks in your contract management plan, or if the risks are substantial, into a separate risk management plan (see sections 1.2 to 1.5). You will need to review and update the plan to reflect the current stage of the contract and continue to update it periodically throughout this step.

Your approach to managing risks for individual contracts should be consistent with your entity's broader risk management framework.

# 3.9 Contract review

To achieve value for money, you should ensure both the entity and the supplier meet their obligations under the contract.

During the life of the contract, you should review the contract periodically to assess if you are meeting the contract outcomes or they are on track to be met. You should also assess whether the contract continues to accurately reflect your entity's requirements. This may be through regular contract review meetings or through a reporting schedule. The timing and frequency of contract reviews is driven by factors including contract risks and duration. For long term or high risk contracts, you might require monthly performance reviews, and for low risk contracts, you might need an annual review.

You should also do a formal review when deciding whether to extend a contract (see section 3.12 Managing contract options or extensions).

# 3.10 Managing complaints, disagreements and disputes

You can make a complaint if you are unhappy with the goods or services delivered by the supplier, or if the supplier doesn't provide the goods or services within agreed timeframes. You may receive these complaints through users, stakeholders or from your own observations.

Supplier complaints often relate to late payments or a perceived failure by the customer to meet its obligations.

If you or a supplier makes a complaint, ensure you:

- follow any processes set out in the contract regarding complaints handling
- keep records of all conversations with the supplier regarding the complaints
- keep records of all complaints and actions taken to resolve them.

Conflict management by negotiation is a business process that involves strategic analysis, good preparation, and effective interaction between each party. In addition, it is a dynamic process of re-analysis, further preparation and continuing interaction between the respective teams.

Contract managers should have good communication skills. Effective communication is a vital ingredient to successfully manage complaints. Contract managers should:

- communicate regularly with the supplier, particularly face to face, whether this is through informal discussions or formal contract management meetings or reviews
- deal with problems or issues as soon as they become apparent
- regularly review tasks in conjunction with the supplier, and resolve an issue quickly to lessen any disruption to the contract and minimise the costs for both parties
- take minutes of meetings, setting out clear agreed outcomes and actions, and then monitor completion of the actions.

For more complex procurements, communication will often be undertaken formally at contract review meetings, like project management meetings and other reviews required under the contract. However, the contract manager should regularly communicate and discuss issues with their supplier counterparts outside of these formal meetings, within the areas and limits of their responsibility. Where the issues discussed relate to contract change proposals, schedule, payments or disputes, these should be formally documented.

Formal dispute resolution processes (e.g arbitration, litigation) are a last resort and should only be started after attempts to resolve the dispute by negotiation, escalation and mediation have failed to resolve the issues, subject to the processes required in the contract terms.

**NOTE**: If either party triggers the dispute resolution clauses, you should promptly obtain legal advice about the situation to protect the Commonwealth's interests.

| Some of the key actions to consider include: |
|---|
| ✔ **Engaging the supplier in open, transparent, constructive conversation** about complaints or disagreements promptly. |
| ✔ **Understanding the supplier's perspective.** |
| ✔ **Agreeing on corrective actions** to bring the goods and/or services within the requirements of the contract. |
| ✔ **Escalating issues if necessary** to achieve resolution. |
| ✔ **Using formal dispute processes only if you are unable to resolve issues using less formal processes** (e.g. negotiation, escalation, mediation). |
| ✔ **Ensuring you follow the dispute resolution clauses** of the contract to protect the Commonwealth's rights. |
| ✔ **Engaging with legal advisers if you need advice** regarding escalation and management of disputes. |



## Notification of significant events

To strengthen the Commonwealth's expectations regarding the ethical conduct of suppliers, the Commonwealth Contracting Suite and ClauseBank have been updated to include Notification of Significant Event Clauses. The clauses require a service provider to notify the entity managing the contract immediately upon becoming aware of a significant event.

A significant event means:

- any adverse comments or findings made by a court, commission, tribunal or other statutory or possessional body regarding the conduct or performance of the supplier or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability or reputation;or
- any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Supplier or it officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

For more information about what should you do when you become aware of a Significant Event and the use of this clause, please see the **Department of Finance website**.



## Managing complaints

End users may approach you with complaints about the goods or services provided to them under the contract. As contract manager, it is your job to look into the complaint, and consider whether it is something that you need to raise with the supplier.

Be aware that sometimes a complaint, even though genuine, is not covered by the contract. For example, a member of staff may complain that the cleaners are not washing dirty dishes in the sink, when this is not included in the cleaning contract.

You need to manage complaints according to the terms and conditions of the contract. If you cannot resolve the complaint, or the complaint indicates a serious or systemic issue, you should escalate the matter to a higher authority.

Early attention to complaints that arise in the contract management phase can prevent formal disputes from occurring. If a dispute about your contract does arise, you must carefully follow the dispute resolution process detailed in the contract.

## What is negotiation?

In contract management, negotiation usually means talking calmly, openly, transparently and constructively with the other party about the issues raised to see whether it is possible to reach an understanding and agreement about how those issues can be resolved. You should aim for a fair and equitable outcome for all parties.

It is preferable to resolve contractual issues as early as possible. This can save time and helps to maintain the delivery of goods or services provided under the contract

You must keep proper records of all negotiations during the life of the contract, whether the negotiation was successful in resolving the issue or not. Proper records will allow you to determine if the same issue keeps arising, if the supplier is performing in accordance with the agreements they made with you and if your entity is honouring commitments made to the supplier.

Any agreement you reach with the supplier must be consistent with the terms and conditions of the contract, with any proposal to change these arrangements identified and managed as a contract variation. You should be careful not to negotiate away important aspects of the goods or services that the Australian Government is paying to receive under the contract. This would reduce value for money obtained in the procurement.

## What is escalation?

If you cannot resolve issues directly with the supplier, you may consider escalating the negotiation through your entity's hierarchy so more senior people from your entity can negotiate with more senior people from the supplier. The contract should clearly outline processes for any dispute that arises between the supplier and the entity.

## What is mediation?

Mediation involves the use of a neutral third party (the mediator) to assist the parties to resolve their issues. The mediator does not impose a decision on the parties, but instead applies a structured process to help the parties resolve the dispute themselves.

Mediation can be faster, less formal and less costly than court proceedings or arbitration. Limitations of mediation may include difficulty enforcing the agreement if one of the parties decides they no longer wish to comply, and the risk that the parties cannot reach an agreement at all. Under an Australian Government Coordinated Procurement Arrangement, the panel manager can sometimes act as the mediator between the entity and supplier to help resolve issues.

## What is arbitration?

Arbitration is a formal dispute resolution process in which the parties refer their dispute to an independent third person (the arbitrator) for resolution. The aim of arbitration is usually to get a final and enforceable result without the costs, delays and formalities of litigation. Arbitration proceedings can be less complex than litigation and the arbitrator can be a person who is able to provide independent technical expertise relevant to the contract.

Arbitration can be costly, and it is possible that neither party will be satisfied with the outcome (which is often binding). Other limitations of arbitration can include difficulty agreeing on an arbitrator and finding an arbitrator with the right expertise for the case.

You should get **legal advice** if you are considering arbitration.

## What is litigation?

Litigation is the process of seeking compensation through the courts or other tribunal. A judge will hear the evidence presented by both parties and will reach a binding decision based on the facts of the situation and the application of relevant law.

Litigation is generally the most expensive way to resolve a dispute and can be time consuming, the proceedings are usually public, there are significant risks associated with the process and the parties may not be fully satisfied with the decision of the court. Litigation is generally only undertaken when other avenues of dispute resolution have not been successful or are not available.

If you are considering litigation, you **MUST obtain legal advice**. Refer to the Legal Services Directions 2017 issued by the Attorney-General for further information about your obligations in this process.

# 3.11 Managing contract variations

A key part of contract management is managing contract changes that may occur. A contract can be changed using various formal and informal means. Making changes to an established contract is commonly called a variation, however it may also be called an amendment or a change proposal.

Contract variations can be minor administrative changes such as a change of address or they can be substantial changes that affect the length, price-specified, personnel or deliverables under the contract introducing further complexity or risk. Contract managers need to be aware that contract variations can alter the contract to the detriment of the Commonwealth. Accordingly, prior to agreeing to a contract variation, contract managers need to consider whether the proposed variation is value for money. For more substantial variations it is important to seek **legal or policy advice** where appropriate.

A contract variation is itself a separate agreement and needs to be supported by consideration to take effect . Most contracts will provide that contract variations will be effective only if made by agreement in writing, although, as noted above, contract managers can inadvertently by their actions agreed to informally vary the contract. The use of a formal contract variation process aims to ensure that:

- all information required to understand the proposed variation and its impact on the performance of the contract is obtained from the supplier
- appropriate consideration can be given to the proposed variation
- an appropriate audit trail of variations made to the contract is kept
- the contract remains current by incorporating any contract variations
- value for money is considered and documented as part of the variation

The need for a contract variation may arise due to:

- unexpected events (including delays in delivery)
- changes in technology
- changes in legislation or policy
- minor changes to your organisation’s requirements
- changes in key personnel
- changes in delivery method or location
- changes to milestone delivery dates
- fluctuation in demand for the goods or services
- other factors that affect contract delivery.

Requiring contract variations to be in writing and signed by the parties with the appropriate authority minimises the risk that contracts can be inadvertently varied to the detriment of the Commonwealth. To the extent practicable, contract variations should be prepared by entity officials.

Contract managers also need to be aware that a proposed contract variation that significantly alters the scope of the contract could be considered to be a separate procurement. The inclusion of significant additional scope to a contract after contract signature may be unfair to competitors who may have bid to deliver that scope of work. Further, it may compromise the outcome of the original procurement process as had the additional scope been included in the approach to market other bidders may have been able to offer a better value for money solution than the tenderer awarded the contract.

| Before initiating or agreeing to any variation the Contract Manager should determine: |
|---|
| ✔ Whether the variation is needed. |
| ✔ The effect of the proposed variations on delivery. |
| ✔ That the variation does not change the original scope of the procurement. |
| ✔ What effect, if any, the proposed variations will have on contract price. |
| ✔ The effect of the proposed variations on other terms and conditions of the contract. |
| ✔ Whether the variation will transfer or create risk for the entity or the supplier. |
| ✔ Whether the proposed variation will affect the technical, regulatory or other certification requirements of the contract. |
| ✔ The details of the variation and whether it may amount to unfair treatment of unsuccessful tenderers who are denied an opportunity to tender for the changed requirement. |
| ✔ Whether the variation will affect the original value for money assessment. |
| ✔ What consequential changes may be needed to implement the variation? |
| ✔ Whether the variation has any follow on implications. |

The variation process you should follow is usually covered in the contract.

Either the procuring entity or the supplier can request a contract variation, but it must be agreed by both parties to be legally binding. A variation can be implemented without being formalised in writing. So be aware of what you say during meetings and informal discussions to ensure you do not accidentally vary the contract (see the information in section 3.2 Unintentional variation or waiver through conduct).

You need to document your decision-making process for a contract variation to ensure your position is defensible and the contract still presents value for money. You should discuss any proposed variation to a contract with the supplier, document the variation in writing and ensure both parties sign as evidence of agreement to the changes (usually through a Deed of Variation).

Before finalising a variation, find out what approvals or authorisations you need to get, as well as the appropriate delegate – particularly if the variation will result in a change to the overall value of the contract. Consult your Accountable Authority Instructions (AAI's) or your central procurement area to identify the amount that requires approval (the variation amount or the whole new contract amount). Even if the delegate only needs to approve the amount of the variation, it is good practice to detail the new amount of the whole contract (the original contract value plus any variations to date plus the current variation). You must also record any financial changes in your entity's Financial Management Information System.

Once you complete the contract variation, inform stakeholders about changes to the contract so they have a clear understanding of what goods or services to expect under the varied contract.

Your entity must report contract variations on AusTender within 42 days of varying the contract if valued at or above the **CPRs reporting threshold** of $10,000. Entities must also report cumulative variations of $10,000 as per the **Commonwealth Procurement Rules 7.19c**.

For longer term or more complex contracts, you should keep a 'master version' of the contract that includes any contract variations in mark up. This is important, especially when there has been several variations. Maintaining a 'master version' means, you have a copy of the latest version of the contract, as well as a record of the evolution of the contract.

You may want to consider using the **BuyRight tool** to guide you through the steps for a contract variation.



## Contract variations by conduct

**Warning:** Contracts can be legally varied by the conduct of either party (known as Estoppel), or through communication between the parties such as conversations or email. If discussing a possible contract variation with a supplier, you must be careful not to imply agreement until all aspects of a variation have been finalised. This includes any internal approvals from relevant delegates and the specific variation process outlined in the contract (i.e. notice timeframes, variation templates).

It is best practice for all contract variations to be agreed in writing and signed by both parties.

For more information see 3.2 Unintentional Contract Changes – Waiver and Estoppel.

# 3.12 Managing contract options or extensions

Many contracts will include provisions allowing an entity to exercise an option (such as to buy additional quantities of the goods or particular 'extra' items) or to extend the contract. Normally, the contract will state the timeframe or date by which an entity needs to decide whether to exercise the option or extension.

If an option is included in a contract, it may constitute an offer from the supplier to an entity and therefore the supplier should keep the offer open for acceptance by an entity for the period set out in the contract. An entity is under no legal obligation to accept the offer but may elect to do so at any time within the specified time. If an entity does not elect to exercise the option within the specified period, the supplier's offer will lapse.

Contracts can be extended in two ways.

1. The contract contains an unused provision to extend
2. The contract is amended to extend the timeframe of the contract. This would typically be used where the contract does not contain any provisions to extend. This method would normally be used to extend for a short period while a procurement activity is undertaken.

When extending a contract through a provision to extend the contract, officials should ensure that use of the provision still delivers a value for money outcome for the Australian Government.

Entities should only extend a contract where necessary and where there is a business need.

- Extending a contract via a variation may not result in a value for money outcome because a supplier may be unwilling to continue to supply its goods and services, and/or the continued terms of supply may be unfavourable. Entities are therefore encouraged to not rely upon the ability to extend a contract by variation.
- Contracts should not be extended by variation due to a failure to appropriately plan procurement needs, continue supplier relationships, or with the intention of discriminating against a supplier, avoiding competition, or to avoid obligations under the CPRs. However, a short extension by variation may be necessary to complete a complex procurement activity, or to ensure transition is well managed.

**Key steps in this process are:**

- ✔ Determining whether there is an ongoing need for the goods or services.
- ✔ Determining whether the existing contract has an option to extend.

  **Warning:** Once a contract has expired, you cannot exercise an unused option to extend, or vary the contract. If required, you will need to establish a new contract and you should take care in making any promises to an incumbent supplier in any ongoing communications.

  Contract variations should be agreed in writing and signed by both parties.

  **Warning:** Contracts can be legally varied by the conduct of either party or even by a conversation or email. If discussing a possible contract variation with a supplier be careful not to imply agreement until all aspects have been finalised, including any internal approvals from relevant delegates.
- ✔ Considering whether extending the existing contract would represent value for money, and if so, gain necessary approvals and follow the extension process contained in the contract.
- ✔ Initiating contract renewal in a timely manner. If the contract does not have an option to extend or all extension options have been used, but the goods or services are still required, **seek legal advice**. You may need to initiate a new procurement process that will need to follow your entity's policies and processes for procurement, including procurement thresholds and delegations, and must also comply with the CPRs.
- ✔ Keeping appropriate records for all decisions made in relation to extending or renewing a contract.

## Maintaining value for money when considering the use of contract extensions and variations

It is important for contract managers to evaluate why a contract variation is being considered and make a comparison against approaching the market again in the context of maintaining value for money. Delegates must also consider value for money when considering extending or varying a contract. Contract extensions and variations can have the effect of being unfair to unsuccessful tenderers who may have been able to deliver a better value for money outcome if the reasons for the extension were included in the original scope of the procurement. Therefore, a contract should not be varied to amend the scope to allow for unrelated or previously undefined goods and/or services to be performed or delivered by the supplier.

As noted above, contracts should not be extended by variation due to a failure to appropriately plan procurement needs, failure to manage the contract, to continue supplier relationships or with the intention of discriminating against a supplier, avoiding competition, or to avoid obligations under the CPRs.

When providing reasons why the extension or variation would achieve value for money you should be able to provide the delegate with a explanation of what has been done to achieve the best value for money practicable, including whether:

1. There been negotiation with the supplier?
2. The pricing has been benchmarked against other comparable goods/services?
3. Competitive quotes have been obtained from alternate suppliers?

You should also consider and advise the delegate whether:

4. The market has changed, there are new suppliers who can provide the goods/services who did not exist at the time of the original approach to market?
5. The supplier's performance has been satisfactory over the life of the arrangement?
6. The goods and/or services are still fit for purpose?

Regular reviews of the contract throughout its lifespan and forward planning will ensure that contract management officials will be able to make a value for money based decision on whether a contract extension or variation should be exercised instead of a new approach to market, rather than be in a position where an extension or variation is the only choice due to lack of time or to maintain continuation of service.

If a contract extension or variation option is deemed appropriate the changes will need to be reported on AusTender within 42 days of amending a contract if valued at or above the relevant reporting threshold in line with 7.19 of the CPRs. For variations which do not affect the contract value consideration should be given as to whether the amendment should be reported on AusTender in accordance with the reporting requirements specified in the CPRs. See **Procurement Publishing and Reporting Obligations (RMG 423)**. It is also important to ensure that all of the information used to inform decisions and all decision making processes are well documented to ensure there is an appropriate audit trail.



# 4 Close the contract

The table below lists activities that may be relevant during contract closure. Your categorisation of your contract based on the complexity and risk profile will help determine which activities you should complete.

| Activities during the close the contract step include: | | Transactional contract | Routine contract | Complex contract | Strategic contract |
|---|---|---|---|---|---|
| **4.1** | **Consider and manage contract transition issues** | Not required | Recommended | Strongly recommended | Strongly recommended |
| **4.2** | **Contract closure** | Required | Required | Required | Required |
| **4.3** | **Conduct final contract review (with supplier)** | Not required | Recommended | Strongly recommended | Strongly recommended |
| **4.4** | **Conduct lessons learned** | Recommended | Strongly recommended | Strongly recommended | Strongly recommended |

Most contracts close because they have been satisfactorily completed, where both parties have completed all their obligations under the contract and/or the end of the term of the contract has been reached. This is often called ‘expiration’.

Sometimes you will end a contract before it has been completed. This is called termination of a contract. Terminating a contract early can carry risks – including reputational, business, financial and legal risk. If you are considering terminating a contract early, **you should seek legal advice** before discussing the possibility with the supplier or taking any actions.

## How can contracts end?

**Successful completion:** When the contract outcomes and milestones have been delivered to a satisfactory standard, the contract has expired, and all applicable payments have been made to the supplier. Generally, once a contract has been fulfilled, the supplier and other parties are absolved from any further responsibilities unless there is a survival clause which identifies obligations, rights, warranties, or other clauses that will continue after the contract has completed.

**Mutual agreement:** The contract's end is the result of an agreement. The parties to a contract can terminate a contract at any time if they all agree on the termination, even if the contract has not been completed. You should keep a detailed record of the exact terms of the agreement to terminate and the rights and obligations of everyone involved. **You should consider getting legal advice** in this situation.

**Novation:** This occurs when a party's rights under a contract are transferred to a third party. This means the original contract is terminated and a new one is put in place with the third party on the same terms. An example of novation might be where a supplier sells its business to a third party during the life of a contract and requests a novation of the contract to the new business owner. In this case, the original contract is transferred to the new business owner (this ends the original contract and creates a new one with the new business owner). **You should consider getting legal advice** before novating a contract.

**Termination by breach (default):** In some circumstances, you may have a right to terminate the contract due to a breach of the contract by the supplier. You should never consider termination as the first or only option when a problem arises in a contract. Termination has consequences – not all of them may be favourable to the terminating party. **You will need to get legal advice** in this situation before considering terminating by breach.

**Termination for convenience:** Many Australian Government contracts include a right for the Australian Government to terminate the contract for convenience, after providing notice to the supplier. When this occurs, it is often balanced by provisions that provide compensation to the supplier for costs incurred or costs unavoidably committed at the date of termination. This is a complex area of law and the outcome depends on the circumstances of the case as well as the contract provisions. **You will need to get legal advice** in this situation before considering terminating a contract for convenience.

## Ending a contract for any reason other than successful completion

**You should seek legal advice** before considering ending a contract through termination. The contract will likely include specific termination clauses, which will set out the circumstances when each party can terminate the contract, the process to be followed, and the result of the termination.

Where the termination is due to a default by the other party, many contracts require the parties to follow the dispute resolution and other procedures before exercising a right to terminate the contract.

Following those procedures is extremely important. If you do not follow them before exercising a right to terminate, it can result in the Australian Government being obliged to pay damages to the supplier.

# 4.1 Consider and manage contract transition issues

You may need to actively manage contract transition if you still require goods or services after the completion of a contract.

The new contract may be with the existing supplier, or a new supplier. If moving to a new supplier it may be beneficial to ensure that subcontractors can be novated to a new supplier at the time of transitioning between old and new contracts.

The transition from one contract to another can be a period of risk. Check your contract to see what has been included about transitioning out. If your contract requires a transition out plan or checklist, ensure it is in place prior to transition. If the contract requires a transition plan, ensure it:

- meets the timeframes and requirements under the contract
- can manage your entity's risk associated with the transition.

A transition out plan needs to be arranged before the end date and should be done before your approach to market for the new contract.

Ensure you understand, record, manage and enforce the obligations of the transition plan on the outgoing supplier, as well as your own entity's obligations to the supplier.

| **Some typical transition issues include:** |
|---|
| ✔ Developing a timeline of activities/events, including change over periods. |
| ✔ Identifying resource requirements. |
| ✔ Identifying key roles and responsibilities and how these change with the transition. |
| ✔ Identifying specific differences between the current and future contracts. |
| ✔ Considering training requirements. |
| ✔ Identifying risks and applying risk management to maintain continuous supply of goods or services and managing effects on customers. |
| ✔ Considering matters connected with return of your organisation's fixed assets and/or information. |
| ✔ Determining and dealing with any transitional arrangements that need to be negotiated with the incoming or outgoing supplier. |
| ✔ Managing the outgoing supplier's performance through to the conclusion of their contract. |

# 4.2 Contract closure

The contract closure and evaluation stage of the procurement process is important but often overlooked. Undertaking contract closure activities helps to ensure that all the requirements of the contract have been met and the delivered supplies (i.e. goods and services) can be appropriately used by the entity in the future. This is also a necessary stage where the contract has been terminated, to ensure that all required activities have been performed.

The point at which contract closure activities should be undertaken will depend on the type of procurement being undertaken. Services contracts often include a specific date on which the contract will come to an end and any required closure activities should be completed within a short period of time following that date. Contracts for the delivery of goods do not usually specify a particular end date and as such contract closure activities are usually performed following delivery and acceptance of the last item of supplies under the contract. Where a contract is terminated, required closure activities should be completed as soon as possible after the contract termination takes effect.

At the end of a contract, you should formally close the contract according to the terms and conditions in the contract.

| **Some of the relevant activities include:** |
|---|
| ✔ Verifying all work has been completed and all deliverables have been received to an acceptable standard. |
| ✔ Verifying all other contractual obligations have been fulfilled to an acceptable standard. |
| ✔ Obtaining all final reports, documentation, certifications from the supplier. |
| ✔ Confirming final invoices have been received. |
| ✔ Arranging to cancel access passes, remove system access, etc. |
| ✔ Arranging for the return of any materials or assets provided to the supplier. |
| ✔ Arranging for the return, safe custody or destruction of any information or data, including confidential information that was provided to the supplier or created by the supplier under the contract. |
| ✔ Arranging to transfer any Intellectual Property (IP) to the Commonwealth. |
| ✔ Checking all defects have been identified and rectified. |
| ✔ Finalising outstanding claims. |
| ✔ Finalising outstanding disputes. |
| ✔ Documenting information on warranties available under the contract (for users). |
| ✔ Advising users the contract has finished and providing them with advice about future arrangements (see section 4.1 Consider and manage contract transition issues) |
| ✔ Advising other stakeholders the contract has finished and providing them with relevant reports or other information they need to finalise their involvement. |
| ✔ Retaining contract management documentation in accordance with the *Archives Act 1983* (Cth) *Freedom of Information (FOI) Act 1982* to enable any future audit or FOI requests, including the signed contract and any variations. |
| ✔ Identifying and documenting contract provisions that may continue to operate after the completion of the contract, such as confidentiality obligations. |
| ✔ Ensuring all parties acknowledge and confirm contract closure activities have been completed consistent with the contract. |
| ✔ Providing feedback to the category manager or procurement team to include in future procurement processes. |
| ✔ Documenting and sharing any lessons learned. |

| **Only after completing all of the above** |
|---|
| ✔ **Pay final invoices, return or terminate any performance securities, refund retention moneys (if any) in accordance with the contracted timeframes and close / defund purchase orders in the financial management information system.** |

# 4.3 Conduct final contract review (with supplier)

Conducting a final contract review allows you and the supplier to:

- ensure that all obligations have been fulfilled by both the supplier and the entity
- assess performance, outcomes and whether you have achieved value for money
- provide feedback
- review effectiveness of delivery of outputs
- review contract effectiveness.

You can use this information to develop lessons learnt.

The depth and detail of the contract review will vary depending on the complexity of the contract and whether you will need to procure similar goods or services in the future.

| **The final performance review could include consideration of:** |
|---|
| ✔ Whether the contract achieved its objectives, considering timeliness, quality and cost. |
| ✔ Analysis of the supplier's performance including recording any value-adds achieved. |
| ✔ Analysis of the procuring entity's performance. |
| ✔ Information about the satisfaction of users, including identifying any major complaints. |
| ✔ Analysis of effectiveness of contract variations, and why they were required. |
| ✔ Information about disputes that arose during the contract, and supplier willingness to resolve issues. |
| ✔ Review of budgeted versus actual costs, and reasons for the difference. |
| ✔ Analysis of whether value for money was achieved, including a comparison against the original value for money assessment. |
| ✔ Identified issues in planning, management, administration and processes, including how each was addressed and the effectiveness of each treatment. |
| ✔ Discussion of other things that went well, or opportunities for improvement in future contracts. |

# 4.4 Conduct lessons learnt

Officials should consider seeking feedback from the supplier on the performance of the entity contract team by conducting lessons learnt.

Identifying and recording 'lessons learnt' is useful to understand which areas of the contract performed well and other areas that could be improved for future arrangements. Collecting feedback from various sources throughout the contract life cycle will help you identify opportunities for improvement as they arise, and support continuous improvement rather than waiting until the end of the contract.

Sources of information for developing lessons learnt may include the contract management team, end users of the goods and/or services, and relevant stakeholders within your entity. You may also wish to seek feedback from the supplier regarding performance of the contract and the entity's contract management team.

Analysing feedback will allow you to identify patterns, trends, gaps, risks and best practices on the operation of the contract. Some useful questions to ask when seeking feedback on the performance of the contract include:

- Were the primary objectives of the contract achieved? If so, to what degree?
- How effective was the supplier in meeting your needs?
- What challenges were encountered, and could they have been handled more effectively?
- How was communication and expectations managed throughout the contract?
- How effective was collaboration between the parties to achieve the outcomes?
- Did the supplier implement appropriate knowledge transfer processes?
- Recommendations for improving management of the arrangement?

Where appropriate, it is useful to share the lessons learnt with your procurement team, contract management team(s), relevant stakeholders within your entity, and other Commonwealth entity officials to support capability uplift. Sharing the information will allow you to apply learnings and improve contract management processes and inform future procurement activities.

# Appendix A. About standing offers

| Topics covered in this section are: |
| --- |
| What is a standing offer? |
| Australian Government Coordinated Procurement Arrangements |
| How do I manage a panel? |
| Managing an official order under a panel arrangement |

## What is a standing offer?

There are many goods or services your entity will need to use in an ongoing or ad hoc way. For example, training, professional services, scribing, office supplies, etc. A standing offer is a convenient and flexible way to address this need.

DoSO is an agreement whereby a supplier offers goods or services for a fixed period, at agreed pricing or rates and on agreed terms. A DoSO is also sometimes referred to as a 'head agreement'. An entity can then order those goods or services when required. Standing offer arrangements are generally established by an open procurement process. In most cases, more than one supplier will be identified as providing value for money. Where multiple suppliers are selected, this is commonly called a 'panel'. Generally, the DoSO will be the same for each supplier.

When an entity requires goods or services, they will need to request a quotation from a supplier(s). If a quote is acceptable and represents the best value for money, then the entity will send an official order to the supplier for the goods or services. The official order is the contract between your entity and the supplier.

The DoSO plus the official order will set out the terms and conditions of that contract (usually standard terms set out in the DoSO, plus the specific requirements contained in the official order). It is important to use the official order template identified by the DoSO to ensure the terms and conditions of the overarching arrangement apply to the individual procurements.

A key difference between a deed (such as a DoSO) and a contract (such as an official order) is that consideration, such as the exchange of funds, is provided under a contract (official order) but not a deed. A DoSO creates a legally binding promise or agreement that the supplier offers goods and services on agreed terms. The volume of goods and services that a specific customer will purchase and price they will pay is not agreed or guaranteed.

Over the life of the standing offer, many individual contracts may be formed by an official order. The DoSO will require an official order to be issued for every procurement thereunder.

Standing offer arrangements are efficient and minimise costs to procuring entities and suppliers, as there is no longer need for separate tender processes for the same or similar goods or services. Also, new contractual terms do not need to be negotiated for every procurement thereunder.

## Australian Government Coordinated Procurement Arrangements

In some circumstances, the Government initiates the establishment of a Coordinated Procurement Arrangement. These can be established to:

- support policy decisions
- provide internal reporting and oversight to support decision making, planning and delivery across the Commonwealth
- oversee the performance management framework for service providers and address performance issues
- reduce the time and effort for entities and service providers to establish contracts
- collectively procure goods or services in common use across entities to leverage the purchasing power of the Australian Government
- improve consistency and control
- deliver cost savings and efficiencies for service providers and the Commonwealth by reducing administration and tendering efforts.

Where established, coordinated procurement arrangements are mandatory for NCEs, as defined in section 8 of the ***PGPA Act***.

Contract management processes vary for different arrangements. If you are managing your entity's purchasing through an Australian Government arrangement, we recommend talking to the panel management team to get an understanding of your obligations.

A list of Australian Government arrangements and more information can be found on the **Department of Finance website**.

# How do I manage a panel?

You can find details of panels listed on AusTender. All panels are listed under a Standing Offer Notice (SON).

If the panel has a panel ID then it is managed under the **Dynamic Sourcing for Panels (DS4P)** tool within AusTender. DS4P is functionality within the AusTender website that provides government buyers with a standard and streamlined approach to sourcing their goods or services from panels.

DS4P allows panel managers to:

- create and manage panels in a consistent way (regardless of panel type)
- update panel information in real time
- communicate updates and changes to suppliers and participating entities.

As a procuring entity, you can use DS4P to:

- get real time information on procurement activities and trends for panels you both own and access
- identify panels that match your requirements
- search for and shortlist relevant suppliers
- access panel documents and templates
- run request for quotation processes.

This reduces the amount of effort required from a panel manager as they do not have to manually distribute panel documentation upon request from panel users.

Many entities are transferring existing panels to DS4P to benefit from the functionality. It is strongly recommended that new panels utilise the DS4P to assist in panel management and improve the user experience.

Panel management is a form of contract management. As a panel manager, the key activities you should undertake are listed below.

## Establish regular communication with panel suppliers and users

Panel managers should ensure panel users:

- are aware the panel exists
- understand what goods or services can be provided to them under the panel
- are aware of the processes for placing orders.

You should ensure suppliers:

- understand the processes used to select a panel member for work
- have information to help them manage workloads and resourcing (e.g. advice on anticipated workflows, upcoming potential opportunities, or changes in the business environment of the procuring entity that could affect the quantity or timing of orders placed under the panel).

## Provide guidance to users on how the panel operates

Panel managers must provide accessible and up to date guidance to panel users, including:

- what goods or services they can access under the panel
- supplier pricing
- how to place orders
- supplier contact details.

The DS4P tool allows panel managers to communicate this information effectively to panel users. If your panel is not on DS4P then you should develop a communications strategy for panel users.

## Monitor and review the panel's operation

Monitoring and reviewing a panel's operation will provide you with information to:

- support decisions about supplier performance
- understand whether the panel is an effective way for your entity to procure its goods or services
- understand whether you should extend or renew the panel
- identify opportunities for improving the overall management and use of the panel.

| Key areas of monitoring and review relevant to panel arrangements include |
|---|
| ✔ Reviewing how users use the panel to obtain goods or services including whether users are keeping their purchases within the scope of the panel. DS4P can help you to get certain data to assist in this process. |
| ✔ Monitoring the performance of suppliers in delivering goods or services including meetings to discuss performance. |
| ✔ Collecting data about panel usage, for example, the number and value of individual contracts entered into under the panel arrangement, and the number of contracts awarded to different suppliers. |
| ✔ Seeking and considering both supplier and user views on how your entity administers the panel, including options for improvement. |

## Consider any options for extending the term of the panel

Standing offers often include extension options. To extend a panel, you need to determine if:

- your entity still needs the goods or services provided by the panels and
- whether the extension provides value for money.

If you choose to extend the panel, you should:

- follow the requirements of the DoSO
- communicate with any entities who regularly use the panel to inform them of your plan to extend.

If you choose not to extend the panel, you should:

- find new arrangements for goods or services you still need
- communicate with any entities who regularly use the panel to inform them the panel is ending.

When extending panels for digital or ICT goods or services you should apply for certification of the panel from the DTA under the Digital Sourcing Panel Policy. See the **BuyICT.gov.au** for more information.

## Maintain proper documentation

Maintaining proper documentation for a panel arrangement includes:

- the rationale for establishing the panel
- supplier meetings
- performance reviews
- records of panel usage
- records of decisions on panel extensions
- DoSO with each panelist.

These records should be able to demonstrate the panel is not being used to avoid competition or to discriminate against suppliers.

Each panel user must also keep details of individual contracts with suppliers.

## Allowing others to use your panel

Other entities can access your standing offer if you included wider access in the original approach to market documentation.

If the panel arrangement is loaded onto DS4P, access for all eligible entities is automatically available and the panel manager generally does not need to take further action. If not loaded onto DS4P, the panel manager will need to arrange access to documentation for each eligible entity wanting to use the standing offer arrangement.

If you receive a request from another entity to access your standing offer, you must:

- ensure the documentation issued to the market during panel establishment and DoSO's allow that entity to access the panel
- ensure suppliers agree to the request (if required)
- check the procurements proposed by the joining entity are within the scope of the existing panel arrangement.

If you grant access, you will need to agree on the roles and responsibilities of each entity, including:

- how the added entity will access the panel
- how the panel will be administered with regard to payment and any reporting requirements
- how feedback to the suppliers will be managed.

In some cases, an entity added to a panel arrangement will need to:

- complete a 'Notice of Inclusion' with each supplier they intend to contract with (through an official order), so the overarching terms of the standing offer apply to them
- confirm their ability to contract using a standing offer through other documented means, such as a Memorandum of understanding.



### Notice of inclusion

When accessing a standing offer, you may need to sign a Notice of Inclusion (NoI) (sometimes called an instrument of acceptance) with the supplier so your entity is covered by the provisions of the deed of standing offer. Your entity will only need to do this once with each supplier's standing offer. If you are unsure whether your entity needs to do this, contact your central procurement area or the panel manager.

If in doubt, sign a NOI for your procurement before you sign your official order to ensure you are covered by the terms of the specific DoSO.

## Managing an official order under a panel arrangement

Once a panel is established, you can purchase goods or services from the panel using the processes and documentation set out in the panel.

If you execute an official order for goods or services to a supplier under the panel, and the suppliers accepts it, this will form a contract between you and the supplier.

| **Depending on the setup of the panel, the issuer of the official order will need to manage:** |
|---|
| ✔ The delivery of the goods or services including any acceptance requirements. |
| ✔ Any performance management requirements under the panel including the reporting of any non-compliance or performance issues to the panel managers. |
| ✔ The verification and/or payment of invoices. |
| ✔ Supply other reporting obligations, under the panel, to the panel managers. |

To manage an official order under a panel, you will need to complete the same contract management activities identified in this guide. It is important to remember to keep the level of effort required for management proportionate to the size and complexity of your purchase.

# Appendix B. Common contract provisions

Every contract must include provisions to protect the interests of the Australian Government and as the person responsible for contract delivery, you need to understand the intent and consequences of all the provisions included in your contract.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to these common contract provisions.

If you have an issue that arises around these provisions, you should rely solely on the terms and conditions within your contract and seek advice from your legal advisers or your central procurement area.

## Access to premises, systems and records

A contract may grant a supplier access to the Commonwealth's premises, records or systems, so the supplier can fulfil its obligations under the contract. The contract details the scope of the access rights and the obligations of the parties in relation to such access. The Commonwealth will usually retain the right to withdraw the supplier's access to its premises and systems, or to require the return of any records. The contract also usually places obligations on the supplier to ensure that its personnel comply with the relevant policies, work health and safety and security requirements of the procuring entity when accessing the facilities. Access to the Commonwealth's premises may require supplier personnel to hold an access pass or complete security vetting processes.

Australian Government contracts generally provide for people authorised by the procuring entity to have access to the supplier's premises and records associated with the contract, and to subcontractors (if relevant) premises and records. This is typically required for reasons such as:

- monitoring quality and performance
- as part of the payment, accountability and transparency requirements
- for reviewing subcontractor's conditions of engagement and compliance with policies.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to access to premises, systems and records.

When granting a supplier's personnel access to premises, systems and records, you must ensure that any requirements contained in the contract provisions are strictly adhered to. For example, you may need to seek confirmation from the supplier as to the security clearances held by its personnel, or make arrangements for supplier personnel to receive appropriate IT briefings before they are permitted to access any internal system.

When seeking access to a supplier's premises or records, pay careful attention to any requirements for notices to the supplier, permitted use of records, or other conditions that are contained in the contract provisions.

You should also have regard to contractual provisions regarding information security, such as:

- ICT security provisions, cyber security provisions and provisions requiring compliance with government frameworks, such as the *PSPF* and the *Australian Government Information Security Manual (ISM)*
- provisions dealing with the protection of personal information under the *Privacy Act 1988 (Cth),* including the Notifiable Data Breaches scheme.

## ICT security

Some government contracts will require the supplier to comply with the PSPF and ISM. The requirements of the **PSPF** and **ISM**.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to information security. These provisions can be complex and can include specific ICT requirements, reporting obligations or performance measures related to data security. It is advisable to seek technical advice from your ICT Security Team if any issues arise.

Some contracts may contain provisions that require the immediate, timely and/or regular reporting on suspected or actual security incidents to the entity. These requirements may be incorporated into the performance standards, Service Level Standards or KPIs. You should be aware of these provisions, including any assessment of compliance with the provisions that require regular reviews of supporting documentation (such as Security Plans and the like).

For further information regarding ICT security and procedures for security matters, you should contact your entity's internal ICT Security Team.

# Assistance provided to the supplier

Suppliers are often provided assistance with access to government equipment, information or data to facilitate the delivery of goods or services and the level of assistance to the supplier can affect the final price of the contract.

Where assistance is provided to a supplier under a contract, the nature of that assistance must be clearly identified in the contract and usually addresses:

- what is to be provided to the supplier
- the manner, place and times for providing the assistance
- allocation of ownership and risk, including responsibility for any maintenance, inspection and testing, as well as any audit or stocktake requirements
- any limitations on use, storage, transfer of possession, ownership, marks/plates or modification
- identification of the party responsible for loss, damage, or replacement, including fair wear and tear
- return, transfer or destruction at the end of the contract.

When managing a contract, it is vital for you are familiar with the specific provisions in your contract that relate to the assistance to be provided to the supplier.

The Commonwealth is obliged to provide the supplier with all assistance that is stipulated in the contract and you must make suitable arrangements for this to occur. If you fail to provide that assistance in the agreed manner, at the contracted time and place there may be serious consequences for the delivery of the contract and may place the Commonwealth at risk of being in breach of contract. You should also make suitable arrangements to verify that any equipment, information or data provided to the supplier under the contract is properly managed, handled, stored, used, returned or disposed of according to the provisions of the contract.

# Insurance

For most transactional, routine and complex contracts, the Commonwealth expects the supplier to propose and maintain a prudent level and type(s) of insurance appropriate to the risks and complexities of the goods or services being procured. For strategic contracts, the Commonwealth may require the supplier to obtain and maintain a particular level and/or type of insurance, or may allow the supplier to propose and maintain a prudent level and type(s) of insurance appropriate to the risks and complexities of the goods or services being procured.

The contract provisions usually provide the Commonwealth with the right to seek confirmation of the type and level of insurance held by the supplier, and to seek evidence that the insurance is being maintained. The contract provisions may also specify a period for which the insurance is to be maintained by the supplier, which may sometimes extend past the completion of the contract (e.g. professional indemnity insurance, defects insurance).

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to the insurance to be maintained by the supplier.

You should establish systems and processes to seek evidence that the agreed level and type(s) of insurance has been obtained by the supplier, and that this is maintained over the period specified in the contract.

# Intellectual property rights

IP rights include various classes of rights covered by legislation including copyright, patents, registered designs and trademarks.

Contracts will include provisions to deal with the ownership and rights to use IP rights in material created under or otherwise relevant to the performance of the contract. These provisions usually consider ‘new’ material created under the contract (sometimes called foreground IP), as well as material that was previously created outside the contract that is incorporated in the deliverables under, or required for the performance of, the contract (sometimes called background IP). These provisions can be quite complex, as they need to consider material created by the supplier, material created by third parties (such as subcontractors of third party vendors), material created jointly by the supplier and the Commonwealth, as well as material provided by the procuring entity.

Intellectual property rights is a complex area of law and you should consider separate legal advice if the contract will involve significant intellectual property issues.

# Key personnel (specified personnel)

In contracts dealing with the provision of professional services, the skills, qualifications or experience of particular people may be critical to the value for money assessment and the provision of the contract deliverables by the supplier. In such cases, the contract will contain provisions that these specified personnel perform particular roles in relation to the contract. The contract will also contain arrangements to replace specified personnel if necessary. This often includes arrangements for the procuring entity to approve replacement personnel. If certain minimum skills, qualifications or experience are required to be held by specified personnel, these will also be stated in the contract.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to key personnel or specified personnel. It is your responsibility to ensure that the specified personnel are performing the work and raising any performance issues with the supplier in a timely fashion.

You should establish systems and processes for determining that the work has been performed by an approved person and that the personnel performing the work have the required skills, qualifications or experience as laid down in the contract. You should also confirm with the supplier that qualifications or accreditations held by key personnel are current.

# Liabilities and indemnities

An indemnity is a contract provision that allocates liability between the parties and is generally expressed in the form of one party indemnifying the other for a particular type of liability.

## Granting indemnity to the supplier

Indemnity provisions that provide for your entity to accept the risk of specified losses or damage the supplier may incur or suffer, can have significant legal, policy and financial implications. In many situations, you must obtain approval from a relevant delegate to provide indemnity to a supplier. An example of this type of indemnity is when booking a venue for a meeting, most venue contracts require the hirer (in this case the Commonwealth) to indemnify the venue owner for any damage to the premises caused by attendees at the function. **You should seek legal and insurance coverage advice before giving an indemnity to the supplier.**

## Receiving indemnity from the supplier

Many Commonwealth contracts contain an indemnity from the supplier to the procuring entity that makes the supplier liable for loss, damage or expenses incurred by the procuring entity as a result of the actions of the supplier or their subcontractors. An example of this type of indemnity is a requirement for the supplier to cover costs incurred for a training program if the supplier cancels that program (e.g. venue deposits, catering costs, travel costs for participants from interstate). A significant issue is whether the supplier’s liability should be capped or limited. Any decision to cap or limit a supplier’s liability should be based on a formal risk assessment. **This is a complex area of law, and you should seek legal advice if any issues arise in connection with indemnities from the supplier.**

## Contingent liabilities and liability caps

Contingent liabilities are commitments that may give rise to a cost as a result of a future event. The *PGPA Act section 60* applies to indemnities that create contingent liabilities. Typical liabilities are:

- An indemnity is a legally binding promise whereby the Commonwealth undertakes to accept the risk of loss or damage another party may suffer.
- A guarantee is a promise whereby the Commonwealth assumes responsibility for the debt, or performance obligations of, another party on default of its obligations.
- A warranty is a promise whereby the Commonwealth provides certain assurances to the other party to an arrangement.

Where an arrangement doesn't explicitly allocate liability, this may be determined at general law. To create certainty, a liability regime may be agreed and set out in a contract. This allocation of risk between parties on the occurrence of a future event creates contingent liabilities.

In some instances, your contract may include a liability cap. A liability cap does not necessarily create a contingent liability. A liability cap should be treated as an indemnity involving a contingent liability, if:

- it involves limiting a supplier's contingent liability to a third party so the Commonwealth is liable to the third party for any excess above that cap or
- limiting a supplier's exposure for damage the supplier has suffered itself, so the Commonwealth is liable to the supplier for any excess.

**This is a complex area of law and you should always seek legal advice.**



### Want to know more about Indemnities?

Download the *Resource Management Guide No.414 Guidance for Commonwealth entities on Indemnities, guarantees and warranties* from the **Department of Finance website**.

## Securities and guarantees

In some situations, it may be necessary to obtain some form of guarantee or security for the supplier's performance. These can take a variety of forms. The two most common being:

- **Financial**: these are often provided by a bank or other financial institution and entitle the procuring entity to obtain a specified amount of money directly from the provider of the guarantee to cover the procuring entity's costs or other amounts due under the contract, should the supplier fail to perform its contractual obligations.
- **Performance**: in which a third party agrees to take responsibility for performing the contract when required to do so by the procuring entity, usually in the event of a default by the supplier.

Securities and guarantees are useful where significant amounts of money are involved or where an upfront substantial payment is to be made to the supplier prior to delivery and acceptance of the goods or services. They are also common where the supplier is a subsidiary – with the parent company providing the guarantee.

**This is a complex area of law, and you should seek legal advice before seeking to claim on any form of security or guarantee.**

## Subcontracting

In relation to subcontracting, the contract provisions usually require the supplier to:

- provide full details of any subcontractors it proposes to engage
- inform relevant subcontractors that the subcontractor's participation in fulfilling a contract may be publicly disclosed and obtain the subcontractor's agreement to the public disclosure
- seek approval from the procuring entity before engaging subcontractors
- acknowledge that the supplier retains responsibility for ensuring that subcontractors perform all their obligations
- flow down certain obligations to the subcontractor from the supplier's contract
- retain responsibility for ensuring that subcontractors comply with all relevant Australian Government policies.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to subcontracting. It is common for Commonwealth contracts to contain clauses that require subcontractors to comply with the same obligations as the supplier under the contract. In most cases, the supplier has a responsibility to impose these obligations as part of its subcontracting arrangements.

You should establish systems and processes for determining that the supplier has complied with the obligations relating to subcontracting that are contained in the contract.

# Warranties and fitness for purpose

Warranty provisions cover your rights and obligations and those of the supplier in relation to defects that may be identified in the goods or services after delivery.

Warranties may provide contractual rights for you to:

- reject goods and be paid a refund
- have defects repaired
- have the goods or services replaced.

Generally, contracts stipulate the time period after the acceptance of goods or services in which you can make a claim for warranty action.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to warranties and fitness for purpose.

You should promptly and diligently review the delivery and acceptance of goods to ensure that you have received the correct items in the right quantity, in good repair, at the agreed time and in accordance with any other contractual provisions (e.g. packaging, location for delivery). You may need to use a suitable technical adviser to assist you to determine if the goods meet the contract specification. Some entities may have a formal quality control or quality inspection process which will provide advice about the acceptance of goods.

If the contract is for delivery of services, the contract manger should promptly compare the services that have been delivered to the service standards contained in the contract to ensure that the contractual requirements have been met. This may involve seeking feedback from user representatives or gathering direct evidence about the standard of services by methods such as site inspections, spot checks or other forms of service audit.

If goods or services need to comply with an Australian or international standard, you must make reasonable enquiries to determine compliance with that standard. This includes gathering evidence of relevant certifications and periodic auditing of compliance by an independent assessor (**see CPRs paragraph 7.26**).

If the goods or services do not meet the expected standard, you must strictly adhere to the contract provisions, particularly, provisions on:

- the rejection of goods or services, paying particular attention to the time frame for accepting or rejecting the goods or services
- notices that must be given to the supplier
- any time periods that apply for the supplier to remedy the defects
- any impact that the defects may have on the amounts payable under the contract.

# Confidentiality

Confidential information is usually a defined term in a contract and will have a definition similar to information that is by its nature confidential and which is designated by a party as confidential and which the parties know, or ought to know, is confidential. Information that is already or becomes public knowledge other than by a breach of the contract is not regarded as confidential information.

Confidentiality provisions in a contract prevent the supplier from divulging any Commonwealth confidential information to a third party without the prior written consent of the Commonwealth. Contracts also usually contain a reciprocal provision that prevents the Commonwealth from divulging any of the supplier's confidential information without prior written consent. The provisions usually require the supplier and its subcontractors to provide a written non-disclosure agreement (sometime called a deed of confidentiality) at the Commonwealth's request. Sometimes there are exceptions to the obligation of confidentiality, for example when the information is otherwise in the public domain, is disclosed to legal advisers for the purpose of complying with obligations or exercising rights under the contract or when required for the Australian National Audit Office (ANAO), a Minister or the Parliament.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to confidentiality and exceptions. These provisions can be complex and it is advisable to take **legal advice** if any issues arise.

You must ensure that any actions taken in relation to confidentiality are consistent with the contract provisions. You must strictly adhere to any form and content requirements contained in the contract for notices, permissions and undertakings in relation to confidentiality.

# Protection of personal information and data protection

Personal information is defined in the *Privacy Act 1988* (Cth) (Privacy Act) to mean information or an opinion about:

- an identified individual or
- an individual who is reasonably identifiable.

Whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not.

Contracts will contain provisions that impose upon the supplier an obligation to not do an act or engage in a practice that would breach the Privacy Act. Contracts must also contain provisions which ensure that the same obligations are imposed onto any subcontractor(s). These provisions will usually require the supplier to provide the Commonwealth with a copy of the supplier's and any subcontractor's privacy policy, security and data protection policy and any processes implemented by the supplier and the subcontractor(s) to comply with the Privacy Act.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to protection of personal information and data breaches. These provisions can be complex, and routinely refer to provisions of the Privacy Act, so it is advisable to **seek legal advice** if any issues arise. Most entities will have internal Privacy Teams that can be contacted for advice.

You must have proper processes and procedures in place to request, receive and review the supplier's and subcontractor's policies and processes if the provisions of the contract require this. You may need to take specialist advice on whether these policies and procedures are adequate to address privacy and data security risks, and decide how to manage any risks that arise in this area.

## The Privacy Act 1988

For further information regarding compliance with the Privacy Act, contact your entity's internal Privacy Team. Information can also be found at the Office of the Australian Information Commissioner's (OAIC) **website**.

*The Privacy Act 1988* (Cth)

The Privacy Act sets out the Australian Privacy Principles (APPs). APP 1 requires APP entities (such as non-corporate Commonwealth entities) to take reasonable steps to implement practices, procedures and systems that will ensure compliance with the APPs and enable them to deal with enquiries or complaints about privacy compliance.

APP 11 requires APP entities to take reasonable steps to protect the personal information they hold from misuse, interference and loss, and from unauthorised access, modification or disclosure.

The Privacy Act requires an agency to incorporate compliance with the APPs into Commonwealth contracts to ensure that the contracted service provider is contractually obligated to not engage in action that would breach the APPs.

*The Notifiable Data Breaches (NDB) scheme*

Under the NDB scheme, introduced in February 2018, any organisation or agency covered by the Privacy Act must notify affected individuals and the OAIC when a data breach is likely to result in serious harm to an individual whose personal information is involved.

A data breach occurs when personal information an organisation or agency holds is accessed or disclosed without authorisation or is lost. A data breach may be caused by malicious action (by an external or insider party), human error, or a failure in information handling or security systems.

As the contract manager, you should be aware of these provisions in your contract, as well as any associated and supporting policies, procedures or documentation. You should contact your entity's internal Privacy Team for guidance on understanding the requirements under the Privacy Act or if issues arise.

# Appendix C. Glossary

**Accountable Authority** means, Under the PGPA Act, the person or group of persons responsible for, and has control over, a Commonwealth entity's operations. This is usually the Secretary of a department and is defined in the **PGPA Act section 12**.

**Accountable Authority Instructions** are written instructions issued by an accountable authority giving direction and guidance to their officials on matters relating to finance law and regulations (Accountable authorities may also issue instructions to officials of another Commonwealth entity in relation to matters listed in the PGPA Act section 20A(2)).

**AusTender** is the central web-based facility for publishing Australian Government procurement information, including business opportunities, annual procurement plans and contracts awarded.

**Central procurement area** means the area within your entity that is responsible for issuing internal procurement advice and monitoring procurement activity performed by your entity. This may be a dedicated team or could be a function of your entity's Central Financial Officer (CFO).

**Commonwealth entities** means non-corporate Commonwealth entities and corporate Commonwealth entities that are subject to the PGPA Act (**defined in the PGPA Act section 10**). A list of Commonwealth entities is on the **Department of Finance website**.

**(The) Commonwealth Procurement Rules (CPRs)** are issued by the Minister for Finance under the PGPA Act section 105B(1). Officials from non-corporate Commonwealth entities and prescribed corporate Commonwealth entities listed in the **PGPA Rule section 30** must comply with the CPRs when performing duties related to procurement. The CPRs are the core of the Commonwealth procurement policy framework.

**Conflict of interest declaration** means a form on which a person will disclose any real/apparent/potential conflicts of interest that exist or may arise in the course of their employment and is signed by that person as a declaration.

**Contract Manager** is generally responsible for managing the contract, monitoring and mitigating risks, managing stakeholder relationships, supervising the supplier's performance, and ensuring both parties meet their obligations to achieve value for money under the contract.

**Deed of confidentiality:** A deed is a special type of binding promise or commitment to do something. A deed of confidentiality is a commitment to keep certain information, shared from one party to another, confidential and to use that information only as intended within the contract.

**Delegate** means (in relation to the PGPA Act) an official who has been given statutory authority, by an instrument of delegation, to make particular decisions or perform particular functions. A delegate is constrained by any limitations expressed in the delegation instrument.

**Dynamic Sourcing for Panels (DS4P)** is functionality within the AusTender website that provides government buyers with a standard and streamlined approach to sourcing their goods or services from panels.

**Indemnities** are provisions that outline the responsibility of one party to compensate the other for specified losses, damages, or liabilities. They serve as a risk management mechanism to protect parties from the consequences arising from breaches of the contractual relationship.

**Key performance indicators (KPIs)** means a metric that is measurable and verifiable that, at a point in time, will provide an indication of the level of performance by the supplier against the outcomes of the contract.

**Modern Slavery** is a term used to describe serious exploitation where offenders use coercion, threats or deception to exploit victims and undermine their freedom. Modern slavery can occur in every industry and sector and has severe consequences for victims. Your supplier may have reporting obligations under the *Modern Slavery Act 2018*, for more information see the **Attorney-General's Department website**.

**Not required** means, within the contract activity table used in this guide, that the activity is not necessary for a contract at this level of complexity.

**Probity** is the evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process. It is essential that probity is upheld throughout all aspects of the procurement life cycle. For more information see the **Department of Finance website**.

**Protective Security Policy Framework (PSPF)** helps Australian Government entities protect their people, information and assets both at home and overseas. The PSPF contains 16 policies under the categories of Security governance, Information security, Personnel security, Physical security. For more information please see the **Department of Home Affairs website**.

**Required** means, within the contract activity table used in this guide, that the activity be performed for a contract that has been categorised at this level of complexity.

**Recommended** means, within the contract activity table used in this guide, that the activity is recommended for a contract that has been categorised at this level of complexity but is not mandatory. You should use judgement to determine if you need to perform the activity for your contract, and if so, the extent to which the activity will be performed.

**Resource Management Guides (RMG)** are a series of policy documents that detail policies dealing with resources management. These policies form part of the Government Resource Management Framework. Details of these policies are on the Department of Finance **website**.

**Service level agreements (SLAs)** are documented levels of service that will be provided by the supplier and are usually measured in terms of quality, availability or responsiveness.

**Statement of Tax Record (STR)** is required for contracts over $4m under the Shadow Economy Procurement Connected Policy- Increasing the integrity of Commonwealth Government procurement. This policy requires that a supplier holds a valid and satisfactory STR at the time of contract award and may be required to maintain a satisfactory STR for the duration of the contract see the **Department of Treasury website**.

**Strongly Recommended** means, within the contract activity table used in this guide, that the activity is recommended for a contract that has been categorised at this level of complexity. The activity, whilst it is not mandatory, is generally good contract management practise and may provide significant benefits to the management of that contract. You should use judgement to determine if you need to perform the activity for your contract, and if so, the extent to which the activity will be performed.

**Subcontracting** is the outsourcing of a portion of work or services outlined in a primary contract to another party. The original contractor or supplier generally remains responsible for the overall performance and delivery of the contract. Subcontracting allows companies to leverage specialised skills and resources to fulfill specific aspects of contract.

**Value for Money** is the consideration of the relevant financial and non-financial costs and benefits of each submission including, but not limited to:

- the quality of the goods and services
- fitness for purpose of the proposal
- the potential supplier's relevant experience and performance history
- flexibility of the proposal (including innovation and adaptability over the life cycle of the procurement)
- environmental sustainability of the proposed goods and services (such as energy efficiency, climate change impact, environmental impact, circularity of the goods and services and use of recycled materials)
- whole-of-life costs.

For more information, refer to section 4 of the CPRs.

**Warranties** are written or implied assurances provided by one party to another regarding the quality, performance, or certain characteristics of goods and/or services.