



CONTRACT MANAGEMENT POLICY

DRAFT

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1. POLICY STATEMENT

Scope

This Contract Management Policy applies to the management of all Council contracts, including, but not limited to contracts for the supply of products, works and services, but excluding employment contracts and non-binding memoranda of understanding.

The Policy is subordinate to Council's Procurement Policy and is complemented by Council's Tendering Policy.

The Policy does not provide advice regarding the management of contracts.

Advice and instructions on contract management processes and practices can be found in the *Contract Management Guidelines*.

Purpose

The purpose of this Policy is:

- to confirm Council's standards and expectations for contract induction, monitoring, supervision, performance assessment, variations, extensions and customer satisfaction
- to ensure that there is accountability in contract management; and
- to deliver high quality products, works and services by generating strong contractual relationships based on clear performance expectations

Objectives

The key objectives of the Policy are to ensure that:

- Council receives the benefits expected from contracts and contractual relationships,
- Council staff understand Council's obligations under contracts, and
- Council staff manage contracts in a manner which facilitates Council responsibilities and minimise risk.

Principles

Council is committed to the following principles of effective contract management:

- Contracts shall be proactively managed, including management of risk,
- the performance of contractors shall be monitored,
- Council shall honour its' contractual obligations,
- Contracts will be documented and recorded in the Records Management System,
- Contract management shall be undertaken in an honest and transparent manner,
- Good contractual relationships shall be aimed for, developed and maintained,
- Contracts must deliver the specified outcomes, and
- Proper communication channels shall be established and constructive feedback shall be encouraged.

Benefits

Council expects that effective contract management will deliver the following benefits:

- On time delivery of products, works and services,
- Reduced exposure to risks and the costs associated with risks,
- Good quality and value for money products, works and services,
- Innovation and continuous improvement, and
- Goodwill and other intangible or value adding benefits.

Therefore, each contract specification shall have clearly specified contract objectives and the Contract Superintendent shall manage the contract and monitor the performance of the contractor to ensure delivery of the contractual objectives and realization of the contractual benefits.

Applicability

This Policy shall be binding upon Councilors (Administrator) and Council staff. It is also binding upon contractors, consultants and agents while performing any work for Council.

Definitions

Contract Superintendent means, in relation to a contract, the person (normally a member of Council staff) who has responsibility for supervising the contractor and monitoring the contract.

Engineering Finance and Assets Officer means, the Council staff member who has responsibility for coordinating the tendering processes, including contract documentation and the contract register.

Department Manager means, in relation to a contract, the Executive Manager or Manager of the Department that has budget responsibility for the contract.

2. ROLES AND RESPONSIBILITIES

2.1. Department Manager

The appropriate Department Manager is responsible for policy, planning and development, setting service standards, specifications, customer satisfaction and budget responsibility for the contract. Therefore, the Department Manager has ultimate responsibility for the contract.

In practice however, responsibility for “managing” the contract and contractor is often delegated to the Contract Superintendent. Therefore, the role of the Department Manager is usually similar to that of the project sponsor and includes engagement with the relevant stakeholders such as Councilors and Government Departments.

2.2. Contract Superintendent

The Contract Superintendent is responsible for supervising the contractor and monitoring the contract on behalf of Council and the relevant Department Manager. The Contract Superintendent is the person nominated as such by the Department Manager. In some cases, the Contract Superintendent may be the Department Manager. Usually, the Contract Superintendent is a staff member of the relevant Department. Sometimes, in the case of major capital works projects, the Contract Superintendent may be the Project Manager under supervision of the Engineering Department.

2.3. Engineering Finance and Assets Officer

The Engineering Finance and Assets Officer is responsible for ensuring that Council's tendering and contract administration is undertaken in accordance with legislation, Australian Standards, Council policies and Council guidelines.

The Engineering Finance and Assets Officer has responsibility to provide guidance, advice and assistance to Contract Superintendents, Department Managers and other Council staff in the management, supervision and monitoring of contracts and contractors.

The Engineering Finance and Assets Officer has responsibility for ensuring that proper contract documentation is prepared and the contract register is kept up to date.

2.4. Training

The General Manager will ensure that all staff with procurement and contract management responsibilities receive appropriate training (and refresher training when required) and that these responsibilities are reflected in their position descriptions.

3. RISKS

Management of risks is an inherent aspect of contract management. Risks may include:

- Failure (of either party) to comply with the conditions of contract,
- Inadequate monitoring and supervision,
- Unauthorized changes to the contract, including failure to approve variations and extensions,
- Loss of intellectual property and breach of confidential information,
- Changes in scope, personnel, and technology,
- Fraud and unethical behavior, including failure to disclose conflicts of interest; and
- Lack of properly maintained documentation.

Contract management requirements increase as the value, risk and complexity of a contract increases. The Contract Superintendent shall be responsible for managing risks and shall seek appropriate professional advice at an early stage where insurance, legal or governance issues arise.

It is critical that Council itself complies with the contract. Otherwise, Council may not be able to enforce the contract against the contractor.

The Contract Superintendent shall consult with the Engineering Finance and Assets Officer and Department Manager as required.

Further information can be found in the Contract Management Guidelines prepared by MAV Procurement.

4. AWARDING OF CONTRACT

4.1. Letter of Acceptance

As soon as practicable after a decision has been made to award a contract, the Engineering Finance and Assets Officer shall communicate the decision in writing to the Contractor. The written advice shall cover, at least, the following points:

- Amount of the contract (lump sum, schedule of rates or annualized amount),
- Commencement date and duration,
- Name of Council's nominated Contract Superintendent,
- Name of Contractor's nominated representative; and
- Requirement to provide insurance certificates and performance security deposit or bank guarantee (if required) within a specified timeframe.

4.2. Contracts Register

The Engineering Finance and Assets Officer shall enter the following information in the Contracts Register:

- The contract number and name,
- The contract commencement date, contract term and the date the contract is expected to conclude,
- The name of the Contractor,
- The date and place of the publication of public notice calling for tenders or expressions of interest.
- The names of all tenderers
- the closing date for the submission of tenders,
- The tender evaluation criteria and any ranking accorded to the criteria,
- The names of persons who were on the tender evaluation panel,
- Council's reason for entering the contract if the contract was not awarded to the lowest tenderer,
- The estimated value of the contract for the financial year, in which the contract was entered into,
- In each subsequent financial year during the term of the contract, the estimated value of the contract, and
- Details of approved variations and extensions (as they occur).

The Contracts Register shall be made available by the Public Officer for inspection upon the written request of any person.

The Contracts Register shall be held on Councils Electronic Record Management system only and be available to the Public Officer, General Manager, Executive Managers, and other nominated staff.

4.3 PRE-CONTRACT COMMENCEMENT

Prior to the commencement of works or services under the contract, the Engineering Finance and Assets Officer shall ensure that at least the following matters have been addressed (to the extent that they apply):

- A contract “induction” meeting has been held,
- A program or calendar/timetable of works has been submitted and approved by the Contract Superintendent,
- A contract management plan has been submitted and approved by the Contract Superintendent and the required proof of insurances have been provided, and
- Bank guarantees or security deposits have been received and held in the Council safe or banked, as appropriate.

5. PERFORMANCE ASSESSMENT

5.1. Introduction

Performance assessment is a major component of contract management and performance assessment requirements shall be written into the contract specification.

Ongoing performance assessment should be based on the mechanisms for performance assessment included in the contract.

Where applicable, performance assessment shall be based on, but not limited to, contractor reports, inspections, performance review meetings, customer complaints and surveys.

5.2. Contractor Reports

Contractor reports are the method by which a contractor certifies that the products, works or services comply with the specification. If required, the type and frequency of Contractor reports shall be clearly described in the specification. The Contract Superintendent shall ensure that the contractor submits the reports on time and shall review the reports carefully. The Contract Superintendent shall discuss matters of serious concern with the Engineering Finance and Assets Officer and/or Department Manager.

5.3. Inspections

Inspections should incorporate an assessment that compares actual performance to the performance requirements specified in the contract. Inspections shall be the responsibility of the Contract Superintendent.

If required, an inspection regime shall be clearly described in the specification and shall stipulate:

- Who will inspect,
- When inspections will occur, and
- What will be inspected.

5.4. Performance Review Meetings with Contractor

Performance review meetings provide a forum to discuss and assess the contractor's performance. Generally, a performance review meeting shall be based on the most recent contractor report (refer clause 6.2).

If required, the type and frequency of performance review meetings shall be clearly described in the specification. Generally, they shall be held every three months, however, meetings may be required more frequently, at the commencement of a contract.

The conduct of performance review meetings shall be the responsibility of the Contract Superintendent. The contract should authorize the Contract Superintendent to nominate the time, date, and place of performance review meetings. The contract should require the contractor or an appropriate representative and any other person nominated by the Contract Superintendent to attend performance review meetings. The Engineering Finance and Assets Officer may also attend performance review meetings at their own choosing or when requested to do so by the Contract Superintendent.

5.5. Analysis of Customer Complaints

Receipt and analysis of customer complaints shall be the responsibility of the Contract Superintendent.

5.6. Customer Surveys

In the case of long-term service contracts, customer surveys may be undertaken to assess customer satisfaction with the performance of the contractor and the contractor's compliance with the specification. Customer surveys shall be the responsibility of the Contract Superintendent.

If Council intends that the contractor be obliged to achieve a particular customer satisfaction level, then this and the methodology for measuring the customer satisfaction level must be specified in the contract.

5.7. Unsatisfactory Performance

When contractor performance does not meet the contract requirements, the Contract Superintendent shall contact the Contractor and:

- Define the problem,
- Specify the unsatisfactory performance in terms of a comparison with the requirements of the contract, and

- Specify the implications of the problem.

If the Contract Superintendent considers that the problem can be rectified without resort to formal breach of contract procedures, the Contract Superintendent and Contractor shall:

- Identify the cause of the problem, and
- Decide upon corrective action.

If required, the Department Manager and the Engineering Finance and Assets Officer shall participate in the meeting.

The contractor shall implement the corrective action as agreed upon and the Contract Superintendent shall monitor and assess the outcome to ensure that the unsatisfactory performance is rectified on a permanent basis.

The Contract Superintendent shall ensure that any informal problem resolution process does not prejudice Council's rights under the contract with respect to any breach of the contract.

5.8. Performance Measurement Form

If required, a performance measurement form, shall be developed for the contract by the Contract Superintendent. The performance measurement form shall identify the performance requirements of the specification.

The Contract Superintendent shall complete the performance measurement form on a regular basis. For example, after the receipt of the contractor's report (refer clause 6.2) or after the performance review meeting with the contractor (refer clause 6.4).

5.9. Council's Responsibilities

If Council is to be able to enforce the contract, it must ensure that Council itself complies with the contract. The Contract Superintendent should ensure that Council complies with all contract timelines, gives all required notices and otherwise meets its obligations under the contract. Even if the Contract Superintendent employs informal processes to address particular problems, the formal requirements of the contract should still be followed.

5.10. Termination for Failure to Achieve Performance Standards

Any formal process for termination of the contract must be conducted strictly in accordance with the requirements of the contract. Generally, this will require a "show cause" notice to first be issued to the contractor. Legal advice should be obtained before such a process is instigated.

If a contractor has breached a contract with Council, then (whether the contract has been terminated), Council may consider the breach in considering subsequent tenders from the contractor.

6. PERFORMANCE REPORTING

6.1. Contractor Performance Evaluation Report

The performance evaluation report shall focus upon the contractor's compliance with its obligations under the contract. A contract performance evaluation report will generally be an "internal" document used to monitor and improve operational performance. However, some information will be relevant to, or parallel to, the information to be included in the report to Council (refer clause 7.3).

If required, the Contract Superintendent shall be responsible for preparing the contractor performance evaluation report. It shall be based on Council's template and the Department Manager shall determine how frequently the Contract Superintendent is required to prepare a contractor performance evaluation report.

Once complete, the Contract Superintendent shall provide the Department Manager with the contractor performance evaluation report for approval. Upon approval of the Department Manager, the Contract Superintendent shall provide the Contractor with the contractor performance evaluation report and also advise the Contractor of the date of the next review meeting.

6.2. Reports to Council

The report to Council shall primarily be concerned with "outcomes", that is, the effect or benefit of the service and the degree to which the service is meeting community, customer and citizen needs and expectations.

If required, the Contract Superintendent shall be responsible for preparing the report to Council. It shall be based on Council's template and the General Manager shall determine how frequently the Contract Superintendent is required to prepare the report to Council.

7. VARIATIONS

7.1. Department Manager

The appropriate Department Manager is responsible for policy, planning and development, setting service standards and writing specifications.

Therefore, any major change which is a significant departure from the contract specification is the responsibility of the Department Manager to consider. The decision to approve a major change shall be made by the appropriate Council staff member with delegated authority to do so, as defined in Council's Instrument of Delegation.

7.2. Contract Superintendent

The role of the Contract Superintendent is to supervise and monitor the contract in accordance with the specification.

When supervising the contract, minor changes or changes of an operational nature may be made by the Contract Superintendent providing the decision does not alter the objectives, scope, purpose or overall value of the contract.

7.3. Value of Change

The importance of discussion between the Contract Superintendent and Department Manager cannot be overstated when there is any doubt about variations.

As a guide, the value of the change may determine whether it is the Contract Superintendent or Department Manager who has the responsibility and authority to approve the change. For example, providing there are no exceptional circumstances, the Contract Superintendent shall be responsible for and have authority to approve minor changes providing that, during the life of the contract or project, they do not exceed a maximum cumulative value of 10% or \$100,000 (whichever is the lowest amount) of the estimated value of the contract.

Before any variation is approved, the Contract Superintendent or Department Manager must ensure that the value of the change does not exceed the limits of their delegation as shown in Council's Instrument of Delegation.

In the event that the change exceeds a maximum cumulative value of 10% or \$25,000 (whichever is the lowest amount) of the estimated value of the contract, a Council Report will be required to approve the variation.

7.4. Documentation

All changes must be documented. It is the responsibility of the Contract Superintendent to:

- If the change to the contract has been agreed by the parties, write to the contractor providing a description of the change and the agreed value of the change,
- If the change is being directed by the Contract Superintendent pursuant to a contractual entitlement to do so, ensure that the change is directed in writing in accordance with the requirements of the contract,
- Provide a copy of the change to the Engineering Finance and Assets Officer to be attached to the official signed and sealed contract,
- Place a copy of the change on the contract file,
- Report the change in the monthly and quarterly reports, and
- Advise the Finance Manager in writing if the value of the change will create a significant budget variation.

It is the Contractor Superintendent's responsibility to ensure that all contract documentation is retained for a period of seven years following contract closeout, defect liability periods or resolution of pending action (e.g., legal, audit, etc.) whichever is later.

If required, the Engineering Finance and Assets Officer shall assist the Contract

Superintendent to ensure that all documentation is satisfactorily completed.

7.5. Exceptions

All of the commentary in clause 8 must be read subject to Council's specific obligations under the contract. For example, under standard form General Conditions for Construction and Civil Works, such as AS4000-1997, the Superintendent's obligation to direct variations in certain circumstances is not subject to approval from a delegated Council staff member or Council itself.

Council may breach the contract if the Superintendent does not promptly direct a variation in certain circumstances (i.e., without waiting for Council approval). Council may also breach the contract if the Superintendent acts at the direction of another Council staff member with respect to a variation. This is a complex area of law and legal advice should be sought where necessary.

8. EXTENSIONS

8.1. Should the Contract be extended?

It is the Contract Superintendent's responsibility to anticipate and plan for the expiry of a contract. This is part of normal contract supervision and monitoring.

The Contract Superintendent shall review the contract and consult with the appropriate Department Manager to determine the action required for:

- Arrangements with the Contractor for expiry and termination of the contract (including actual end date), and
- Arrangements for service delivery beyond the expiry date, for example, the extension of the contract or the commencement of a new contract.

In deciding whether a contract should be extended or allowed to expire at the end of the initial contract term, the Department Manager and Contract Superintendent must ensure that Council complies with any notice periods and procedures for extending the contract.

If the contract is for a fixed period, such as a contract for managing a swimming pool, and it does not contain provision for an extension, it may not be possible for Council to "extend" the contract, as any "extension" will constitute a new contract and hence may be subject to the public tendering requirements.

8.2. Authority to extend a Contract

If delegated authority to award the initial contract existed, then delegated authority to extend the contract should generally also exist.

If the contract was not made under delegated authority, then any decision to extend the contract must be made by Council.

However, if a contract is for a task, such as construction of a building, rather than a fixed period of time, and the contractor needs more time to complete the contract due to unforeseen circumstances/delays or unseasonable weather

conditions, then such an extension shall be deemed to be an operational matter and therefore authority to extend the contract rests with the Contract Superintendent. The Contract Superintendent must comply with all requirements of the contract with respect to granting extensions of time.

8.3. Formal communication

After the decision to extend the contract has been made, it is the responsibility of the Engineering Finance and Assets Officer to write to the Contractor confirming the extension to the contract. The Engineering Finance and Assets Officer shall refer to clause 4 of this Policy to the extent that it applies to the extension and shall also update the Contracts Register.

9. POLICY IMPLEMENTATION

This Policy is effective from the date it is approved by Council.

10. POLICY REVIEW

This Policy shall be reviewed within four years of the date on which it was approved by Council or within twelve months of a Council general election.

11. POLICY CONTACT

The Engineering Finance and Assets Officer is Council's designated contact and has primary operational responsibility for this Policy.

12. REFERENCES AND RELATED POLICIES

- Local Government Act (NSW) 1993
- Local Government (General) Regulation 2021
- Local Government (Tendering) Regulation 1999
- Tendering Guidelines for NSW Local Government 2009
- Model Code of Conduct for Local Councils in NSW 2020
- Government Information (Public Access) Act 2009 (GIPA Act)
- State Records Act 1998
- Balranald Shire Council -Procurement and Disposal Policy