

# Australian Government Procurement Conference

## **Contract Management in the Public Sector – an ANAO Better Practice Perspective**

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## Contract Management in the Public Sector ANAO Better Practice Perspective

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### *Introductory remarks*

I would firstly like to thank the Department of Finance and Administration for hosting this conference on Australian Government Procurement and the opportunity for me to speak to you this morning about the Australian National Audit Office's (ANAO) perspective on contract management and related issues.

Contracts, and hence the need for contract management, are not new. In 2003, in his series on *Great Moments in Science*, Karl S. Kruszelnicki reported on the use of new image enhancement techniques to uncover markings on a 5,100-year-old clay tablet from Sumeria. So, what was this ancient cuneiform writing about? **It was a contract.** Back in 3,100 BC, Ur Ningal, a Sumerian merchant, sold some slaves. The contract on this particular clay tablet gave a Money-Back Guarantee - if the slaves turned out to be faulty, the buyer could get a full refund!

Many aspects of contract management have not changed since – but we have adapted them to suit today's public sector context. I must say, though, that I am impressed with the quality of Sumerian record keeping. With the current prevalence of email "documentation", finding a record of a decision made five months ago is sometimes hard, let alone 5,000 years ago. However, back to my topic for today.

Contracting is now an integral part of doing public sector business; it is probably the exception rather than the rule where the delivery of government programmes does not involve some contracting with private sector providers. As a result contract management is a skill required in the management of the majority, if not all, programmes.

Yet we still regularly see references to problems in contract management in both the private and the public sector.

To give an overseas public sector example, in a report of December 2005, the United States General Accountability Office (or GAO - the equivalent of the ANAO in the United States) reported that the United States Department of Defence had paid an estimated \$8 billion in incentive fees spanning four major development programs regardless of the performance of the relevant contractor. The GAO report also mentioned that in some cases the Department of Defence had given contractors a second opportunity to earn in excess of \$600 million in incentive payments, irrespective of the actual contract outcomes.

Examples of this kind show, amongst other things, that we can gain from the experience of others in learning how to better develop and manage contracts in the public sector. The ANAO's own work in reviewing contract management

led to the preparation and issue in February 2001 of an ANAO Better Practice Guide on Contract Management. The continued interest in, and need for, advice in this area has encouraged the ANAO, in conjunction with the Department of Finance, to update this guide for issue later this year.

Today, I plan to

- briefly outline the **Scope of Contract Management**, and then
- follow through the **Life Cycle of a Contract** commenting on areas of better practice, and finally discuss
- The need for **Contract Management Capability**, so that the Commonwealth acts as an *'intelligent customer'* in understanding the agency's requirements and the contractor's own capabilities.

In such a short talk I do not aim to be comprehensive – that is the job of the Better Practice Guide. I do aim to at least sketch out the landscape and touch on some areas highlighted in recent reviews and audit reports.

My key message is that successful contract management requires:

- The **right contract**, and
- The **right contract management team**.

### ***The scope of contract management***

Contract management is the process that ensures both parties to a contract fully meet their respective obligations as efficiently and effectively as possible, in order to deliver the business and operational objectives required from the contract and in particular to provide value for money. The foundations for good contract management are laid during the procurement process, as highlighted by the MAB/MIAC paper in 1997 titled *'Before you sign the dotted line, Ensuring contracts can be managed.'*

In the public sector there is huge variety of contracts, with different types of contracts needing different types of contract management. Examples of the types of contracts entered in by Commonwealth entities in recent years include:

- cleaning of offices
- courier services
- detention services
- construction projects – from standard office buildings and fit out to specialist quarantine facilities

- complex computer system development
- freight and transport services
- military equipment, from small vehicles to aircraft and weapons
- supply of goods and services – from copying paper to high value and complex equipment.

Such contracts can vary in value from thousands to hundreds of millions of dollars, in duration from days to decades, in complexity from simple to very complex. Clearly, different degrees and types of contract management practice will apply to differing types of contracts.

Also, remember that *contract management* is a part of overall procurement. The Commonwealth Procurement guidelines say:

*“Procurement encompasses the whole process of acquiring property or services. It begins when an agency has identified a need and decided on its procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the property or services and, where relevant, the ongoing management of a contract and consideration of options related to the contract. Procurement also extends to the ultimate disposal of property at the end of its useful life.”*

For my purposes today, I see “contract management” as beginning at around the time the contract is being finalised, and then including any “transition in” arrangements, ongoing management of the terms of the contract and any final completion, disposal or transition to the new provider. As mentioned earlier, though, the seed of either effective, or problematic, contract management is often laid at the earliest stage of defining the procurement requirement and the general strategy for fulfilling the need.

## ***Life Cycle of a contract***

### ***Initial Planning***

The first step in contracting is assessing the “size” of the contract – its expected cost, duration, complexity, certainty of volume of services needed, degree of novelty, and capability of the market to provide the service and so on. You should assess potential problems and risks. This information will guide the course of your procurement.

There are strategic decisions to be made that will affect the nature of your contract management role. For example, you might contract out a whole requirement, leaving you a relatively straightforward contract management task. Or you may contract out several packages of work, giving you an additional contract management role of service integration and coordination.

Such issues need to be considered early, decisions made and documented. Once these broad issues are settled, the next step (in many cases) is development of tender documentation and draft contracts.

Some better practice points at this stage are to:

- describe the requirements in terms of results required rather than the methods of performance of the work. That is, what is to be performed rather than how to perform it;
- set measurable performance standards. Standards should be set in terms of quality, timeliness, and quantity among other things;
- describe how the contractor's performance will be evaluated focusing on the quality, quantity, and timeliness of the performance outputs to be delivered by the contractor, among other things, and not on the steps required or methods used to produce the service;
- identify positive and negative incentives, when appropriate. Incentives should be used when they will induce better quality performance and may be either positive or negative, or a combination of both. They should apply to the most important aspects of the work, rather than every individual task;
- ensure proper contract coverage of all legal requirements and terms and conditions, and identify responsibilities for approving and managing the contract including taking delivery of the goods and services, and arranging for payment to the contractor.

These are general principles. I acknowledge that in certain contracts it may not be practical to be precise on all issues. For example in research oriented contracts or contracts that involve leading edge technology, it may not be possible to define the deliverables with precision. However, in these cases the timeframes and processes which will lead to the formulation of the contract deliverables during the life of the contract should be identified in the contract.

Describing the deliverables wanted by contract is crucial, but may take much more effort than you imagine. For those of us working mainly through staff, we are able to give broad direction and refine the requirement as work progresses. But if you have to specify work to level needed to contract it out as a package, it is considerably more demanding. Let me give a simple example on the evolution of a single clause in an office cleaning contract. Originally it said "Clean every floor every night". But some floors were vacated, so the clause became "Clean the floors specified in a schedule". But in practice the schedule was not kept up-to-date, so the contractor was still paid for "cleaning" unoccupied floors. The current clause says "Clean only occupied areas, and tell us of any areas that become newly occupied or unoccupied". Our better practice advice is to research and adapt your specifications from someone who has responded to these real world experiences.

In particular, our experience is that setting performance measures is an area where public sector managers do not always give sufficient attention. In our experience it is not the **number** of performance measures or indicators in place, but the **quality** of these and the extent to which they can be accurately measured or assessed is what is important. Having a large number of indicators can be counter-productive and can distract both the contract manager and the contractor from the delivery of the required goods or services. While having effective relationships can help, (a matter that I will discuss shortly), the absence of clearly defined deliverables or contract outcomes and measures that will be used to measure the achievement or delivery, is a common factor in the poor management of contracts.

Flexibility is something that is important in contract management, and contract managers need to be alert to the need to review and if necessary negotiate changes in contract deliverables and outcomes, and the way they are to be monitored and measured through the life of the contract. This is particularly important in contracts where the environment is fluid including changing policy priorities.

### Managing the risk

A lot has been said about the importance of an effective risk management framework as an integral part of any procurement activity. Let me lend my support to this body of information.

At the very least, all procurement should involve some level of risk identification and, where appropriate, the implementation of risk mitigation strategies and approaches. This can be as simple as making a brief note that the risks had been considered and that appropriate arrangements are in place to effectively manage any risks identified. For more complex contracts, more structured and formal risk management approaches and techniques will need to be implemented and applied throughout the life of the contract.

To not take the time to consider the risks involved in a procurement process of any substance, is simply not meeting the standards expected. Unfortunately the failure to conduct even the most rudimentary risk assessment continues to feature as an observation in some of our audit reports. It is also a common finding in the audits undertaken in other jurisdictions both in Australia and internationally. It seems that the pressure of getting things done and achieving the required outcomes is often seen as not being conducive to apply an effective risk management approach, even though it is arguably more important in these circumstances. Whatever the reason the ANAO, in future audits in this area, will continue to assess whether entities have applied the appropriate risk management strategies and approaches.

Effective risk management is not just a matter of identifying the risks at the start of the process and the strategies that will be adopted to manage any risks identified. Initial risk assessments need to be revisited periodically, and realistic and hard-nosed re-assessments of risks made at key stages of the procurement process. It is also particularly important to periodically review

how effectively the risks are being mitigated or managed. Make no mistake, it will be very unusual for the risks to remain static in any contract that extend over reasonable period of time and is of significant value.

### ***Finalising the contract***

Once a preferred supplier has been identified, there are still a number of steps to finalise the contract. A range of matters may still be subject to final negotiation – such as final pricing, some aspects of terms and conditions, legal liability issues, exact performance targets and so on.

It is better practice to have the proposed contract management team involved at this stage, as they will be the ones who will need to manage the contract. For example, the contract manager will want to ensure that the payment schedules provide effective control for the contract manager and provide appropriate incentives for the contractor.

The contract will need to be checked for compliance with better practice, and with relevant Commonwealth procedure and regulations. For example, the Commonwealth's approach to risk management is that the party best able to manage risk takes responsibility for that risk. An issue worth specifically mentioning is the need for appropriate clause to protect the Commonwealth's interests around payment of appropriate liquidated damages in case of default or defective delivery.

If your risk assessment has identified areas of uncertainty, it may be necessary to include appropriate flexibility into the contract. For example, if an IT services contract was for five years and it is known that the number of staff to be covered by the contract is going to change substantially over this period, it does not make any sense for the contract to lock in a specific number of staff to which the services are to be delivered. The contract should include a clearly defined process by which the number can be adjusted throughout the life of the contract.

I would now like to mention several specific contract issues raised in recent reviews – confidentiality, security, record keeping and use of sub-contractors.

### **Confidentiality provisions**

An important factor that should be considered 'up-front' is the question of confidentiality provisions. In this regard I note with interest that there is to be a panel discussion on this aspect later on the morning. So without wishing to pre-empt that discussion I would like to discuss the importance of what we come to colloquially refer to as 'the Murray motion'.

Concerned by what they saw as the public sector using confidentiality as a reason not to provide contract information to Parliamentary Committees, the Senate passed a motion in June 2001 that, in essence, required Ministers to have agencies they are responsible for disclose a range of contract information on their agencies' websites. The Senate has since amended the order; and the Government, with some provisos, has agreed to comply with

the spirit of the order. The relevant Commonwealth Procurement Guidance requires, amongst other things, for contracts of \$100,000 or greater the disclosure of whether they contain confidential provisions. The Order is directed to underlining the principle that information in government contracts should not be protected as 'Commercial in Confidence' unless there is a sound reason to do so.

As some of you would be aware, the ANAO has agreed to conduct an annual audit of agencies' compliance with the Senate Order. To my mind the Senate Order and the positive Government response has brought a very healthy change to the culture that previously existed in the public sector. How many of you would recall that it was common practice for most, if not all, contracts to be identified as 'confidential' or 'in-confidence' irrespective of the nature of the contract provisions.

Requirements of the Senate Order are now embedded in the Commonwealth Procurement Guidelines and the Finance guidance material requires agencies to make a considered judgement at the time the contract is being negotiated / finalised about whether certain contract provisions should be regarded as confidential. While not part of the Senate Order, the attention to this issue has also resulted in a standard provisions being included in most contracts that provide for the disclosure of contract details to Parliamentary Committees and the courts.

While our audits continue to identify that some agencies need to pay increased attention to whether or not certain contract provisions should be confidential, I am pleased to say that overall, most agencies have embraced the intent of the Senate Order. The relevant Finance guidance in this area outlines four criteria for the determination of whether commercial information should be protected as confidential. I won't discuss each one, but I would like to briefly discuss the criterion that disclosure would cause detriment to the contract or the third party. Not surprisingly it is in the area of pricing information where most judgements need to be made. The Finance guidance makes it clear and that the party seeking to maintain confidentiality needs to make a substantive case that disclosure would harm their commercial interest. The guidance goes on to say that the disclosure of hourly rates would not normally meet this test and for pricing information to be considered to be confidential would normally require the inclusion of information that would reveal a contractor's profit margin.

I am a very strong supporter of the policy position that has embraced the Senate Order and I regard the conduct of an annual audit on compliance of the audit as a high priority for my office.

### Security

The security of information is of paramount importance in many contracts entered into by the public sector. For those entities that are subject to the Protective Security Manual there are a range of mandatory requirements that generally should be reflected in contracts. Our experience in this area is that at times there is something of a 'black hole' in relation to the security



requirements that need to be met by contractors. As a general rule, the ANAO suggests that this should mirror the security requirements of the entity itself. There should also be contractual arrangements in place that allow the entity to satisfy itself that the required security arrangements remain in place over the life of the contract. This is an area that requires careful consideration by agencies.

#### Recordkeeping requirements

Any discussion about contract management wouldn't be complete without reiterating the need for entities to maintain appropriate records. As with all recordkeeping, the extent and nature of the records that are maintained should be fit for purpose that is, they should be commensurate with the particular circumstances of each contract and of course, they need to be in accordance with the entity's own recordkeeping policies and practices.

In a recent audit report (Audit Report No. 34, 2005-2006 *Advance Passenger Processing*) the audit identified that in relation to a very significant payment made to the contractor of nearly a million dollars, the entity's records were not adequate to indicate the basis for the payment and the respective responsibilities of the parties in relation to the payment.

#### The use of sub-contractors

Many contracts involve the Commonwealth engaging a prime contractor and in turn that contractor engaging one or a number of sub-contractors to assist in undertaking some or all of the required services. In these circumstances it is essential that the contractual relationship between the prime contractor and the sub-contractors reflect, to the extent required, the essential features of the contract between the Commonwealth and the prime contractor. Provisions relating to access to information and records, intellectual property, ownership of contract material and performance measures are some of the areas where attention needs to be paid in this regard.

Following my comments on those specific contractual issues, I return to the broader theme of contract finalisation stage.

#### Prepare for a contractual relationship

At this stage new relationships will need to be developed, between the contract management team, the contractor, and other stakeholders such as service recipients. In some cases, you may find that the personnel on the contractor side change from the contract bidding team, to the delivery team, and some care may be needed to build new relationships and ensure the quality of contractor personnel.

## ***Transition***

Often there is a transition stage for commencement of the contract. There may be a whole range of one-off tasks that need to be planned and resourced. This will often include the setting up of performance monitoring arrangements. For changes from one supplier to another there will be need for close coordination to ensure continuity of service and transfer of relevant information and assets. Ensuring that both the contractor and the contract management team understand what is needed and are appropriately resourced is important.

Once contact start-up or transition is complete, you move into the phase of ongoing contract management.

## ***Ongoing management***

The key activities for ongoing contract management can be grouped broadly into three major areas as follows:

- **Service delivery management** which ensures that the goods, services or supplies are being delivered as agreed, to the required level of performance and quality
- **Relationship management** which keeps the relationship between the parties open and constructive, aiming to be based on trust rather than on adversarial models, so that tensions may be resolved or eased and problems identified and effectively dealt with early
- **Contract administration** which encompasses the areas of formal contract governance and changes to the contract documentation. It involves areas that are often early warning signs that more significant actions may be needed.

I would now like to expand on some of these points. I have also included an attachment of Good Practices to aid Contract Management, kindly made available by Mallesons Stephen Jaques.

## **Relationships**

An important aspect of the management of any contract of substance is the need to develop and maintain effective working relationships between the parties. Having professional, constructive relationship with the contractor is more likely to assist in the delivery of the outcomes sought from the contract. This is distinct from a relationship which is acrimonious and adversarial which is likely to mean both parties are distracted from achieving the desired outcomes and spend time and energy in what is ultimately unproductive discussions and correspondence. However, maintaining good relations is not, in my view, about not enforcing the terms of the contract where this needs to be done. But it is about both parties having a very clear understanding of their respective responsibilities and also being very clear about the contract

deliverables. Ideally, relationships will start to be formed during the contract negotiation stage, but in many cases the contract manager will assume responsibility for managing the contract once it is signed. In these circumstances it is important that the contract manager inform him or herself about any issues arising through the tender and/or negotiation phase which potentially may impact on the ongoing management of the contract.

#### Management of underperformance

One of the issues that we observe from time to time during the course of our audits is a seeming reluctance on the part of entities to enforce the provisions of the contract in the event of under-performance. This is sometimes justified on the basis that it would impact on the relationship between the entity and the contractor. Difficult judgements will often need to be made in this respect, but the ANAO's general position is that the provisions of the contract should be enforced where the entity considers that there is evidence to support the fact that the contractor's performance is below what is required. Not to do so would potentially weaken the Commonwealth's position and in some circumstances may inadvertently mean that the contract has in fact been varied through the actions of the Commonwealth.

#### Contractor payments

Another area of concern is validating contractor payments. It may seem unnecessary to say, but one of the golden rules of contract management is that contract payments should only be made in accordance with the contract provisions and should only be made where the contract manager is satisfied that they have been fulfilled. This requires in the first place for the contract to clearly specify the contract payment arrangements including the circumstances in which payments will be made to the contractor. In the course of our audits we do come across instances where payments have been made where there is a lack of evidence that the required delegate have certified that goods and services have been received; or worse, where payment have been made where it is evident that the required goods and services have not been received or are not at the required standard. Again, this action is sometimes justified on the basis that it is important that a good relationship is maintained with the contractor. In our view this is not sufficient reason to justify the expenditure of public funds.

For example, in some research we have undertaken in updating our own Better Practice Guide on Contract Management, we were advised of a situation that, in respect of a multi-million dollar contract, it wasn't until the entity concerned was considering the renewal of a contract that it was identified that significant amounts of money had been paid to the contractor even though the contractor had delivered the required services late on many occasions and at times had failed to deliver the services in accordance with contract requirements. Notwithstanding this the entity had continued to pay all invoices submitted by the contractor.

### ***Transition to renewed contracts***

Many contracts are for goods or services for which there is a continuing need. Often a contract will be signed for provision of services for, say three years, with options to extend for one or two years.

But once this contract ends, there needs to be a transition to a new contract, and potentially a new provider.

The foundations for managing this successfully need to be laid in the initial contract, with such as issues as transfer of records and equipment covered, and transitional service arrangements. Many of the standard contracts we review cover these issues well, and I encourage you to draw upon the experience of other public sector managers which is embodied in such contracts.

But there can still be practical issues which cause problems. I will mention two (by way of example, rather than suggesting these are the most significant issues).

It is not uncommon for agencies to set up a professional services contract, say for three years, with the option of two one year extensions. This represents good procurement practice. However, sometimes even with the foreknowledge of five years, procurement processes for a replacement contract are not completed by the end of the contract period. In such cases the agency may continue using the original contractor – with some agreement to continue work under the terms of the original contract. Whilst this may have been seen as a pragmatic approach in the circumstances, it does not give effect to Commonwealth Procurement Guidelines principles of open competition and having evidence of value for money. A message here is the need to plan ahead for the internal resource requirements of transition, which can be higher than the management of ongoing operations.

In the other example, a tender process was conducted for a service provider, in parallel with the continued provision of services by the incumbent contractor. In such cases there are clearly sensitivities over due process, potentially differing access to information among bidders, and the need to ensure probity in the process. Our audit of the process raised concerns about transparency and probity, related to the involvement of agency personnel managing the current contract and the new selection process. Such issues are complex and need to be carefully managed, with clear accountability established within the tendering agency.

## ***Contract management capability***

My comments so far have related to work that should be done by the contract or procurement manager. But their role is only part of the picture. Agencies with a good track record in contract management have generally invested in their contract management capability. This capability can take the form of internal guidelines, practice guides, suites of standard contracts, systems for the collection and analysis of contractor performance, and the development of contract management skills in staff.

Decisions about the level of investment in these matters are taken by agency management, rather than individual contract managers. And, in my view, such investments can make a significant difference to performance.

Such “better practice” approaches to contract management capability are operating today in some agencies.

A number of agencies have good internal suites of standard contracts, covering such common needs as consultancies, or standard goods and services for the agency. Some have effective support processes, including legal advice or procurement process advice to help line managers set up good contracts.

Some agencies, particularly those with similar service contracts with multiple providers, have well developed performance data collection and assessment processes.

And there can be real problems with not having such frameworks. For example, a highly decentralised approach to contract documentation can lead to the continued re-use of contracts and tender documents with inappropriate or dated clauses.

However, the crux of good contract management is good contract management personnel. Certainly good contract specifications are the key to good contract management. But highly skilled, experienced and trained contract management personnel are the key to good contract specifications. Evidence suggests that there should be a continued focus on training and skills development and, in particular, the development of legal skills and awareness.

Skills for contracting are the critical factor influencing all parts of contract management, in addition to strong subject matter skills, interpersonal skills and project management skills as essential attributes of an effective contract manager. The contract manager's subject matter skills should include knowledge of the relevant industry, procurement processes, accountability requirements, contract law, financial management and human resource management. In addition, the contract manager should be aware of contractors capabilities, so that the Commonwealth is able to act as an *‘intelligent customer’*.

In relation to interpersonal skills, contract managers should have strong communication, negotiation, facilitation and team-building abilities. In addition, contract managers must have strong project management skills so that they can develop a strategic plan and ensure that there is effective integration of people and tasks.

Contract managers also need to be able to draw together, motivate and lead a team of people to achieve a common goal. Successful project managers are able to establish effective working relationships within the team and set assignments so that the disparate skills of the team are used effectively.

Part of the program manager's responsibility is to identify and secure the necessary skills for contract management. These skills may not be available and may need to be developed internally, or obtained through recruitment or outsourcing.

### ***Why is public sector contract management not done better?***

As mentioned, there is evidence that contract management requires some improvement in performance. Before closing, I thought it would be useful to reflect on why that might so. There is no one, or simple, answer to this question.

One likely factor is the fact that the environment in which contracts are let and managed is a complex one. Public sector agencies generally do not have only one objective or outcome to achieve. This creates a situation whereby there may not always be a straightforward business focus in public sector programmes.

A related issue is the range of legislative and policy requirements that are relevant to procurement generally, and to contract management specifically. Many of these requirements are reflected in individual contracts and therefore need to be actively managed to ensure that the Commonwealth and individual entities comply with them. A very informative document issued by the Department of Finance and Administration, Finance Management Guide No.10, *Guidance on Compliance with Legislative and Government Policy Procurement* dated January 2005 provides a comprehensive listing of these requirements.

Another factor, in my view, is that a public sector manager's skills and ability in managing contracts may not be given the same prominence as other skills that managers need to have. There can be a number of underlying consequences of this, such as reduced management attention to procurement activities generally, a lack of priority being given to training and development and the absence or inadequacy of policy and guidance material.

However, these factors notwithstanding, we do see many cases of sound contract management. So the general public sector environment is not the key determinant. It is a case of getting the fundamentals right, having clear accountabilities in place within the agency, and between the agency and contractor, and particularly in senior management recognising the importance

of effective contract management to the successful delivery of programme outcomes.

The agencies that manage contracts well provide the opportunity for learning from their success. It is likely that some of their systems of standard contracts, or the use of specialist support areas, or internal training and career streams can be adapted and used by other agencies to good effect.

## **Concluding comments**

Let me now sum up. At the outset I made the point that contract management is not new. But it worth also noting that Ur Ningal, the Sumerian merchant of 5,000 years ago, could write his entire contract in cuneiform on a small clay tablet. Our world, and the services we want to contract, are much more complex than Ur Ningal's. Our contracts may be hundreds of pages long – and successfully deliver complex services not contemplated in the past. So I think there still is plenty to learn about an old subject.

There are many dimensions to successful contract management, but the key ingredients include:

1. a well designed and executed procurement phase;
2. having skilled and experienced contract management personnel in place;
3. acting as an 'intelligent customer' in understanding your agency's requirements and the contractors capabilities;
4. managing the relationship effectively.

Contracting is now a fundamental part of how we do business. As a result, effective management of contracts of whatever size and for whatever purpose is an essential requirement for most, if not all, public sector programs. It is however an aspect of administration that has not always been given the focus and attention that it deserves.

It was pleasing therefore to hear Dr Shergold recently underlining the importance of the closely related discipline of project management. He talked about wanting public servants to have a bias "for delivering public policy with vigour".

He made the point that:

*"Better implementation needs to be consciously driven from the top down. It requires continuing executive oversight and support. Chief Executive Instructions create a framework for due process and accountability but they do not convey the commitment and interest of leadership in implementation."*

Given how much public policy is now delivered through contractual arrangements, Dr Shergold's comments also apply equally to contract management:

Effective contract management is an essential element of a well-performing public sector. There is considerable experience to draw on amongst public sector agencies. Conferences such as this are invaluable in sharing the collective experiences of agencies. In this context, the ANAO is pleased to be working with the Department of Finance on the update of the Contract Management Better Practice Guide to assist agencies in this critical area of public administration.

Thank you.



## Good Practices to aid Contract Management – 14 Practical points<sup>1</sup>

**arrange a handover from the negotiation team** - ensure the contract manager, and the people who will be using the contractor's services, get a briefing from the people who negotiated the contract. Consider choosing a contract manager who was involved in the negotiations

**follow up initial contractor obligations** - ensure you follow up the contractor on key initial obligations, such as getting evidence of their insurance, signed confidentiality deeds from personnel (if applicable) and development of transition-out plan (if applicable)

**diarise key dates and deliverables** - it can be useful to prepare a checklist of key dates and deliverables, or other aids to help manage the contract (particularly useful for large contracts)

**consider documenting key processes** - where the contract involves complex processes, consider preparing flow charts or other aids to understanding how the contract works

**use version control** - establish version control for key documents being produced as a result of the contract, to ensure all members of your and the client's team are working on the right version. Consider a central repository for documents

**actively manage the contract** - this may not be necessary for minor contracts, but for many contracts the Commonwealth needs to take responsibility for monitoring and directing contractor performance. This is essential where the Commonwealth is outsourcing delivery of services to the public

**review invoices** - check invoices are in accordance with the contract requirements, and are in order to pay. Consider what substantiating documents are required in support of an invoice

**foster communication and relationship management** - for larger contracts, consider how the parties will interact at different levels, to ensure the contractor is understanding the Commonwealth's needs and we are getting the right information. Consider at what forum should day-to-day issues be resolved. Ideally, there needs to be a forum for provision of feedback and discussion of what's working well and badly, without issues becoming personal or damaging the working relationship between the parties

**consider contract reviews** - for longer-term contracts, having a periodic review with the contractor can be a useful way of ensuring the contract is working well

**manage missed deadlines** - if the contractor is going to miss a deadline, and you are not going to take action against them as a result, make sure you set (or agree) a new due date before the expiry of the deadline (otherwise the Commonwealth can lose the right to take action such as enforcement of service credits, liquidated damages or termination)

**don't pay until defects are fixed** - make sure you have enough money for remaining milestones to give the contractor an incentive to finish the job properly. If not, consider whether the contract allows you to withhold payment until defects are rectified

**make variations in writing** - many contracts need to be changed over time. If any changes are agreed to the contract, make sure they are recorded in writing. Consider a register of variations (if there is a dispute over the contract, and changes have not been written down, it can be difficult to ascertain what the parties' obligations are).

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<sup>1</sup> Adam Bartlett; Partner, Mallesons Stephens Jaques

**resolve disputes quickly** - endeavour to resolve disputes quickly, so that they do not hinder contract performance. Escalation can be a useful tool for preserving the relationship between the people that work together day-to-day on each side of the contract

**have your back-up strategy ready** - for important projects, or where timing is tight, it's obviously even more important to have a back-up strategy, and to be ready to implement it