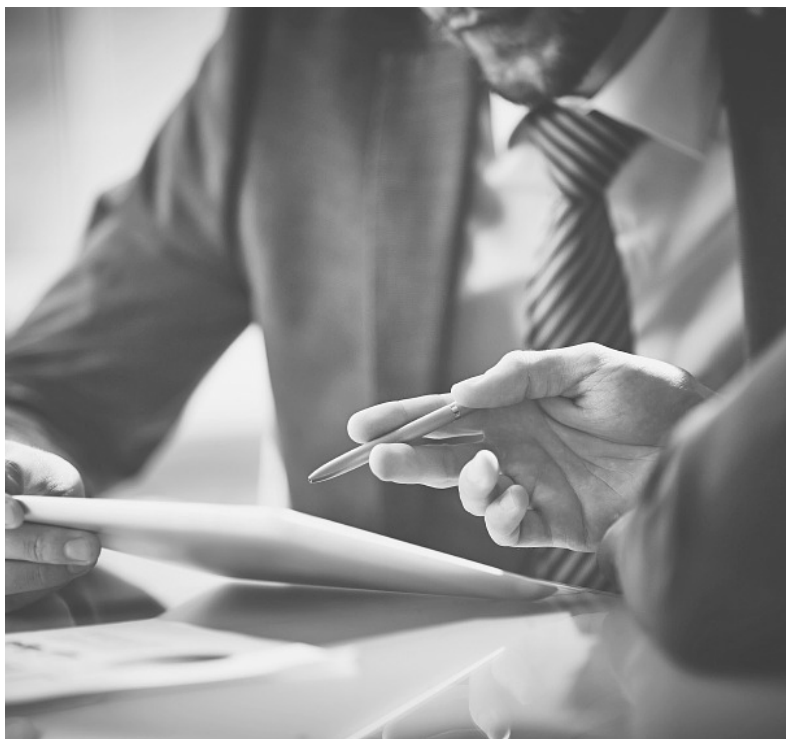




THE ART OF SUCCESSFUL CONTRACT MANAGEMENT

WEBINAR SERIES



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Table of Contents

1	Introduction	3
1.1	Overview.....	3
1.2	Learning outcomes	3
1.3	Who should attend?	3
2	Refresher: sourcing & contract management process	4
2.1	Contract management as part of the Procurement Cycle	4
2.2	What contract management entails.....	7
3	Contract management basics	8
3.1	The Disappointment Gap.....	8
3.2	Why is your contract not achieving as much value as it could?	9
3.3	The ongoing contracting problem	9
3.4	Bridging the Disappointment Gap	10
3.5	Objectives of contract management	12
3.6	Critical drivers of good contract management.....	12
3.7	Contract management at different levels	12
3.8	The characteristics of good practice.....	13
3.9	Contract Law	14
3.10	Written v oral contracts.....	14
3.11	Privity.....	14
3.12	Estoppel	15
3.13	Document precedence	16
4	Contract implementation.....	19
4.1	What is a Contract Management Plan?.....	19
4.2	Key objectives in the implementation process	19
4.3	Key steps in contract implementation	19
4.4	Implementation timeframes	20
4.5	Managing transition	21
4.6	Managing stakeholders	21
4.7	Transition issues	23
5	Creating win/win relationships	24
5.1	Typical relationships	24
5.2	From Foe to Friend - creating win/win relationships	26
6	Communication management	30
6.1	Influencers on effective communication.....	30
6.2	Communication planning	30
6.3	Email versus dialogue	31

7	Performance management	33
7.1	Why measure performance?	33
7.2	Performance management concepts	33
7.3	Incentive regimes (rewards)	34
7.4	Balanced Scorecard	34
7.5	Gainshare / Painshare	34
7.6	Payment for deliverables.....	35
7.7	Performance levels	36
7.8	KPIs must be 'SMART'	36
7.9	Measuring performance	36
8	Managing risk.....	38
8.1	What is risk?	38
8.2	Managing risks.....	38
8.3	Contract risk management	39
8.4	Prioritising the effort	40
8.5	Exercise: Typical risk associated with contract management	41
8.6	Exercise - thinking about risk.....	42
9	Contract variations	44
9.1	What is a variation?	44
9.2	What do you need to do?	44
9.3	Initiation of a variation	44
9.4	How to reduce variations	45
10	Resolving disputes	46
10.1	Stop – and take a deep breath	46
10.2	Resolving minor issues	46
10.3	Resolving major issues.....	47
11	Contract renewal and close-out	49
11.1	How to make a decision to extend / close-out?	49
12	Conclusion, reflection and commitment to action	50
12.1	Supportive behaviours.....	50
12.2	Restrictive behaviours	50
12.3	Ten Golden Rules.....	50

1 Introduction

1.1 Overview

Often, contract management is something that gets thrown at you. Without much explanation of what is required. No training in how you monitor the supplier's performance. No understanding of how to avoid the biggest traps. But you just don't know what you don't know!

That stops today.

You have signed up to our series of seven webinars which will cover everything you need to know to make your contract management more successful.

This course book expands on what we have covered in the webinar series and will give you in-depth explanations for every step of the contract management process.

1.2 Learning outcomes

This course will equip attendees with the skills and knowledge to:

- drive real value for your organisation through effective end to end contract management
- learn what tools, techniques and methods are appropriate to manage supplier performance, relationships and navigate the tricky bits
- unlock the potential of your contract through the power of performance management, supplier relationship management and continuous improvement.

1.3 Who should attend?

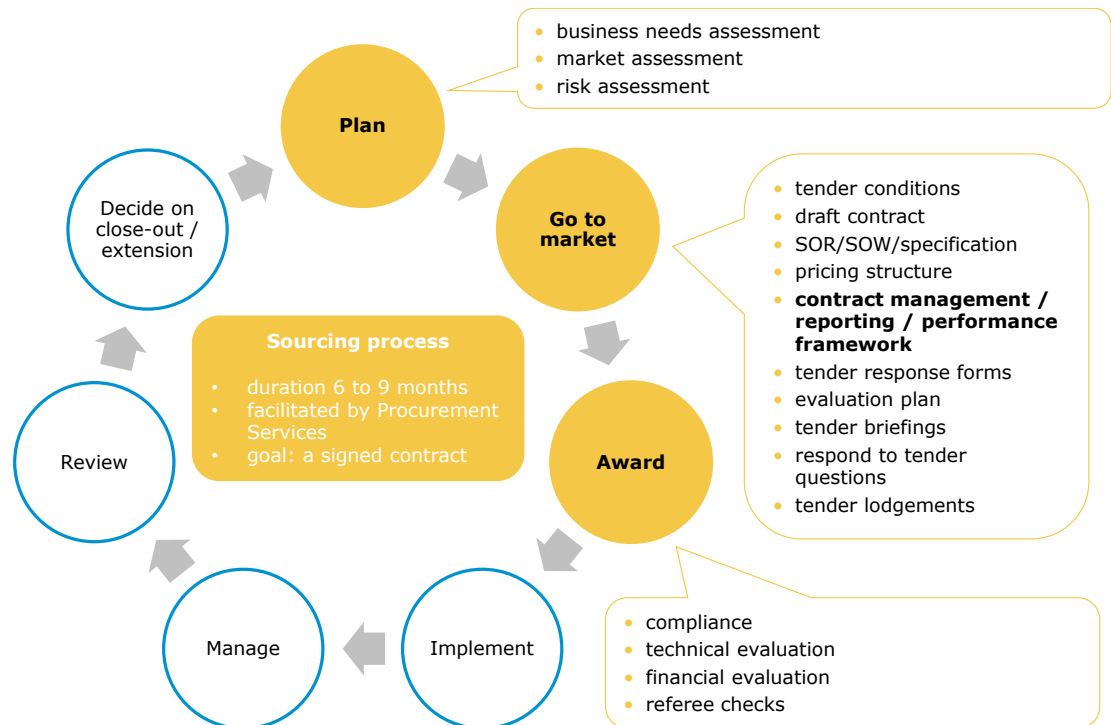
- functional and operational managers who are new to managing external suppliers
- contract managers who are fed up with fighting fires and fixing stuff-ups
- general managers who need to get better performance out of suppliers
- motivated procurement managers wanting to setup more successful contracts.

2 Refresher: sourcing & contract management process

2.1 Contract management as part of the Procurement Cycle

Below outlines the whole of lifecycle approach to procurement. While the foundations for successful contract management are laid during the sourcing process, the management phase typically covers a much longer time horizon (years vs months).

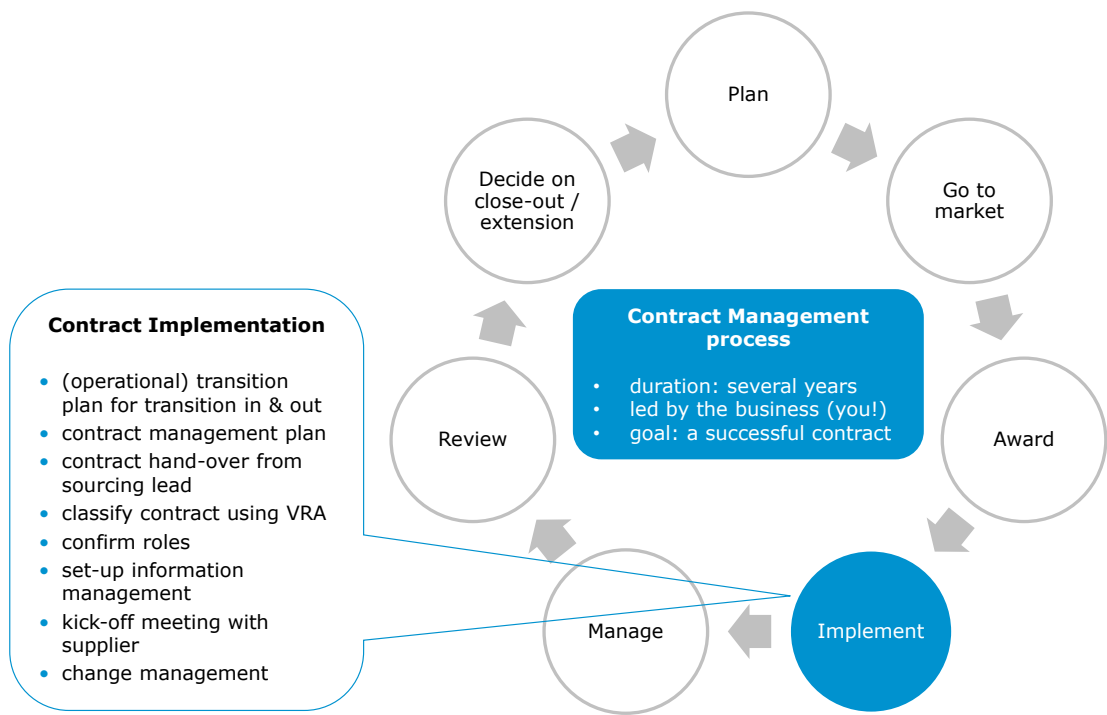
2.1.1 The stages of the sourcing process



2.1.2 Contract management process: Contract Implementation

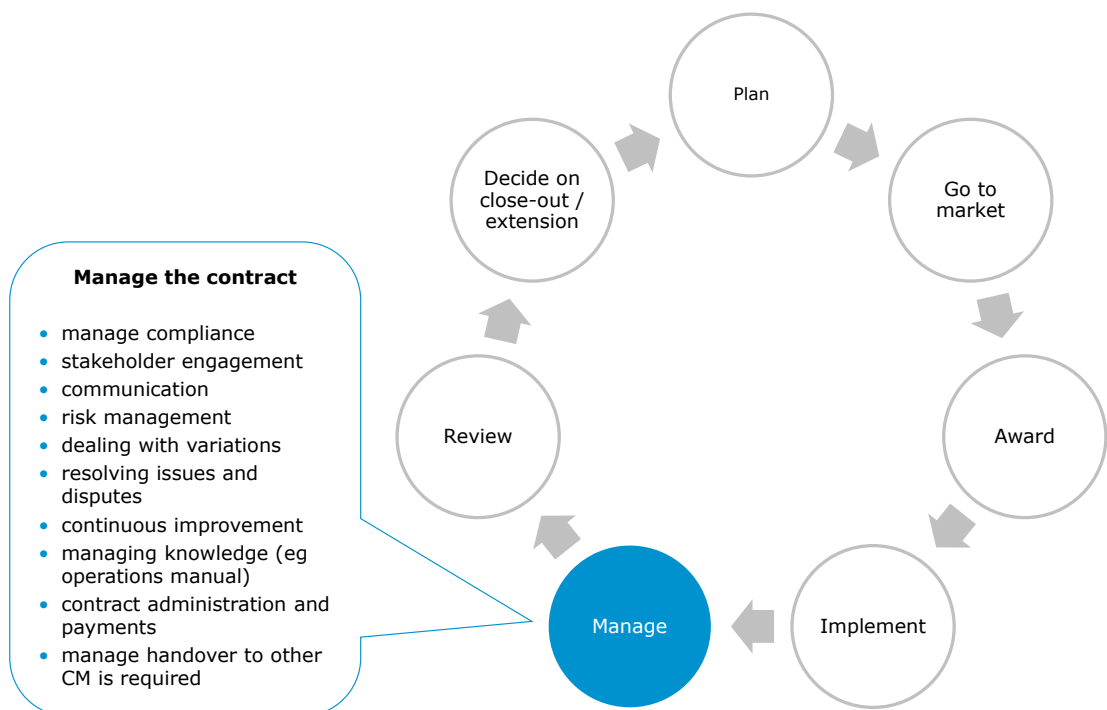
Contract management is the stage of the procurement cycle during which the goods and services are delivered in a manner that satisfies the requirement stated in the Request for Tender (RFT) or agreed Statement of Work (SoW).

During contract implementation, the foundations for a successful contract management are laid as this includes contract management planning.



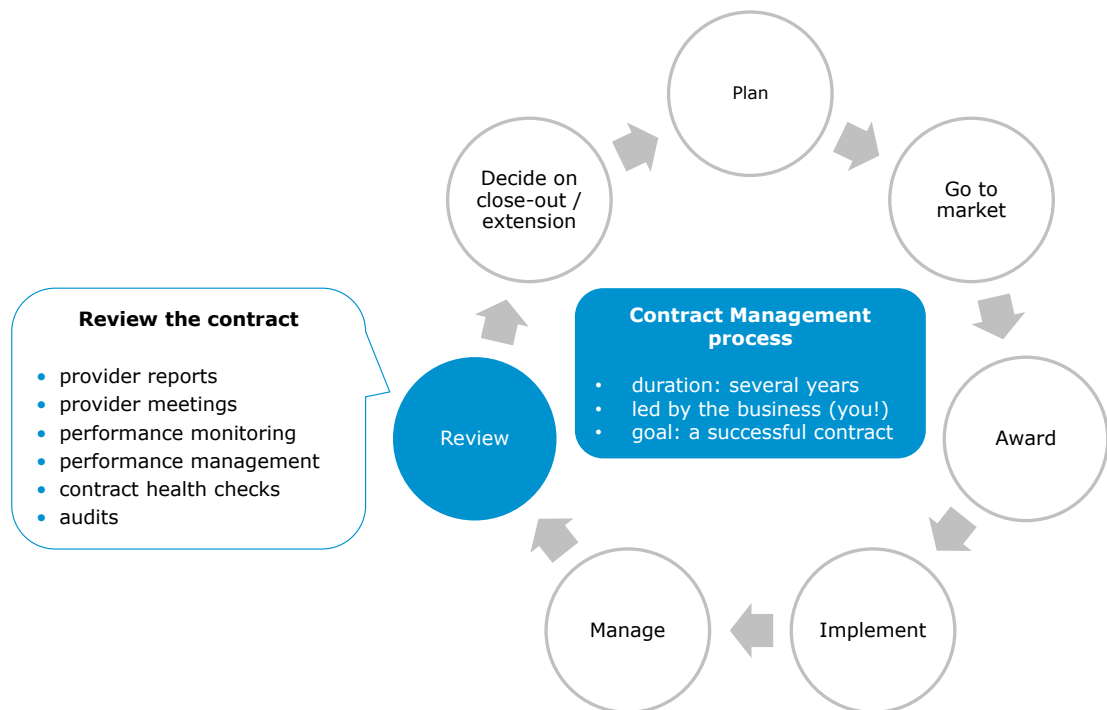
2.1.3 Contract management process: Manage the contract

Managing the contract starts at the commencement date and ends with the last day of the contract term. The Contract Manager (CM) is responsible for these processes to ensure value for money is realised.



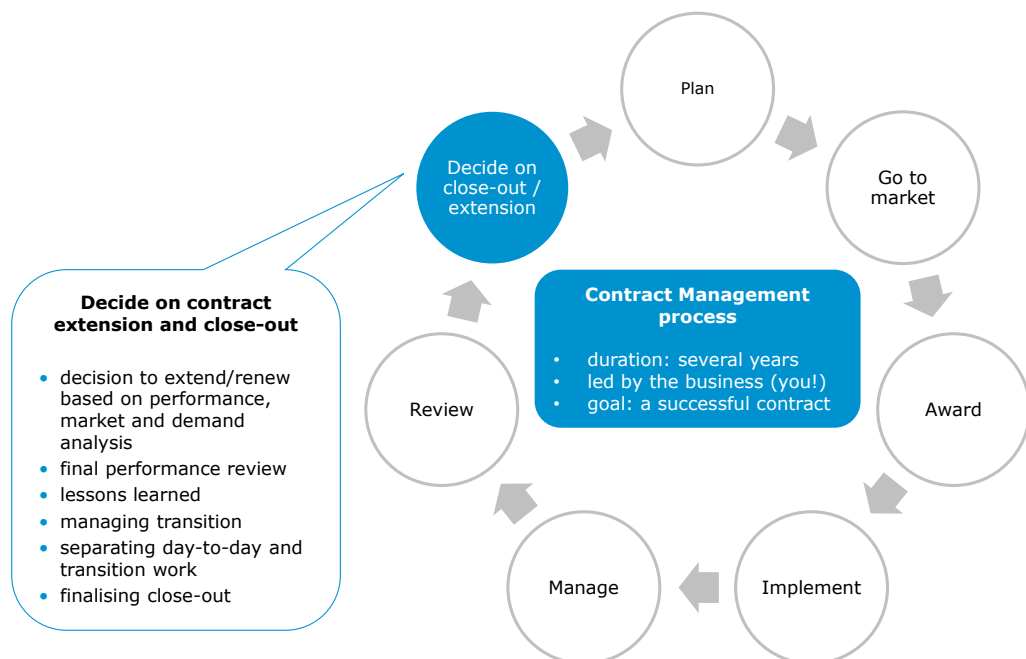
2.1.4 Contract Management process: Review the contract

Reviewing the provider's performance and how the contract is performing against the benefits that were promised during the sourcing process is a critical part in the contract management process.



2.1.5 Contract management process: Decide on extension or close-out

Most contracts and Standing Offer Agreements (SOA) have an expiry date. Planning well in advance if the contract is to be extended or renewed leaves sufficient time to re-procure the services.



2.2 What contract management entails

The below is a summary of the outcomes generated by good contract management.

Can your contract evidence all of these outcomes? Who is responsible for achieving them?

Sourcing	☐ subject matter knowledge available to sourcing project
Implement	☐ up-to-date plan exists describing how the contract is managed ☐ appropriate resources have been assigned to manage the contract ☐ appropriate transition arrangements are agreed
Manage	☐ service provider responsibilities are tracked ☐ delivery of goods and services is monitored ☐ budget is tracked and payments are approved ☐ appropriate records are kept
Review	☐ performance of the service provider is monitored and recorded ☐ performance of the service provider is managed appropriately ☐ relationship is healthy and communication is effective ☐ variations are dealt with and managed appropriately ☐ processes are in place to raise and resolve issues ☐ risks are identified and appropriately managed
Decide on close-out / extension	☐ robust and informed decision to extend the contract is made ☐ timing of the decision does not preclude the option re-procure

3 Contract management basics

3.1 The Disappointment Gap

In undertaking a tender, clients commit considerable resources to ensuring;

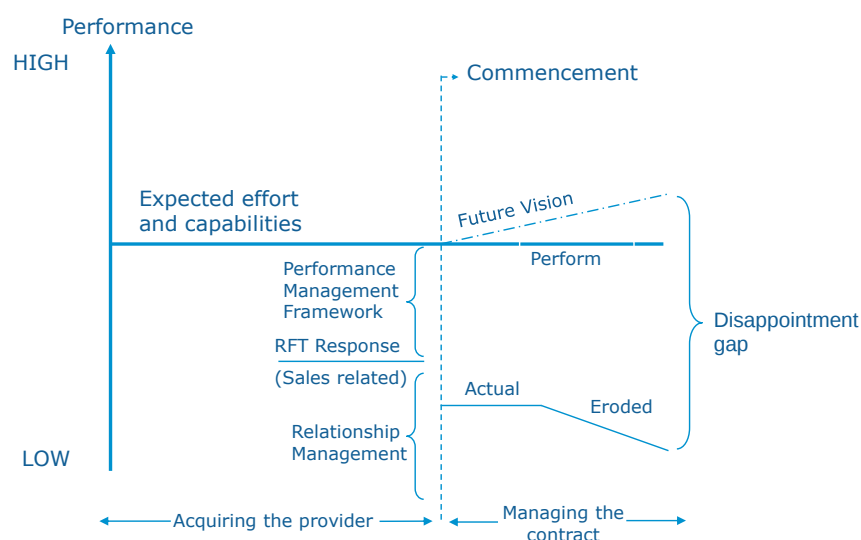
- their exact service needs are well specified, often representing significant intellectual property
- the necessary information is provided to tenderers
- they have an excellent understanding of what constitutes the ideal service provider
- all relevant risks are managed.

Typically, sourcing departments and their customers have a future vision of continuous improvement over the course of the contract. This vision is often given effect by innovation-related KPIs and/or formal gainshare arrangements. These expectations are built into contracts in the knowledge that the market's capability will continue to improve through such things as technology and productivity improvements.

When RFT documents are released to the market, the evaluation teams' expectations of the market's ability to both respond insightfully and then deliver the contract, are high. Tender responses are developed by business developers whose role it is to win contracts, not deliver them. Many evaluators report their disappointment with the gap between the expectations set in the RFT and the responses received.

Further disappointment is frequently reported after contract commencement, as the client's CMs come to realise the promised performance of the service provider is not reflected in the actual delivery. Their experience can be further exacerbated by failure of both parties to achieve mutually beneficial management relationships.

The difference between the idealised future vision and the eroded actual performance is the Disappointment Gap:



3.2 Why is your contract not achieving as much value as it could?

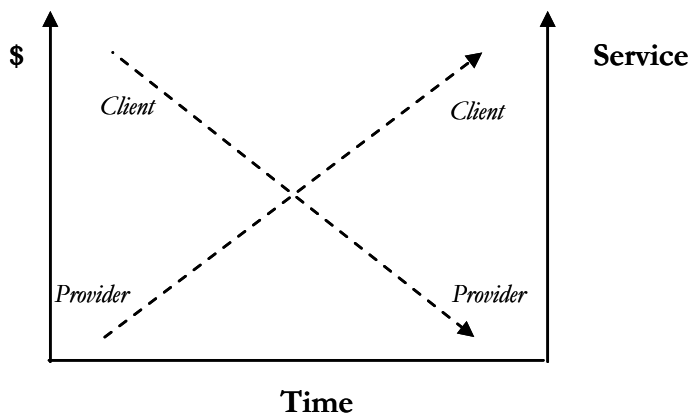
Write down three reasons why you think your contract does not achieve as much value as it could:

3.3 The ongoing contracting problem

There is a constant mismatch of outcomes between a client and a provider.

ORGANISATION		SERVICE PROVIDER
Manages down costs	VS	Seeks to build revenues
Seeks improved services	VS	Aims to reduce costs
Documents and transfers Intellectual Property (IP)	VS	Learns and leverages IP
Manages risk (in part) regularly seeks reassurance by contract term	VS	Aims to extend length of contract
Welcomes competitive market tension	VS	Seeks market dominance
Desires strategic collaboration	VS	Is (micro) managed on operational performance
Aims for contract mobility	VS	Aims for client "stickiness"

Over time, the client desires that costs go down while service goes up. Conversely, the provider wants its revenue to increase without the need to add in extra resources towards delivering services.



The real achievement of congruence and, therefore, the real achievement of a strong relationship, is when both parties realise the conflict between their individual goals and seek to overcome these and work towards common goals.

3.4 Bridging the Disappointment Gap

There are three steps to bridging the gap. They must be done sequentially, each of them takes time and they are increasingly difficult to achieve.

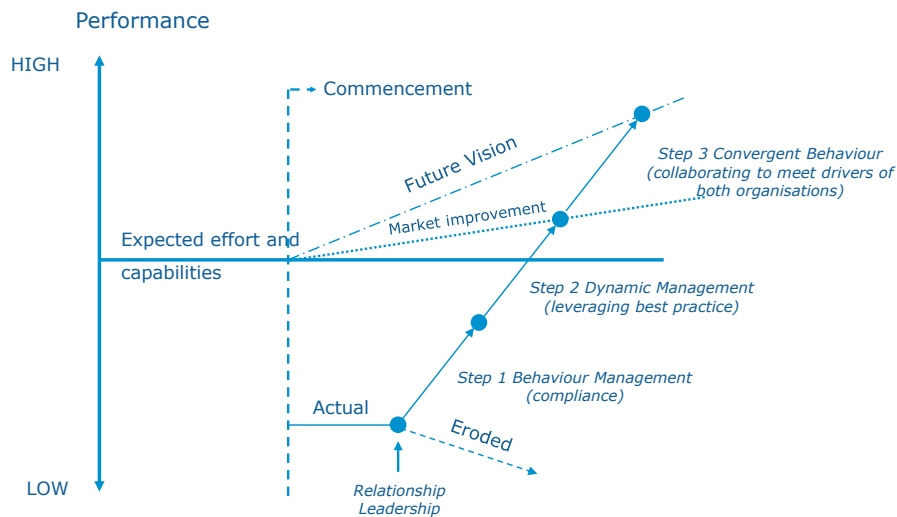
3.4.1 Step 1 Behaviour Management

There is a widely held view that a good contract (relationship) is one where the contract can be left in the bottom drawer. There are many reasons why this opinion is flawed. Here are two: the first is the need to establish trust. Contract users (business units, customers etc) must be able to trust that the tasks and associated service levels specified in the contract will be delivered as the provider's proposal originally promised they would be.

Until such time as the contract users trust the provider with their business as usual needs, the prospects of their allowing the provider to innovate and improve, are effectively nil.

The second is the loss of intellectual property. It occurs as the client loses those in house staff who had the original knowledge and experience of the service. It also arises from the random drift of intellectual property away from documented to tacit. Too often when CMs from either side move on, incoming staff are told that (the contract) is 'not the way we do it anymore'.

Behaviour Management is about achieving compliance with the contract ie the service provider making good on its promises. A good contract management plan, predicated on compliance with the contract, should be the oft-used tool to support this endeavour.



3.4.2 Step 2 Dynamic Management

This second step recognises the challenge of maintaining the leadership position established when the contract was initially exposed to the competitive market forces of tendering. A simple example of this can be found in the provision of share registry services where electronic communication with shareholders is rapidly replacing hard copy forms and documents. Historically, in situations such as this, the provider's cost base has fallen without any resulting benefits accruing to the client.

Both parties benefit in having a solid assurance through the life of the contract and certainly by the intended expiry date; that the arrangement is being delivered at the equivalent of current market practice. For example, if it was clear there was very little additional value for money to be extracted from re-tendering and there was considerable relationship capital between the parties; the resources and costs associated with retendering could be used elsewhere. As organisations recognise this possibility, redeployment of staff from intensive and repetitive contract acquisition into contract management becomes possible.

3.4.3 Step 3 Convergent Behaviours

While it is often written as the ideal relationship objective, collaborating to meet the drivers of both organisations is rarely achieved. The underlying need is for clients and providers to work together to manage their highly dynamic environments with a largely static service level agreement.

Typically services contracts have 3-5 year terms. As organisations regularly vary their strategic agenda, the tactical and operational responses of their organisations must vary accordingly. Consequently contract objectives, critical success factors and key performance indicators must vary.

Developing convergent behaviours requires of both parties a range of attributes, not the least of which are continued relationship leadership by the client and a genuine desire by both parties.

The constituent document set comprising the contract should be structured in such a way as to reflect appropriately the fixed and variable needs of the organisation. A

fixed, rules-based governance document combined with a variable schedule and a variable operations manual which details for example policy specifics, maximises the prospects of eliminating the Disappointment Gap.

A Strategic Performance Framework which has as its core objective organisational satisfaction, lifts the relationship out of the operational-level focus of the typical “fit-for-purpose” service levels.

3.5 Objectives of contract management

The implementation of contract management typically has the following objectives:

- ensuring accountability and responsibility of stakeholders
- best value for money is achieved (ie the best possible service at the most reasonable cost)
- ensuring service boundaries are managed (ie in and out of scope aspects)
- innovative service delivery is achieved
- operational and financial risks are managed or transferred (but note that even risks which have been transferred must still be managed)
- effective relationships with service providers are developed and maintained.

3.6 Critical drivers of good contract management

The following lists critical success factors for a contract:

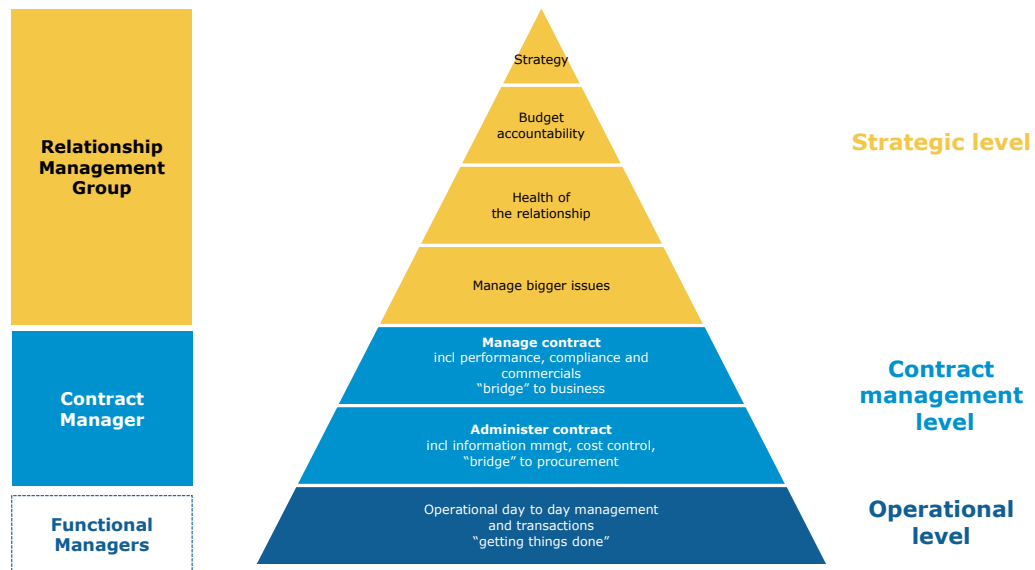
- a good contract, including the quality of the specification, a contract and performance management model and the pricing model
- the right service / product delivery model
- the right provider selected through a transparent and fair process
- change management skills to ensure acceptance of new arrangements within the buying organisation
- contract management skills and competencies
- ongoing review and dynamic management of the contract and deliverables
- following good procurement practice.

3.7 Contract management at different levels

Contract management is a team effort and performed at different levels of governance. Typically, functional managers are concerned with the day-to-day management and transactions at the operational level (we sometimes call them the users of the contract). This is typically where most issues are resolved. Contract Managers and their counterpart at the provider meet regularly, eg on a monthly basis and discusses contract administration issues and performance metrics.

Some contracts include a relationship management group of which the contract owner is a member. It meets less frequently, possibly on a quarterly or annual basis

to assess the health of the relationship. Contract extensions and bigger issues are often discussed at this level based on the information fed up from other levels of contract governance.



3.8 The characteristics of good practice

For contract management to be successful, we typically find:

- presence of a structure appropriate to the requirement
- communication arrangements including meetings between the parties at appropriate regularity
- a reporting framework that provides useful and regular information
- planning around the management of the contract and delivery of the requirements
- a performance management framework that allows you to check the progress of the provider's performance
- incentives to encourage the provider to achieve greater excellence
- appropriate sanctions for poor performance.

Other issues to consider include the process of tasking the provider to undertake work, the development and maintenance of operational manuals and ownership of intellectual property and the implementation or transition process used to set the contract up.

3.9 Contract Law

Contracts in Australia are based on the common law inherited from the United Kingdom combined with Australia's own legal precedents and legislation that has been enacted by the Australian and State parliaments.

A contract can be defined as: *"A legally binding agreement between two or more parties."* Basically, contracts have the following main attributes:

- Agreement:** there must be an offer to do something and acceptance of that offer by the other party. In addition, subject to a limited number of exceptions, there must also be consideration for the promise (there must be sufficient payment or other exchange of value)
- Promise:** both parties promise to do something
- Intention:** the parties must intend that their promises create legally enforceable obligations
- Enforcement:** governed by law or legal precedent
- Reliance:** each party trusts the other party
- Exchange:** if you do this, I will pay this

3.10 Written v oral contracts

A contract may be wholly in writing, wholly oral or, partly in writing and partly oral. In some instances, a contract can even be formed by conduct. It is important you exercise caution when dealing with provider to avoid entering into an unauthorized contract or varying a contract by conduct. This is particularly important if a contract is of special importance, involves a large sum of money or if there is a likelihood that a dispute may arise in the future.

A written contract will assist to clarify the contractual arrangement if there is a dispute. This is because it is easier to prove the scope of works to be performed and the intention of the parties. In the absence of a written contract, if there is a dispute which ends up in court, the court will need to rely on each party's word to determine what the parties had actually agreed to do under the contract.

3.11 Privity

Privity is an important concept as it applies to contract management. It essentially means that only the parties of a contract can enforce the contract. In the real world, this means that if you engage subcontractors via a head contractor, there is no contractual relationship between you and the subcontractors.

3.11.1 Case study: Privity

Try to answer the questions to the following case studies:

1) A subcontractor has been engaged to put new light switches into your office. While they work in your office, you ask the subbie to also change a light bulb. Should the subbie do what you tell them and why?

2) Subcontractor A approaches you and demands payment of an invoice as the head contractor has not paid the last invoice that the subbie submitted. Will you pay them and why?

3.12 Estoppel

It is important to recognise that if the contract is incomplete, vague or is varied by conduct, the provider and not the principal may be more persuasive because of the presumed bargaining position of the parties. So ensure specifications are clearly written.

- estoppel can occur if contract conduct differs from the “contract”
- it is also known as “variation by conduct”
- actual behaviour of the parties changes contract
- almost certain it is occurring in most contracts (you know it happens if you hear someone say “that’s not the way we do it anymore”)
- the facts of the dealings contribute to the legal agreement
- one of the most significant issues in contract management.

3.12.1 Case Study: Estoppel

You have tasked a contractor to build a brick fence. The contractor goes ahead and builds a (cheaper) paling fence.



Contract



Actual

You inspect the construction site and the breach of contract becomes apparent. However, you do not send out a letter to the contractor notifying them of the breach of contract. The case ends up in court. What do you think the court will decide?

3.13 Document precedence

It is fundamental to the appropriate delivery and operation of a contract to have a clear understanding of the levels of precedence of various documents comprising the contract proper.

Good contracts clearly state what happens if one part of the contract contradicts another and which part will take precedence. Quite often, the terms and conditions of the contract take precedence over any clauses in the schedules, the attachments, any documents incorporated by explicit reference or in invoices.

3.13.1 Exercise: Case Study – Document precedence

Part 1 - A major public company undertakes an annual audit of contract payments for the provision of complex document management and printing services. The pricing model contains a number of fixed price elements supported by a schedule of rates for services where the monthly volumes vary considerably. This results in many line items showing up in the monthly invoices and little comparability from month to month.

As the audit progresses it is clear that various apparently new services have been included in the invoicing.

On checking you find that the new services are not covered in the tendered price schedule and the provider's invoices clearly state that: *in the event that amounts invoiced for new services aren't rejected within 30 days of receipt by the client, they form part of the contract.*

Exercise – as the new manager of this contract discuss your intended actions and response to the findings of this audit.

Part 2 - There has been a strong reaction by the provider to your discussions with their client account manager. In your determination to achieve the best outcome for your company you review the service level agreement, pricing schedules, terms and conditions of the contract and the tenderer's original tender response. You note that the precedence clause in the contract states:

Precedence

1.1 If there is an inconsistency between:

- (a) the terms of the Contract and any Schedule, the Contract term prevails;
- (b) the provisions of the Request for Tender and the Contract, the Contract prevails; or
- (c) the provisions of any delivery docket, invoice, account or other document of the Service Provider, the Contract prevails.

Document your expectations now and discuss your approach to the negotiations:

4 Contract implementation

4.1 What is a Contract Management Plan?

The Contract Management Plan (CMP) expands on the actual contract document and is more than a mere summary of that document. It highlights how the contract will be managed on a day to day basis, how performance is monitored, who the people are who manage the contract and includes all critical contract dates.

The CMP typically includes information on:

- detailed knowledge of the goods/services purchased under the contract
- objectives of both parties
- issues raised by the provider that were negotiated as part of the contract
- performance measures and governance frameworks developed and agreed with the provider
- any risks that were identified (relating to either the goods/services purchased or the provider) that need to be managed under the contract
- any savings or benefits that are expected to be achieved under the contract that need to be monitored and managed.

4.2 Key objectives in the implementation process

Managing the implementation of a contract should have the following objectives:

- establish a fair but firm working relationship with the provider
- ensure services are delivered in accordance with the specification
- ensure compliance with the contract
- the tendered price is paid
- variations can be identified and agreed
- services are continually reviewed
- budgets are managed and controlled
- difficulties (client / provider / user) are satisfactorily resolved.

4.3 Key steps in contract implementation

In achieving the objectives of implementation, the following aspects are key:

- the first three months are critical to how the rest of the contract operates
 - relationships are established
 - contract management is implemented
- manage compliance to the

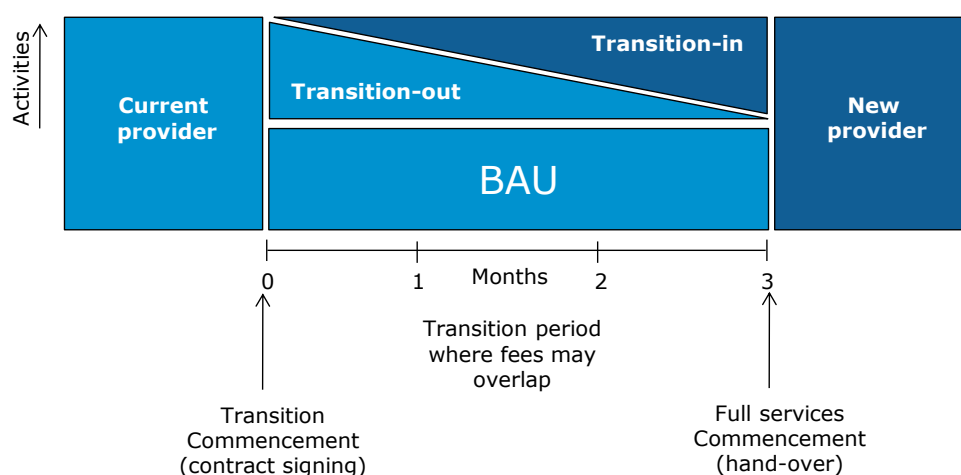
- specification
- contract
- performance and reporting
 - determine how you will identify that you pay the tendered price
 - determine that you get the product or service you pay for
- contract administration
 - variations can be identified and agreed on through a transparent process
 - dispute resolution / issues management framework is agreed and operates in a professional way
- regular review
 - continuous reviews of the contract occurs.

4.4 Implementation timeframes

In the transition period, services are typically delivered by two providers: the incumbent and the new service provider. A gradual phasing occurs between the providers as the incoming provider takes on more and more tasks from the incumbent.

The incoming provider's resourcing allocated to implementing a contract is incremental and involves more people, systems and money as the start date approaches.

Transition is typically managed as a separate project with a separate budget.



4.5 Managing transition

In order to effectively manage transition, consideration needs to be given to the following:

- there needs to be an analysis of stakeholders so that the correct engagement and communication can occur:
 - incoming provider's executive, board, personnel, recruitment providers, subproviders and providers
 - outgoing provider's executive, board, personnel, subproviders and providers
 - client organisation's executive, board, personnel, related providers, secondary providers, customers and community organisations (on occasion)
- transition deliverables need to be agreed and appropriate testing of deliverables occurs to ensure that the contract will work
- transition monitoring and management processes and systems need to be identified.

4.6 Managing stakeholders

When introducing a new contract or instituting a variation to an existing contract, you will need to ensure that stakeholders understand and accept the changes that result.

Who is a stakeholder? Any individual, team, group or organisation who has a vested interest in the work you are doing.

There are some critical steps that should be taken to align stakeholders to the change:

- undertake stakeholder identification and analysis
- for the stakeholder, identify
 - the current level of commitment
 - the desired level of commitment
- identify actions to obtain desired level of commitment
- set out communication strategies to achieve this
- identify any risks and mitigation strategies apparent.

It can be useful to get a group together to brainstorm issues related to key stakeholders: what is their role and why are they important; who are key stakeholders (names, organisations).

Your objective should be to identify all stakeholders and agree an action plan to take stakeholder analysis to the next stage. Then you need to identify what stage your selected stakeholder is at and where you would like them to be; these can be the same.

Focus on those stakeholders in the key players and keep informed category (ie, the important ones), identify those that you need to move to obtain and maintain the desired level of commitment.

Power to influence	High	Keep satisfied Lower level of interest but very influential <i>Face to face contact</i>	Key players High interest, high influence <i>Should be focus of communications</i>
	Low	Minimal effort Require minimal information <i>No undue time & resources</i>	Keep informed High level of interest but low power to influence <i>Updates & developments</i>
		Low	High
		Level of interest	

The above groupings can be defined as follows:

Key players: This group has a high level of interest and high power to influence. This group should be the focus of communications activities, the majority of which should be face-to-face.

Keep satisfied: This group has a lower level of interest in the program of work, but is very influential. It is essential to maintain close contact with this group, using face-to-face communication where possible.

Keep informed: This group has a high level of interest but relatively low power to influence your group's project / activity. Regular updates should be given to this group, keeping them apprised of developments.

Minimal effort: The stakeholders in this group require minimal information on the project. Undue time and resources should not be expended on these stakeholders – email updates will be adequate.

4.7 Transition issues

Transition issues will be many and varied based on the nature of the service.

At its broadest level, the following list provides an indication of the types of issues that should be addressed and an action plan developed on how to manage them.

- records
- work in Progress
- new projects
- tasking
- performance management
- stakeholders
- assets and registers
- procedures / Manuals
- policies
- systems
- contacts
- security
- induction.

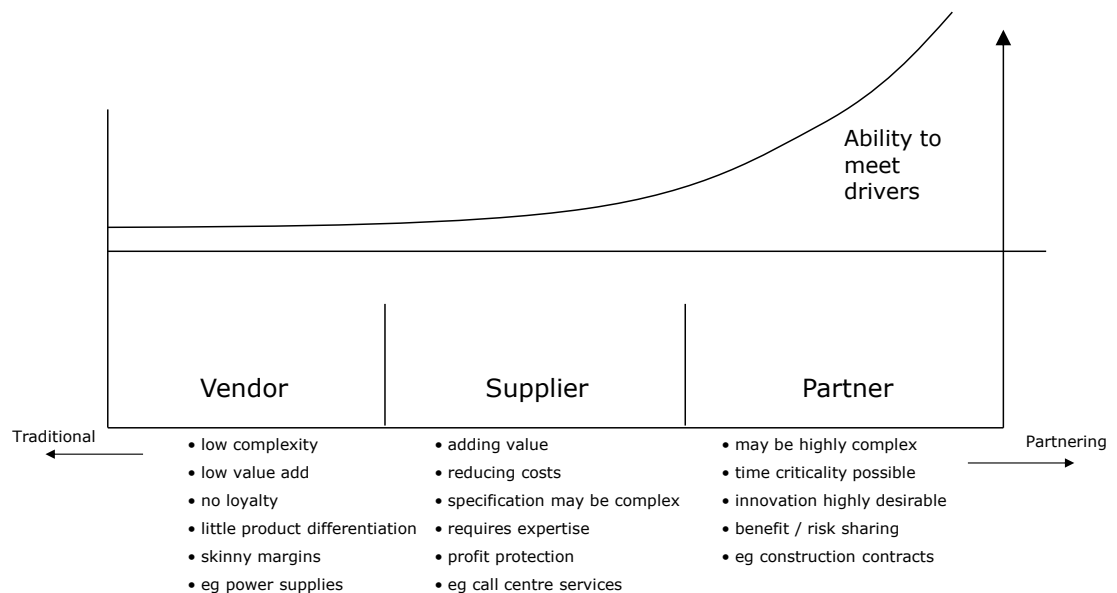
5 Creating win/win relationships

5.1 Typical relationships

The type of relationship that will characterise a contract is established early in the process of sourcing the contract. The RFT documentation and the nature of the interaction with bidders during the tender period and selection will already have established the likely relationship.

Care should be taken to reconcile the constituent documents so that they consistently reflect the actual desired relationship. Frequently there is contradiction between the language of the specification and that embedded in the draft contract.

The following figure demonstrates differences between vendor, supplier and partner/provider:



Typical relationships are:

- adversarial, arms-length, contractual
- cooperative, team oriented
- value added, integrated team
- synergistic, strategic partnership.

The table on the following page further details those relationships.

ADVERSARIAL, ARMS-LENGTH, CONTRACTUAL	COOPERATIVE, TEAM-ORIENTED	VALUE ADDED, INTEGRATED TEAM	SYNERGISTIC, STRATEGIC PARTNERSHIP
COMPETITION	COOPERATION	COLLABORATION	CONGRUENCE
each party has clearly established responsibilities client “monitors and inspects” provider little or no trust required	each party knows and commits to the goals of the contract and to each other’s goals requires a degree of trust	one integrated team consisting of client and contract personnel is created the team has one set of goals team often creates a separate organisational entity for the life of the contract requires a high degree of trust	elements of shared risk defined joint sharing of liabilities for failure joint sharing of gains from success both sides share their goals and cost requires extremely high levels of trust
often adversarial often creates disputes and sometimes litigation occurs	significant energy in communications and “win-win” conflict resolution disputes typically resolved in some degree of compromise and harmony	accountability is collective among the integrated team both client and provider senior level sponsors to remove barriers to support the contract objectives	curve on benefits is logarithmic – based on meeting and then exceeding goals essence of the relationship is to increase the mutual profitability of both parties neither at the expense of the other both aimed at creating new synergistic solutions
both sides plagued by cost overruns	established for early positive intervention tasks often accomplished on schedule and within budgets	typically includes some incentive for exceeding goals	requires extensive communication, collaboration, organisational commitment and sponsorship creates the opportunity for major breakthrough

5.2 From Foe to Friend - creating win/win relationships

5.2.1 Language Choice

The language you choose to routinely refer to the organisations that provide you with goods and services establishes, very quickly in the minds of all, the nature of the relationship. It sets the agenda for all contact and communication.

- master/servant - we are the master and you are here to serve us; ie this is a one way relationship
- vendor vs service provider – we see you as someone who just sells (ie vends) stuff to us rather than provide services which we value
- “the golden rule” – we have the gold and we make the rules, ie we care little for your individual or organisational issues, that’s your problem just make sure it doesn’t get in the way of ours.

Another vital consideration which often confounds the establishment of excellent relationships with service providers is the notion that the parties should commence the relationship with an implicit level of trust.

Trust can be regarded as the quantified belief by a trustor regarding the trustee’s:

- competence
- honesty
- security
- dependability.

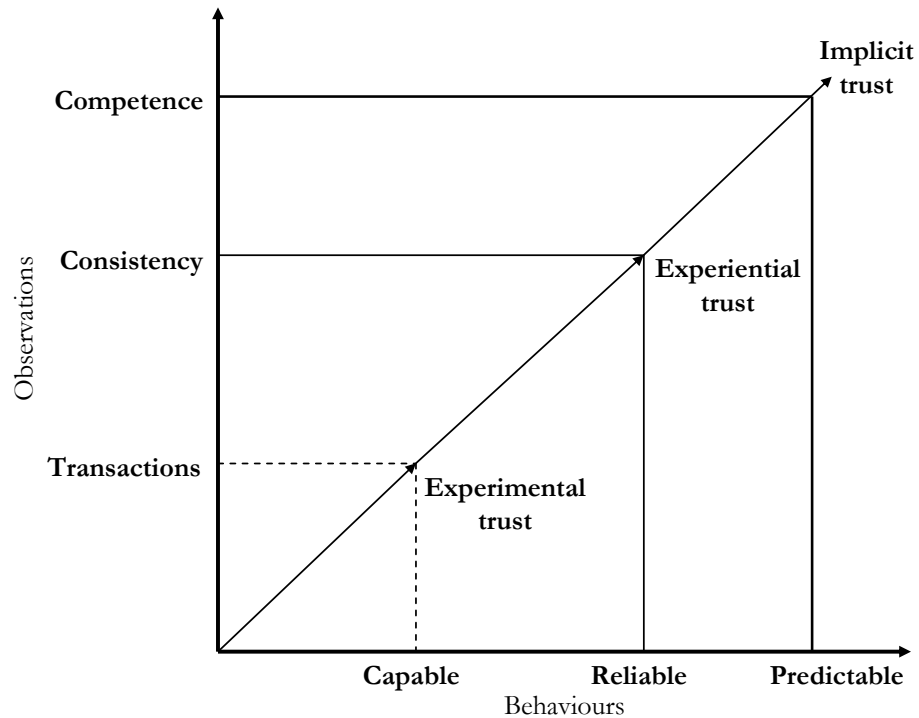
That is to say that trust is confidence in the ability and intention of an agent to provide correct information or perform promised actions, in other words it is a belief that is built over time.

5.2.2 Stages of trust

The following list contains a few characteristics of trust:

- is intangible
- develops over time
- requires hard work
- must be earned by both partners
- requires transparency and full information
- at the beginning is typically based on the reputation of both partners
- consistency allows to predict the partner’s activities
- competence is based on goal congruence as one partner can act instead of the other with same value to both parties.

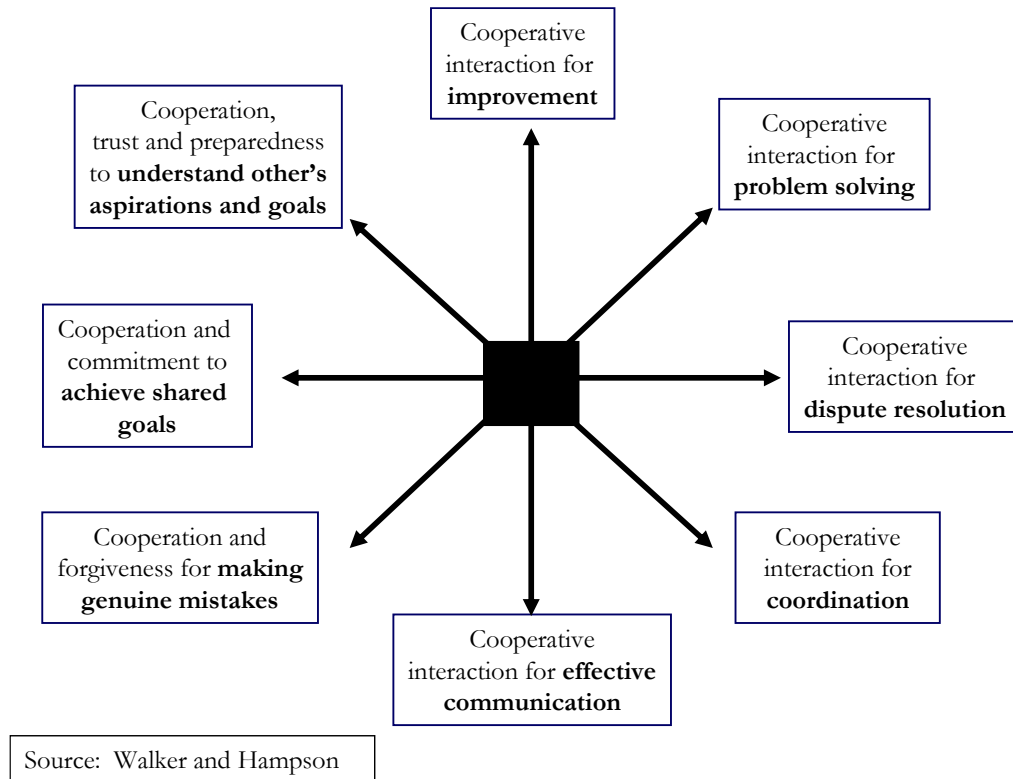
The following graph shows how trust can develop over time from early experimental or learning stages to implicit trust.



The time period over which trust develops varies due to a number of variables. These variables include the level of risk, the opportunity to display trusted behaviour and the level of cooperation evident between the parties.

5.2.3 Drivers of trusting relationships

There are a number of drivers that will promote the achievement of trust in a relationship.

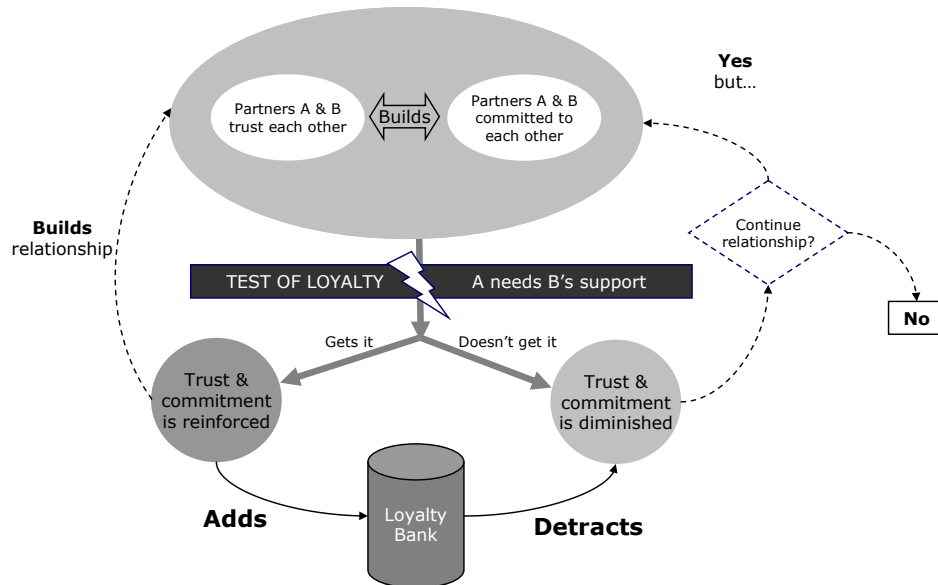


The identification of how you can influence and develop these drivers to achieve better results will promote trust in the relationship.

Trust is built up over time and is enhanced when you do what you say you will. Conversely, trust is diminished if you do not do what you say you will or you act against your previous commitment.

5.2.4 The Dynamics of trusting

The following diagram shows how a virtual loyalty bank operates to add or detract to the relationship.



The above has been compared to personal relationships and similar rules would apply.

There are behaviours that you should practice and expect to see displayed in a successful contract:

- understand that the culture of the contract is often founded prior to contract signature, based on the manner in which the requirement is contracted and act accordingly
- be clear before entering into the relationship in the contract what the intentions of the other party are and the level of commitment required by their executive and organisation
- receive training on how to develop and manage an effective provider relationship
- participate actively in all relationship building activities and behaviours
- work within a jointly agreed framework of acceptable behaviours and values
- focus on the achievement of successful service delivery outcomes

6 Communication management

6.1 Influencers on effective communication

Influencers on effective communication in a relationship are as follows:

- the frequency of communication between the two parties and within each organisation
- the ease by which information can be communicated
- the level of openness and honesty of the content of the communication
- frequent and easily understood
- relevant to the individual or group receiving the communication
- open and honest in content
- timely
- pitched to the right level.

6.2 Communication planning

We have seen above how to analyse your stakeholders and identify the most effective approach to communicating with them at all levels. What should be done next is the development of a communication plan (or communication strategy) to deliver on the required outcomes.

The communications plan should determine how communication will occur

- by what means will you deliver the message, eg, presentation, briefing, email, letter
- what should be the frequency of communication
- are the other opportunities within the corporation of which you should take advantage, eg, seminar sessions, staff meetings.

Remember that for each stakeholder group, a different audience approach is required.

Steps in strategic communication planning



Typical steps in communication planning include the following

Step 1: Stakeholder identification and analysis as discussed in the previous section. The outcome would be the stakeholder analysis and action chart

Step 2: Developing the communication strategy and detailed tactics and actions. The outcome would be the communications plan identifying who is responsible for each tactic and the date or period when these actions should occur.

Step 3: Implement communication tactics and actions, including coaching, guidance and progress reports. This is important if you have responsibility for delivering a tactic and relying on others' actions.

Step 4: Conduct a post-implementation review identifying the effectiveness of the execution of the communication plan and ensure that lessons learned are fed back into future planning activity.

6.3 Email versus dialogue

The email game exercise demonstrates how ineffective email communication can be in delivering the required message.

Email is a tool for delivering text and setting down in writing the logic of a particular issue. It is particularly useful for reaching out to multiple stakeholders (or at least to their Inbox) and for confirming prior discussions.

An email will stimulate an interpretation from the reader and elicit a response, even if that response is not to respond to the email. The down side is that you have no control over this interpretation and the written word, particularly any email shorthand or jargon, can easily be misinterpreted.

Dialogue between individuals either by phone, interview or meeting allows for those intangible but critical characteristics of sound, feeling and tone to be conveyed to the other party. This means that face to face communication is more ideal as it provides

for images, gesture and posture to form part of message delivery that can never be achieved in writing.

Dialogue stimulates thinking on the part of the other party and results in feedback (positive and negative) to which you as the messenger can respond. The result is communication.

It is worth noting that research has been undertaken over the past 40-50 years into communication and, while the analyses have different results, they have all consistently demonstrated that **between 70% & 90% of effective communication is achieved by non-verbal signals.**

7 Performance management

7.1 Why measure performance?

Performance is measured and reported on:

- to understand what is good / bad performance
- to identify where poor performance exists
- to identify opportunities to improve performance
- to monitor progress in improving performance.

It allows the CM to identify that the services being paid for are in fact being received. Performance measurement outcomes can also assist CMs in marketing the benefits of a contract to internal stakeholders and customers.

7.2 Performance management concepts

Performance management is an important component of contract and relationship management. The relationship commences from the first contact between the client and the provider. Commencing the relationship as you wish to continue is important. The protocols and procedures established in the early stages of a contract will dictate the type of relationship that you will have with the provider.

Similarly, the approach you take to performance management will affect the relationship. A clearly defined performance management framework with roles, responsibilities, performance measures, governance structures and schedules detailed will assist the CM and the provider.

There are several widely used approaches to managing the performance of a contract. These are as follows:

- **transparency / open book** is where both parties operate in an environment of openness and the financial accounts related to the services are made available to the other party
- **balanced scorecard** is an approach developed by Robert Kaplan and David Norton from Harvard Business School; it measures achievement along four or five categories that usually include financial, customer, process and developmental lines
- **alliancing / partnering** involves both parties operating in a collaborative way to achieve shared objectives; the term is widely (and often erroneously) used
- **competitive tension** is where two or more providers are given a catchment area (physical or functional) and performance information is shared in an attempt to encourage excellence
- **gainshare / painshare** is where the provider is given the opportunity to share in savings (“gain”) arising from the contract and share in losses (“pain”) for failure (see below)

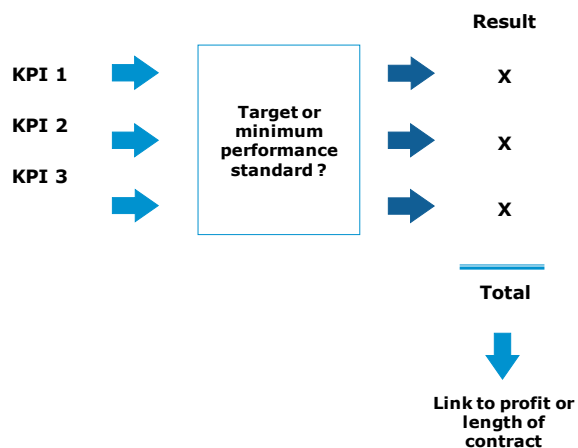
- **contractual sanctions or abatement regimes** can be used to recover an amount from the provider for a breach, with a differential amount for major and minor breaches

7.3 Incentive regimes (rewards)

Contemporary contracts usually aim to include an incentive for the provider to aim for excellence. This can be done in a number of ways:

- growth in scope of contract is an effective incentive and does not cost the contracting company any additional money
- profit motive where opportunities are identified to increase the provider's profit (without simply paying them more money!)
- longevity of contract means that the provider is encouraged to look at the long term of the contractual relationship
- preferred short listing for additional opportunities can be useful in the private sector but is contrary to probity standards in the public sector.

7.4 Balanced Scorecard



The above diagram depicts how the balanced scorecard works.

By achieving the target or minimum performance standard set out in the contract, the performance is calculated as a score. If the total of all key performance indicators reaches an agreed threshold, then the provider is entitled to an incentive.

7.5 Gainshare / Painshare

Gainshare / painshare is where the provider is given the opportunity to share in savings ("gain") arising from the contract and share in losses ("pain") for failure.

When the provider is able to demonstrate that savings have been achieved, an agreed formula is used to calculate the share of savings to which it is entitled. Examples

include 20% of the savings achieved or even 100% of savings generated in the first year with the savings for subsequent years reverting to the contracting authority.

Painshare works effectively in reverse and results in the provider having to pay a share, or on occasion the full amount, of the additional cost or reimbursing for the savings that were expected but not realised.

This model can work exceptionally well and requires a strong commitment from both parties to make it work. The CM needs to be conscious of the effect that consistent rejection of ideas for savings has on the incentive – it can cause quite opposite behaviour.

Many gainshare / painshare models don't work because they are poorly designed and managed. Both parties need to allow for the ongoing adjustment of the baseline to ensure that variations in the influencing attributes (eg, number of customers) are addressed.

Gainshare / painshare requires that each initiative is measured. Initiatives and savings calculations should be agreed in advance. The process is administratively effort intensive. External independent only way to guarantee success and both parties should abide by the umpire's decision.

7.6 Payment for deliverables

This approach identifies an element of the provider's fee that is placed "At Risk" subject to the achievement of certain deliverables. It is most effective in the first year of a contract where particular requirements need to occur.

Examples:

- 100% completion of certain tasks
- completion of operational plans / procedures
- delivery plan submitted and accepted
- MIS and reporting development.

7.7 Performance levels

The key to setting appropriate and useful performance levels is to first understand objectives of having the contract. Identify what it is that is trying to be achieved in the broadest terms, eg

achievement of the organisation's IT strategy to upgrade all desktops to current standard

versus

delivery and installation of new desktop software

Then look at how you can measure achievement of this:

- operationally what do you want to measure as a KPI?
- how do you get a sense of performance at the detailed level?
- fitness for purpose
- compliance.

7.8 KPIs must be 'SMART'

When defining KPIs make sure they are:

- **S**pecific
- **M**easurable
- **A**ttainable
- **R**esults – oriented
- **T**ime based.

7.9 Measuring performance

Measuring the performance of the provider can be done either by:

- relative / comparative analysis
- benchmarking the service outcomes with comparable services or organisations
 - external benchmarking
 - internal comparisons between contracts
 - ensuring 'like for like' comparisons
 - need to find comparable services / goods / organisations
- trend
 - change of measures against the previous period

- achievement of specific organisational strategies / targets.

Those attributes that should be measured are generally along the following lines:

- cost
- operational performance
- risk
- achievement of strategy.

Recent developments have extended these to include:

- stakeholder accountability
- alignment with organisational strategy.

8 Managing risk

8.1 What is risk?

“Risk is the exposure to the possibility of such things as economic or financial loss or gain, physical damage, injury or delay, as a consequence of pursuing or not pursuing a particular course of action.

The concept of risk has three elements:

1. the perception that something could happen
2. the likelihood of something happening and
3. the consequences if it happens.

Standards Australia Handbook 240:2000 Guidelines for managing risk in outsourcing

8.2 Managing risks

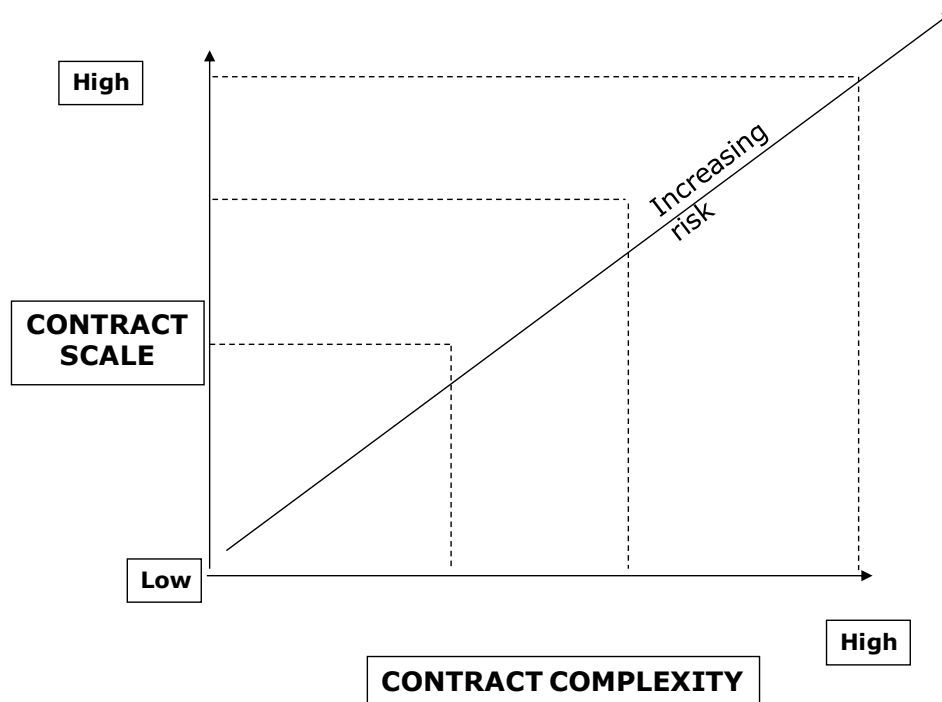
It is important to determine the risk management approach through the following activities:

- identify and develop risk treatment plans
- monitor and review outsourcing process
- undertake communications and consultation with all parties
- conduct a rigorous implementation program
- ensure the organisational infrastructure is in place
- manage your obligations to manage risks
- ensure that the provider meets its obligations
- monitor and review the contract
- keep risk treatment plans up to date.

8.3 Contract risk management

All too often CMs find themselves with a considerable number of contracts to manage and numerous issues all of which can result in too little time or incorrectly focused activities. With an understanding of the above risk protocol it is possible to take a contract risk assessment process to determine the necessary priorities.

The following model contemplates the scale and complexity of the contract as the basis for this determination.



Service contracts can vary in complexity and scale, for example, a waste management contract is high risk due to their large scale and high level of complexity, whereas graffiti removal would be low risk due its low level of complexity.

In assessing contract scale consideration could be given to such things as:

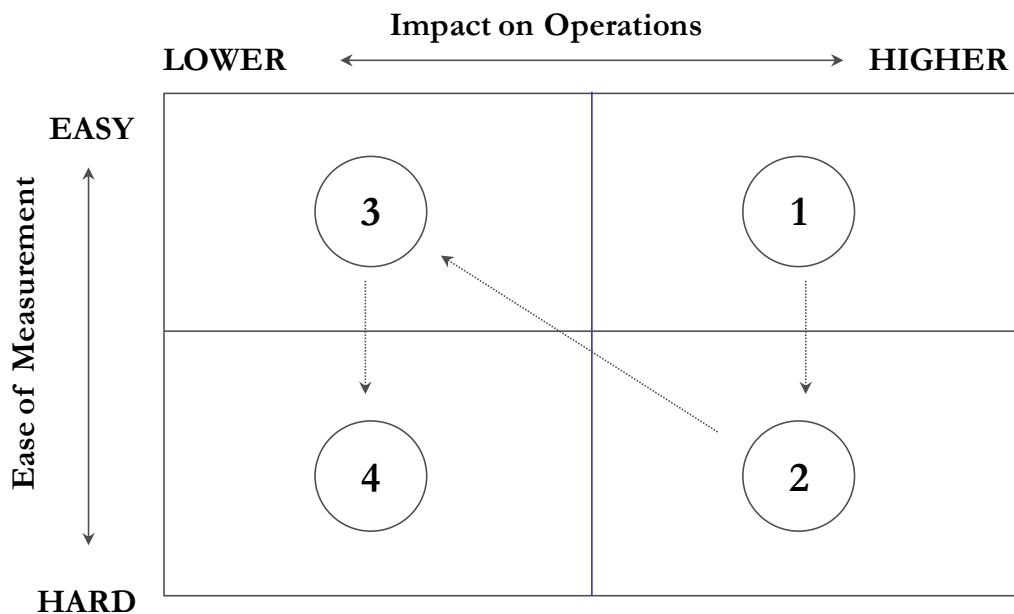
- how widely across the organisation the contract operates
- the number of relationships involved
- the contract value
- number of full time equivalents (FTEs) “touched” by the contract
- focus of the contract eg strategic/tactical.

In assessing contract complexity, consideration could be given to such things as:

- number of process operations involved
- the range of disciplines required to deliver
- the types of stakeholders
- the visibility of the deliverables
- the nature of the applicable regulations.

8.4 Prioritising the effort

After identifying the risk, remain conscious of what can be achieved within the constraints of your resources.



Assessing the extent of the impact on you only serves to identify the priority of developing measurement tools and contract management strategies.

8.5 Exercise: Typical risk associated with contract management

As an example, service contracts can have a number of associated risks, including:

1. failure to have sufficiently skilled and experienced resources to effectively manage the contract(s)
2. failure to act on provider under-performance
3. failure to provide contract deliverables on time, to agreed quality standards
4. exceed agreed budget limits
5. breach contract provisions
6. fraudulent/ unethical conduct by the provider
7. failure to register contract amendments as contract variations
8. provider does not agree to contract variations to accommodate changes
9. key stakeholders not consulted or notified about contract performance or disputes.

Pick one of the risks from above which is most applicable to your contract. Come up with three DO NOTs that you want to steer away from to minimise the resulting risk for your contract:

DO NOT...

DO NOT...

DO NOT...

8.6 Exercise - thinking about risk

A man and a woman both well rested, experienced drivers set off in a late model Volvo early one morning to drive non-stop from Brisbane to Perth. Think about what could happen (as in what could go wrong).

Part 1: Write down in the spaces below what could happen (the risk event) and then what the result of that risk event happening could be (consequence).

WHAT COULD HAPPEN (RISK EVENT)	AS A RESULT (CONSEQUENCE)

Part 2: A family of 5 with 3 young children set off to drive non-stop to Perth. Only the father drives and he worked late the previous evening.

WHAT COULD HAPPEN (RISK EVENT)	AS A RESULT (CONSEQUENCE)

Part 3: Write down the things that you know that people SHOULD NOT DO if they want to minimise the chance of these happening.

DO NOT...

DO NOT...

DO NOT...

9 Contract variations

9.1 What is a variation?

A variation describes any adjustment to the works or services covered by the contract. Such a variation alters the scope, the delivery personnel and/or the pricing.

There are some legitimate reasons for varying the contract, including changes in technology, regulation or demand fluctuations.

How to vary the contract is described in the contract terms & conditions.

It is important to keep in mind that each variation affects the contract's value for money assessment.

9.2 What do you need to do?

When dealing with variations, the CM has the following responsibilities:

- pick up when a variation is happening – the requested ones are easy. Variations often creep in through variations by conduct, such as oral agreements or estoppel. Ensure that if there are any changes to the contract to capture them as a variation
- make sure the provider only delivers against the new scope after variation is final
- a CM must ensure that correct procedures for directing variations are followed so as to prevent unauthorised expenditure
- variations must be approved at the appropriate delegation level
- a CM must check the provider's claims to ensure that no 'extras' are included in a variation
- if the provider seeks to modify the specification, check the reason for the original provisions with the technical adviser/designer since there may be good technical reasons not to change
- keep good documentation and everyone on board.

9.3 Initiation of a variation

Mostly, the variation can come from either party but only the contract authority can approve a variation. At a high level, if the request came from an internal stakeholder, the client may seek to obtain value for money through an RFQ process.

If the provider initiated the variation, it is important to ensure that the variation is valid (ie not already included as part of the current contract scope) and no 'extras' are included so that the variation is kept to the bare minimum.

9.4 How to reduce variations

Activities to reduce variation claims include the following:

- good RFT documentation
- schedule of rates
- effective pre-award negotiations
- referee checks / past experience with provider
- clear directions for variations
- avoidance of interference to provider's work
- critical and researched evaluation of provider claims
- back-charging the provider when they are at fault
- risk management.

10 Resolving disputes

10.1 Stop – and take a deep breath

Dispute resolution is daunting. It involves a lot of legal work and will take a long time. At the same time, you are responsible that the provider delivers business as usual.

As you might have guessed, dispute resolution processes are the very last resort. Most issues are minor issues and are picked up and resolved through:

- performance management
- escalation through governance structure
- documentation
- communication / relationship management.

10.2 Resolving minor issues

In the main, those issues that attract the most attention are actually minor issues. Clear processes need to be set out and agreed to identify and manage these minor issues before they become major.

Minor issues that are recurring frequently can become major and are an indicator (perhaps) of a systemic failure on the provider or client side. A simple and quick procedure is required to manage minor issues. A more formal issues resolution procedure required for major problems.

At all times both parties should act cooperatively and certainly not hinder resolution of the issue. You and your counterpart should maintain the shared objective identified in the contract.

If you have hit a brick wall, escalating the issue through the governance structure of your contract works really well:

- use issues escalation to preserve your relationship with your counterpart
- often just saying that you'll "take it up with my boss" will resolve issue
- important that each level of governance talks to their counterpart in the provider's organisation (ie my boss talks to your boss).

To resolve minor issues, it is useful to:

- during kick-off inform contract users to raise all complaints to you, ideally in writing
- inform users as to types of problems they may regard as minor
- arrange for an issues management register to:
 - record the nature of issue, date reported and date resolved

- monitor provider's performance in service delivery
- monitor provider's record of failures
- monitor recurrent minor issues that may be dealt with as major issues
- provide information to contract authority's representative
- user representative to liaise with contract authority's representative in those minor problems which recur or do not get resolved
- deal with minor, day to day problems, face to face
- if minor issues 'referred' upwards, send them back.

10.3 Resolving major issues

10.3.1 Process

Major issues often have legal implications. Keeping to formal processes and a good document trail is therefore crucial. It is also important to be clear about the actual meaning of contract terms and conditions and the goods/services specifications. Often it is best to get help and advice very early on.

How to deal with disputes:

- user representative reports major issues to contract authority's representative
 - only when they have been unable to resolve directly with provider
 - use formal system (ie in writing) to report major issues
- standard reporting format for major issues to be designed to:
 - ensure consistency of information
 - record all major issues
 - keep track of provider's performance
- major, urgent issues should be dealt with immediately by contract authority's representative
- non-urgent major issues until next periodic review meeting.

10.3.2 Relief from contractual obligations

The law provides precedent for relief from contractual obligations that allow a party relief from the requirement to fulfil its obligations.

One party may seek relief from the contract due to any or the following

- misrepresentation by the other party (eg, "we have the licence to install SAP technology" when the other party does not have this)

- misleading and deceptive conduct (eg, “all our staff are fully qualified to Certificate IV level” when none or only some have this)
- mistake (eg, a genuine mistake has been made)
- unconscionable conduct (eg, it is proven that the other party has been bribing officers to win contracts)
- frustration (eg, a secondary provider has been unable to meet its obligations and the provider cannot deliver the goods or services; note that any loss is worn by the party that incurs the loss).

The likely outcome if relief is granted is that the contract is cancelled.

10.3.3 Remedy for breach of contract

The law allows for one party to seek “remedy” to recover damages for breach of contract. Some of these are included in the contract while others are decided by a Court of Law. Note that penalties can only be awarded by a Court; contracts may include certain sanctions against a party which equate to financial loss by that party for non-compliance with the contract. The remedies available are as follows:

- termination, usually included as a contract term
- damages or other remedy awarded by a Court
- liquidated damages, ie, the precise fixed sum identified in the contract (or a formula by which it will be calculated) that one party must pay the other for breach of contract
- penalty, ie, an amount determined by a Court that one party should pay to the other
- specific performance, ie, the one party seeks property or money to be returned by the other party.

In Australia, the most important legislation governing contract law is the Trade Practices Act 1974 (Cth). Every state and territory parliament has passed fair trading legislation that mirrors the Trade Practices Act.

Disputes and issues will always occur throughout the contract period. The real challenge is to manage these effectively and professionally while still maintaining a business relationship with the provider.

11 Contract renewal and close-out

11.1 How to make a decision to extend / close-out?

Of course is it easier to just extend an existing contract, but is it also best value for money and does it effectively address your organisation's risk exposure?

The following considerations should be addressed when making this decision:

- service provider's performance over life of contract
- changes to your demand profile (more, less, different?)
- changes in the market (new providers, new products, better prices?)
- changes in business needs (through consultations)
- past extensions
- risk/value profile of contract.

12 Conclusion, reflection and commitment to action

12.1 Supportive behaviours

- actively listen to each other and maintain open, honest and timely communication by regularly sharing strategic and operational information using formal and ad hoc meeting forums
- provide positive feedback regularly and negative feedback in a constructive, problem solving way
- establish an environment of trust in systems and processes by consistently delivering outcomes when we say we are going to deliver and by informing each other about problems in plenty of time, so that there are no surprises
- treat each other as if we were in the same company by collaborating on tasks and initiatives, by sharing resources, by developing and agreeing joint objectives and by presenting a united front to defend the partnership against criticism
- establish an environment of trust in people by empowering them to make decisions and take actions, by recognising and rewarding them and their achievements and by tolerating and learning from our mistakes
- understand each other's operating styles, embrace differences and share each other's skills, knowledge and experience to come up with creative solutions to problems.

12.2 Restrictive behaviours

- blame each other for 'screw-ups' and not taking ownership of problems or seeking solutions ("blamestorming")
- not promoting our successes to clients and other stakeholders
- overpromising, setting unrealistic timeframes then not delivering
- not seeing ourselves as one team – ie having an 'us and them' attitude
- working to different agendas or vested interests and having different priorities
- not involving the other party in key decisions, even if peripheral to the services
- not defending the other party to internal criticism, even if it seems justified.

12.3 Ten Golden Rules

The following is a list of "Ten Golden Rules" for better contract management:

1. be proactive – don't allow minor issues to become major ones
2. communicate regularly and effectively (across stream, upstream and downstream)

3. establish your role and the joint roles and responsibilities and remember them in every interaction – be clear on what you expect from your counterpart and what they can expect from you
4. understand your contractual obligations and ensure the other party fulfils theirs
5. behave ethically and honestly at all times and require the same standards of the other party
6. regularly review the suitability of the deliverables and performance outcomes
7. identify particular risks faced by the contract and monitor events to limit their effect; escalate issues before they become too difficult for you to handle
8. seek professional contracting/legal advice when warranted; keep the appropriate people informed of developing issues as they may be able to assist
9. be reasonable and fair when dealing with the other party but enforce the contractual terms when appropriate
10. establish the basis of the working relationship and the rules and behaviours expected as soon as possible



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