

## Appendix 2: Better practice contract management framework

Effective contract management requires an appropriate contract management framework that addresses governance arrangements, skills, roles and responsibilities, and policies and procedures. It should promote accountability for decision making and expenditure of public funds. Our research identified nine key elements that we first published as a better practice contract management framework in 'Managing IT Services contracts February' 2012.

Better practice element	Comment: What is required and why
<b>Governance</b>	<b>Define oversight, financial and management controls</b>
Agencies' contract management delegations are clear and consistent with general financial delegations	<ul style="list-style-type: none"> <li>• Agencies' general financial delegations should take precedence over contract management delegations, such as signing the contract.</li> <li>• Contract management delegations should escalate based on the risks, value and/or duration of the contracts being managed.</li> <li>• Contract management delegations should provide clarity and control the exercise of key decisions such as contract variations and time extensions.</li> </ul> <p><b>Intent</b></p> <p>It is important that contract management delegations are clear and consistent with general financial delegations. General financial delegations are designed to ensure that any new financial commitments are approved at appropriate levels. While general financial delegations give authority to making financial commitments, contract management delegations give authority to undertaking administrative tasks, such as signing contracts. These functions should be segregated.</p> <p>Long term services contracts, particularly for IT, typically may have an initial duration, with several options to extend which can be unilaterally exercised by the agency. This gives the agency flexibility to either remain with the original supplier if performing well, or return to the marketplace. This arrangement can save the agency costs associated in bringing on board a different supplier.</p> <p>However, if the option to extend is to be exercised, a value-for-money assessment should be completed. A further approval is required under financial delegation if such an action commits the agency to new expenditure.</p>
Appropriate reporting and oversight practices for contract management are in place	<ul style="list-style-type: none"> <li>• Defines who reports what to whom and how often, and must be based on contract risk, volume, value, and duration of contracts being managed.</li> <li>• The reporting must recognise critical changes/exceptions to approved budget value and duration (traffic lights), such as cumulative variations above preset thresholds of contract value.</li> <li>• Greater skilling, training, and independent expert support available for members of agency steering committees and others with management oversight responsibilities for IT services contracts.</li> <li>• At least once per year the Audit and Risk Committee should review the contract register.</li> </ul> <p><b>Intent</b></p> <p>Appropriate reporting and oversight should be in place for contract management, which includes oversight outside the business unit that 'owns' the contract.</p> <p>Well structured and targeted reporting on contract and supplier performance ensures appropriate key agency personnel are provided with the necessary information for decision making. For example, how a supplier is performing in meeting its service level obligations is a key performance indicator of the health of a contract, which would be of interest not only to personnel closely associated with the contract but also to senior management outside the business unit. The way the contract and supplier are performing would also be of interest to management, particularly when considering proposals to renew or extend</p>

**Better practice element**

**Comment: What is required and why**

existing contracts. Financial information such as predicted cash flows, estimated final cost and approved variations should be reported on regularly.  
The SCCB would also have an interest in both supplier and contract performance where it relates to agency contracts for purchases from State contracts.

The investment required to manage contracts is assessed and committed

- Agencies need to decide how to organise procurement and contract management functions based on the structure of the organisation, and whether procurement activities will be centralised or decentralised, or a combination.
- Agencies have completed an assessment of capability and how to acquire and maintain skills and capability to ensure the right people are in place to carry out contract management activities.
- Agencies capability assessment addresses the structure of the organisation, and the volume and risk profile of current and planned contract management activities. This may be centralised vs decentralised and from where contract management capability is to be sourced (in-house, external).
- Agencies have the ability to capture key data on contractor performance and lessons learnt from previous experience, and respond accordingly in improving contract management arrangements.

**Intent**

Agencies must establish the capability required to effectively manage contracts. This means that agencies review the types, value and number of contracts that need to be managed and the risk to the agency of poor contract management. Agencies then assess the resources required to adequately manage their procurement and contract management activities, which include:

- performance monitoring and management
- fulfilling contractual obligations
- supplier relationship management
- risk assessment and management.

Industry benchmarks estimate that organisations should invest between three and seven per cent of the contract value to manage complex contracts where there are high switching costs or time to switch, and where there is low market competition for the services provided.

In some agencies this will mean establishing a specialised procurement group. This group would be responsible for developing, and monitoring compliance with agency procurement policies and procedures, as well as centrally managing major contracts and monitoring industry benchmarks. In other agencies the investment will be in skills and capabilities of selected positions to manage specific contracts.

Agencies regularly review their contract management framework for relevance and that it is operating as intended

- Agencies regularly review the governance framework and policies for compliance with government and agency procurement policies. This could be a role for the Audit and Risk Committee.
- Performance against procurement function strategy and procurement management plan.

**Intent**

Agencies should regularly review their contract management framework for relevance and to ensure that it is operating as intended. Agency structures and government policies governing procurement change over time and the framework must be updated in line with these changes to ensure contracts continue to be appropriately managed and controlled.

Better practice element	Comment: What is required and why
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	<p>IT services contracts can be complex and long-term arrangements. Circumstances may change over time, such as governance and management arrangements, and staff changes in the agency. Agencies may be moving from simple purchase of goods to more complex and long term services contracting arrangements. They will need to ensure their framework is adequate to respond to this transition.</p> <p>This is an appropriate role for Audit and Risk Committees.</p>
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There is independent internal monitoring of individual contracts to check compliance

- Ensure independent internal monitoring to ensure that individual contracts are managed effectively. This should be a role for the internal audit function.

**Intent**

There should be independent monitoring of contracts to check compliance with contractual obligations and agencies' contract management framework in order to identify weaknesses. This is an appropriate role for agencies' internal audit programs.

Through agency Audit and Risk Committees and internal audit programs, independent monitoring can provide an objective process to ensure contract management frameworks comply with government, agency and business unit policies and procedures. They can also provide guidance on the effectiveness of such frameworks which can result in improvements over time.

Roles and responsibilities	Define who does what
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Roles and responsibilities are determined and assigned

- Agencies have determined and assigned the various tasks and responsibilities required for contract management and allocated these to the appropriate roles: For example, who manages the supplier relationship, who reports to senior management, what is reported to the Audit and Risk Committee.
- Agencies have determined and assigned the various roles required for contract management. For example, contract owner, contract manager, contract administrator, etc.
- Agencies may use resources, such as the ANAO Better Practice Guide or PACCER Contract Management Self Assessment tool, as a checklist for identifying contract management tasks.

**Intent**

Agencies must ensure that contract management roles and responsibilities are clear. This means understanding the responsibilities and tasks required to effectively manage contracts, and assigning these responsibilities to the appropriate positions.

Appropriately skilled people and the right management structure, supported by comprehensive contract specific guidance material, can strengthen compliance with agency governance frameworks, and better manage gaps in agency policies and guidance. Technical expertise alone is not sufficient to provide the capability required for managing complex services contracts, which typically also require commercial and contractual skills.

The skills and experience required to manage each contract are assessed and sourced

- Agencies must match and source the contract management skills and competencies required to manage each contract based on the assessed contract risk (see policies and procedures).

**Intent**

Agencies must assess the skills and experience required to manage each contract. Each contract should be matched to the level of contract management skills that is needed to manage it effectively and achieve value for money.

**Better practice element**

**Comment: What is required and why**

Typical contract management skills

Contract specific skills

- Specific subject matter/industry knowledge
- Involvement in similar contracts
- Knowledge of specific client groups.

General contract management skills

- Project management
- Interpersonal and liaison
- Supplier relationship management
- Negotiation
- Business acumen
- Performance monitoring and analysis
- Risk management
- Problem resolution/problem solving
- Team management/team motivation
- Secretariat support
- Visual presentation – graphs and diagrams
- Budgeting, financial management
- Legal aspects of contracting and procurement
- Document management.

Having skilled and competent personnel with defined responsibilities managing legally and technically complex, long term and high value IT services contracts is essential to extract optimum performance and value for money.

**Policies and procedures**

**Define what is done, how it is done and when it is done**

There is a whole of agency procurement manual that includes contract management policies and procedures

- Developed and promulgated by the owner of procurement policy in agencies.
- Complies with NSW Government Procurement policies, the *Public Finance and Audit Act 1983*, the NSW Government Procurement Goods and Services framework, and the agency's internal policies and procedures (governance, management, reporting, etc).
- The manual should cover contract management processes, such as:
  - maintaining a contract register
  - assessing and managing risk
  - keeping appropriate records
  - complying with government procurement policies and the Public Finance and Audit Act
  - effective and timely performance monitoring
  - effective and timely reporting
  - preparing value for money assessments, including business needs analyses and market testing, to justify contract renewals, extensions, exercising options, new contract with same supplier for the same service, or where ever there is to be direct negotiations
  - dispute management
  - transitional arrangements and starting/ending the contract.

**Better practice element**

**Comment: What is required and why**

- Major business units may also need to develop their own procurement manual that complies with the whole of agency procurement manual.

**Intent**

Agencies should develop comprehensive procurement guidance material that includes contract management policies and procedures at the agency and business unit level. The guidance should set out the rules for managing contracts, the minimum standards expected of contract managers and how to achieve value for money.

Issues such as access to complete contract documents and the need to maintain comprehensive records of actions and approvals need to be covered.

Each contract has a risk based contract management plan

- A contract management plan should be developed whether buying off state contracts or where the agency has established its own contracts.
- A risk based contract management plan will customise its content and level of detail based on the agency's risk assessment of the contract, its contract management capabilities, and its risk management framework.
- A contract management plan contains information, such as:
  - key information about how a contract will be resourced and managed to comply with contract management policies and procedures
  - risk assessment and risk management strategy
  - transitional arrangements: starting, ending and extending or renewing the contract
  - a commentary or guide explaining operational clauses
  - systems and processes to ensure that the agency and the contractor complies with the terms and conditions during the performance of the contract
  - roles and responsibilities of both the agency and contractor
  - reporting requirements and oversight arrangements
  - actions to be taken at periodic contract review points, and at decision points to extend or renew contracts, to assess changing business needs, service delivery and value for money
  - detail on how to effectively monitor and manage performance against the contract objectives, service delivery standards and KPIs.

**Intent**

Each contract should have a contract management plan. This sets out key information about contract obligations and milestone dates, as well as the process for managing specific contract clauses. This should assist contract managers to understand the intent and operation of the contract and ensure that contract managers are not left to interpret contract clauses. This will support consistent and correct actions over time, particularly where staff changes occur.

A contract management plan will also incorporate information such as how the contract will be resourced and managed, assessing and managing risks, roles and responsibilities of the contracting parties and reporting requirements.