



The Fundamentals of Managing a Contract for Value

Introduction

The contract management process is the interaction between the supplier and the purchaser that ensures that both parties meet their respective obligations in any procurement relationship.

In particular, complex agreements need more active management of the business relationships between the supplier and the users, to manage both the outputs as well as the process. Sufficient resources need to be dedicated by everyone involved to managing these contractor relationships to ensure a successful outcome and, where feasible, to achieve partnership. A partnership is the result of mutual commitment to a continuing cooperative relationship, rather than working competitively like adversaries.

The contract manager's primary responsibility is to ensure that a contractor fulfills its obligations and accepts its responsibilities according to the contract while ensuring contractors are treated fairly and honestly.

The contract management process comprises:

- Procurement Planning and Response Evaluation
- Negotiation
- Management of Adherence to the Contract, and
- Contract Closeout

The effectiveness of contract management will depend on how thoroughly the earlier steps in the procurement cycle were completed. Changes to specifications and management processes can be made far more easily early in the procurement cycle than after contract execution has commenced.

Pre-award steps in Contract Management

During negotiations, the agency should ensure that there are appropriate terms and conditions in place to reduce risk to the state while providing the supplier incentives to deliver the desired output so that the best possible contract is available to both parties. Defining appropriate measures and benchmarks that relate to the desired outputs, and determining how they will be tested, are also critical to determining the performance of the contract and ensuring quality service delivery. These measures and benchmarks form the foundation of the contract management process. Additionally, the agency should ensure that project review check points, or some other formal mechanism of monitoring and maintaining alignment around the contract, are built into the contract and agreed to prior to award.

Contract Management Overview

Contract management comprises three facets:

- Contract Administration or the formal "small print" management of the physical contract and the adherence to the sections and aim of the contract.



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In Contract Administration, the contract manager ensures that the day-to-day procurement activities follow the spirit and sections of the contract. This may also include managing and documenting changes to the contract and tracking the benefits that may accrue under the contractual work being performed.

- Service Delivery or the management of the delivery of the products by the vendor to ensure that they meet the service performance and quality that is required.

In Service delivery, the contract manager ensures that the products are delivered as and when they are ordered. Service delivery is managed by adherence to several Service Level Agreements that are defined during contract negotiation.

- Relationship Management which ensures that the relationship between the company and vendor is mutually constructive and problem free.

In Relationship Management, the contract manager maintains communications between the vendor and the purchaser.

Additionally, the contract manager may:

- Seek improvements within the procurement environment to gain efficiencies and reduce costs.
- Conduct ongoing assessments of procurement activities to ensure that the contracts are adhered to and the purchasing processes followed.
- Managing changes in activities, requirements or products available by noting them and handling them effectively.

Contract administration arrangements should be identified and planned including: who, how, delegations, reporting requirements and relationships and specific task responsibilities. The contract manager's duties and powers are governed by the terms and conditions of contract. In addition, she or he is expected to be impartial, fair and ethical in conduct with contractors.

The contract manager tasks and responsibilities comprise:

- **Planning** - contribute to the development and approval of the contract management plan;
- **Liaison & Problem Solving** - meet regularly with the contractor and maintain associated records; meet regularly with internal managers, users/customers about contract performance; be liaison between internal managers, users/customers and contractors to identify and resolve issues; provide contractors with advice and information regarding developments within government and how this might affect the goods and services they provide; seek remedies in the event of contract breach; resolve disputes as they arise;
- **Measure, Monitor & Check** - monitor contractor performance against contract obligations; check all goods and services provided are certified as meeting the specifications before the supplier is paid; check insurance terms and conditions provide adequate protection for the government and are maintained throughout the contract period; ensure that SLAs are appropriate, performance driven, and met throughout the contract;
- **Review** - review periodically the contract management process and plan; determine if staged projects should continue to next stage; conduct post contract reviews;
- **Report** - provide accurate and timely reporting to senior management with responsibility for the project, highlighting any significant performance issues or problems; maintain adequate



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records (paper and/or electronic) in sufficient detail on the contract file for the purposes of continuity and audit;

- **Managing Change** - manage contract change procedures; manage transition to new contract and/or supplier or termination/closure

Changes to the Contract

Once a contract is established and underway, it may be necessary to make changes to the contract. These changes can be minor administrative changes such as a change of address or they can be substantial changes that affect the price and deliverables.

- **Administrative changes** are within the scope of the contract and do not affect or alter the right of either signatory and may include changes in payment instructions or address; corrections to typographical error not affecting the substance of the contract; a change permitted by the specific contract clauses; or changes in personnel assigned to the management of the contract.
 - The contract manager usually has the authority to oversee administrative variations.
- **Substantive changes**, on the other hand, affect the rights of the government or contractor.
- Substantive variations could include a change in the price of the contract; change in delivery schedule; change in the quantity; change or nature of deliverables set out in the specifications; change of key staff providing the deliverable; change of any terms and conditions; an extension of the contract not previously contemplated by the contract; a change caused by legislative requirements and termination for non-performance.
 - Such changes require amendments signed by both parties. This may require input from the customer/sponsor, procurement authority, and sometimes from a legal advisor. The source of approval for the variation will be dependent on who approved the original procurement process; the total cost of the original approval; and the nature of the proposed variation.

Developing a Contract Management Plan

A contract management plan assists contract managers to properly manage contracts by addressing transition management, performance monitoring and by helping to ensure that both parties (the state and the contractor) fulfil their commercial and contractual commitments.

Complex contracts, irrespective of contract value, should have their own contract management plans for use by the contract manager, identifying matters such as key responsibilities, deliverables, performance measures and targets and dispute resolution arrangements.

A contract management plan includes:

- Contact information for the contract manager/contract management team and supplier/supplier team, and a map of the relationships
- A summary of the contract and its timeline/milestones
- The contract objectives, key deliverables or outcomes
- The supplier communications process/methods including liaison, reporting, signaling problems, contract review meetings and internal review meetings



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- The methods to be used to monitor and measure performance (outputs) and quality outcomes (including user satisfaction surveys) along with evaluation and reporting on that data
- The dispute resolution process, including alternative dispute resolution process if negotiated with the contractor, as well as procedures and penalties to apply to non-compliance or breach of contract requirements (penalties for non-performance and bonuses for good performance)
- Procedures to be implemented to reduce risks and monitor and manage risks
- Key transition-in tasks to be addressed, including list of key documents contractor may require and any expected impact of the contract on those individuals and organizations concerned
- Agreed transition-out processes including key documents required from current contractor
- The final review of specifications and contract and the methods to be used to evaluate the contract and the contract management processes.

Documentation

The retention of documents is important on a contract file for information and audit purposes. It is important from an ethical and transparency perspective that adequate records are kept and contractor performance is monitored; and that regular reviews are undertaken to ensure the performance measurements are still relevant. Recommended documentation includes:

- A copy of the final, fully-executed contract.
- All correspondence or other documents related to the contract. If there are performance problems with the contract, the problems should be documented in memos to the file or in correspondence to the vendor.
- All changes (including change orders and work orders) to the agreement should be formally executed in accordance with the terms of the contract and attached to the agreement.
- Any extensions to the agreement should be formally executed in accordance with the terms of the agreement and attached to the agreement.
- All certificates of insurance should be kept in the file.
- A diary or tickler "compliance" file should be established to keep all certificates of insurance up to date, verify timely performance if time is of essence to the agreement, and to allow timely renewal, if applicable, of the agreement.