

## Practice Note

### Managing the contract

#### 1. General principles

- 1.1 Contract management is the principle that encompasses all elements of procurement, and can be seen as a cyclical process; it requires three basic elements:
- the setting of clear objectives;
  - a strategy to reach the stated objectives; and
  - a method of monitoring progress, so that adjustments can be made deliberately and quickly should momentum be lost.
- 1.2 Contract management is a distinct phase of the procurement cycle, and it begins as soon as the contract has been awarded. It is the active monitoring and control of all aspects of the relationship between the supplier and the Council. The primary aim is to ensure the delivery of a cost effective and reliable service at the agreed price and standard with the terms and conditions of contract, and financial propriety.
- 1.3 Whilst it is a distinct phase, it should not be thought of in isolation, and certainly not as an afterthought once the contract has been awarded. It is essential that the contract monitoring and control procedures have been considered at the contract specification stage, and that the contract monitoring officer or team have been an integral part of each phase of the procurement cycle.
- 1.4 The first step in achieving the above is to ensure that all parties fully understand the contract and their relative responsibilities within it. Some contracts are very simple and require very little management, whilst others are complex and may require several staff members to be involved in the management process.
- 1.5 The main objectives of contract management are relatively simple. They should ensure that:
- the user will be satisfied with the end product;
  - the contract is completed within the stipulated time; and
  - the contract is completed within the agreed budget.

#### 2. Operating the contract

- 2.1 There is a natural temptation to think that once the contractor takes over, the client can relax. This is only true in the sense that, instead of the main focus being on a short-term transition project, there is now a focus on a multi-year relationship. Consequently the perspective is different.
- 2.2 The client is responsible for the contract from day one, and the contractor is likely to make mistakes on day one. How these mistakes are handled, on both

sides, sets the beginning of a pattern, and must be managed correctly if a satisfactory pattern is to lead into a sustainable relationship.

- 2.3 Much recent theory about service contracting builds on the concept of the two parties as partners, rather than adversaries. The partner concept is effectively based on the proposition that both parties share an interest in working together.
- 2.4 Whilst the responsibilities and objectives of the two organisations are different, it is more likely that they can both achieve them if there is a good working relationship based on a degree of trust. Some contracts that are for long periods and involve a substantial financial investment, envisage the development of such a trust, simply because the deal will not work without it.
- 2.5 The key elements of the working relationship through which trust may be developed are:
  - the routine for delivering the service, reporting, monitoring and making payments
  - the processes for managing and reviewing performance of the contract, and activating bonuses and penalties
  - the procedures for agreeing changes to requirements, including the key question of sharing the risks associated with future uncertainty
- 2.6 The operational routine should be based on clear definitions of roles and responsibilities. It is essentially a question of delegating authority to the contractor. The more the client trusts the contractor to take effective action to respond to variable situations of predictable types, e.g. clearing up after traffic accidents or flooding, within the letter and spirit of the specification, the less the client needs to be involved on a daily basis.
- 2.7 Processes for managing performance depend fundamentally on the sharing of information about workload, outputs and costs. Many client-contractor "partners" now share information systems and thus have access to a single database. There is a trend towards the practice of "open book accounting", which implies openness on all financial matters relating to the services under contract.
- 2.8 Performance management within a "partnership" is essentially about sharing information and creating regular opportunities for reviewing and discussing it in a basically non-threatening environment. This in turn is best founded on a contract that has viable financial incentives to improve performance, as well as penalties to deter failure.
- 2.9 Since changes in requirements are guaranteed to arise in any contract period greater than six months, it is absolutely essential to have a contract that facilitates discussion of how change is to be implemented. It is here that "partnership" carries the greatest significance. Not only must the client authority be able to introduce new Council or government policies for a contracted service, or alternatively budget reductions, but there must also be an incentive for the contractor to suggest new methods of working or developing the service.
- 2.10 There are two elements that must be present:
  - a shared interest in improving the quality of service to the user, and
  - a guarantee that both parties will share the risk associated with any change proposed.

- 2.11 These are the cornerstones of the contractual infrastructure. The client's task during the operational stage is to make them work. This is achieved by taking an intense practical interest in the performance of the contract and in the relationship with the contractor. Regular meetings are important, to be held both at board level (perhaps quarterly) and at operational level (perhaps fortnightly). At the same time, however good the relationship, the client must retain her/his arsenal of penalties and be able to use them without destroying the relationship.

### **3. Contract monitoring and management**

- 3.1 Effective monitoring requires good communication between you, the supplier and any other related parties, such as a contract manager, other users of the contract, and so on. A named contact in the supplier organisation is essential, and monitoring meetings should be planned in advance, along with the type of management information required on the progress of the contract.
- 3.2 Monitoring requirements will vary depending on the nature of the contract and the goods, services, and works being provided. However certain standard practices can be adopted including:
- monitoring the supplier's performance against the specific targets set out in the contract
  - inspection of completed work
  - recording complaints received from customers particularly where the service may be delivered to the public on behalf of the Council; or it may be that the users are other staff, e.g. users of Panels
  - recording customer satisfaction with the service, usually via questionnaires, e.g. evaluation forms at the end of training courses
  - obtaining information from the supplier on their opinion of their progress
  - obtaining any revisions in timescale, quantity/quality of outputs from the supplier at the earliest opportunity.
- 3.3 An effective system requires considerable input, but should produce such benefits as:
- a reduction in the level of completion and post-completion problems;
  - a higher level of acceptance by users, thus reducing future pressure for modification or adaptation; and
  - improved staff morale and motivation.
- 3.4 Contract management requires a wide range of skills and techniques to be applied during the life of an individual contract. This range of skills is wider than those required to control, for example, the actual construction of a new building. This requirement arises because at all stages in the project cycle consideration must be given to that project's impact on the existing structure and function of the organisation during the development and implementation process.
- 3.5 The key to successful contract management is sufficient, timely and accurate information delivered to the right people. Effective contract management should therefore take account of the following features:

- project planning
  - resource estimating
  - organisation and staffing of the project team
  - establishing the design requirements
  - monitoring the consumption of resources against budgets
  - progress against plans
  - motivating the design team
  - planning for implementation of the project
  - maintaining good communication inside and outside the project team
  - planning for the provision of maintenance
- 3.6 To ensure timely and accurate information, the importance of Data Quality is paramount. To ensure that all agreements meet the highest standards, client teams should ensure that:
- all relevant records on a data subject are filed/entered immediately upon receipt of that data,
  - data is accurate, and that
  - appropriate systems are established for ensuring the validity of data throughout the process of data collection, recording and reporting.
- 3.7 Throughout the process when data is received by whatever medium, all personal details should be checked to ensure that
- any inaccuracies are rectified and a record kept of when that data is checked and updated, and that
  - appropriate systems are established to safeguard the integrity of data during transmission and receipt between partners.
- 3.6 To enable these elements to materialise, the contract itself should set the framework to provide for the required contract management arrangements. With the key elements enshrined in the contract, both parties to the eventual contract will thus have 'signed-up' to the arrangements and should be clear about the framework in which they are operating.
- 3.7 The key features of the framework should include:
- actions of the authorised officer;
  - performance of the service within given parameters and in line with stated standards and method statements;
  - arrangements for investment and its control;
  - year-on-year improvement and performance information;
  - control of sub-contractors;
  - role and responsibility of contract manager and staff;
  - health, safety and environmental protection;
  - equal opportunities policy and monitoring information;
  - quality assurance, user surveys and complaints;

- operational and financial information;
- method variation;
- performance information – targeted or by sample;
- action on defective service;
- the pricing schedule and the process for payment;
- the practical arrangements for liaison and meetings between the two parties;
- dispute resolution;
- assistance in proceedings and investigations;
- performance standards;
- customer information;
- the provisions for reporting on the performance of the contract, and the procedures and penalties associated with poor performance
- the provisions for changing the requirements of the contract, for dealing with fluctuations of workload, and for changing the prices to take account of inflation and other factors;
- the practical arrangements for terminating the contract, whether at the end of the agreed term or earlier;
- clear identification of who bears the risks

#### **4. Contract control**

- 4.1 In order to keep control of a contract, you need to be able to identify problems as soon as they arise and take the required corrective action quickly. This can only be done if you are keeping up to date with the progress of the contract, and have good communication skills.
- 4.2 The control issues that may arise include:
- unsatisfactory performance
  - misunderstanding the requirement
  - inadequate channels of communication
  - changes to the contract brought about by altered requirements
  - unrealistic initial timescales
  - changing circumstances for the supplier (e.g. excessive growth, or reduced earnings leading to lay offs)
  - supplier insolvency.
- 4.3 Consistent monitoring will bring the control issues to light more quickly, allowing more time to implement corrective action and minimise the impact of any problems that may have occurred.
- 4.4 Often negotiation with the supplier will be sufficient to keep control of the contract.
- 4.5 If difficulties in communicating with a supplier hinders your ability to control the contract, this should be immediately reported to senior management who

should either take arbitration action, or seek to re-assign the contract management role.

- 4.6 Contract managers will be responsible for ensuring suppliers are paid on satisfactory completion of the contract or stages of the contract. You should at least certify that the goods/services have been received or works completed at key points, and gain the necessary approvals for payment.

## **5. Contract variations**

- 5.1 These may or may not arise as a result of contract monitoring and control. Other factors may cause a change in requirements of the Council requiring a change in the contract to reflect these. The typical changes would include:

- quantity or quality of goods or services being required
- timescales for delivery of goods or services
- new or different locations
- changes to the nature of the service being provided, this may be due to market demand, new technologies, new legislation, etc.
- unforeseen events (e.g. the discovery of asbestos during a building project, not identified for removal in the specification).

- 5.2 Contract variations are normally negotiated between the contract manager and the supplier. There should be clear objectives and outputs in relation to the variation. Any change must be done in accordance with the Change Control procedure set out in the contract. On agreement, a variation order must be developed and approved and tied in with the main contract. The variation order should be subject to the securing value for money processes and costed on the basis of the schedule of rates set out in the contract (i.e. enhanced charges should not be agreed).

- 5.3 Contract variations should be approved by officers with the appropriate delegated authority. You should seek the advice of the Legal Services or Procurement Team before you agree to vary standard terms in the Council's contract.

- 5.4 Once the terms of the variation has been agreed you should prepare a deed of variation. You should never agree a variation verbally or by letter as this may invalidate the whole agreement or weaken the Council's right of enforcement

- 5.5 Once approved, contract variations should be monitored and controlled in the same way as the original contract.

## **6. Contract extensions and renewals**

- 6.1 A contract extension or the renewal of a contract may arise where:

- the original contract made provision for extensions (this may be due to the exact timescales, or scope, not being known at the outset)
- it is inappropriate to re-tender and let a new contract for a very short period of extra time, or for a small amount of extra supply (the cost of re-tendering may outweigh the cost of the extension)
- the contract has over-run due to unavoidable delays

- the original timescales and expectations were unreasonable
  - the development work leads onto further activity which could not be quality assured by a different supplier.
- 6.2 Considerable care should be taken when considering renewing a contract or extending it outside of a competitive framework because:
- relationships may develop with suppliers to the exclusion of others
  - there may be claims of unfairness if suppliers continue to get more and more work on continued extensions
  - that aggregation of the original contract and extensions exceeds a financial threshold, particularly EU limits
  - value for money may cease to be achieved without reference to the market place
- 6.3 Any extension option must be agreed **prior** to the expiry of the contract. Options should be assessed at least 9 months prior to contract expiry to ensure that the process for re-tendering the need or getting approval to the contract period extension is achieved within the existing contract period. Contracts placed on the Pan-London Contracts Register have an automatic email reminder service for client managers.
- 6.4 Once the terms of the extension or renewal of the contract have been agreed, you should prepare the variation order. You should never agree a variation verbally as this may invalidate the whole agreement or weaken the Council's right of enforcement.
- 6.5 Before you agree to the possibility of varying a contract you should ensure the EU procurement rules are not breached.

## **7. Re-tendering**

- 7.1 Re-tendering a contract occurs when:
- the end date of the contract has been reached
  - the decision has been made to terminate a contract
  - the supplier resigns or becomes insolvent.
- 7.2 Re-tendering should not be used as a threat to an existing supplier. Effective contract management will have led to improvements in the specification with the knowledge gathered and existing suppliers will also have established a track record in delivery.
- 7.3 The re-tendering process should begin well in advance of the end of the current contract such that in cases where there needs to be a smooth transition, and the existing supplier does not retain the contract, there is time to induct a new supplier. Re-tendering is subject to the same procurement processes as for tendering and EU procurement.

## **8. Contract claims**

- 8.1 There must also be a mechanism for dealing with contractual claims made against the Council. Claims occur when events during the currency of a contract that involve a contractor, though no fault of their own, incurring

additional costs that are not recoverable through the normal methods of pricing and adjustments contained in the contract.

- 8.2 Claims may arise for various reasons, but are generally covered in the following categories:
- delays outside the contractor's control, but not specifically covered by the contract as not being the client's risk;
  - unforeseen conditions on site;
  - enforced changes to the contractor's programme or in the delivery of contract services;
  - design or other changes by the client.
- 8.3 Contractors may allege that additional cost (direct loss and expense) arising from these and similar events are the responsibility of the employer and seek reimbursement for their additional costs. Most construction contracts provide a mechanism for their consideration and ascertainment by the Supervising Officer or their representative; when they are completing this role they are normally operating in a quasi-judicial role, independent of the employer.
- 8.4 As a best practice guide you should also ensure that such provisions are made in any non-construction contracts; seek guidance from Legal Services.
- 8.5 Contractors will only be entitled to their actual extra costs (an ascertained amount), which may in some circumstances include profit and a contribution to head office overheads, arising from matters that are the responsibility of the employer.
- 8.6 To enable a proper ascertainment it is important that additional costs are well documented, and the following records kept as a minimum:
- any notice received from the contractor stating reasons for a claim and any clause under which the claim is being made;
  - the acknowledgement of the receipt of the claim, including any reference about records required to be kept by the contractor or to be supplied in support of the claim;
  - any correspondence, notice or similar issued by the Supervising Officer accepting or rejecting the principle of the claim in whole or in part;
  - the basis of evaluation to be adopted;
  - the contractor's full claim submission, together with any supporting documentation; and
  - details of payments on account and any final claim payment.
- 8.7 Details of the claim should be discussed with Legal Services and the Procurement Team as soon as it has been received, and any action agreed before payment is made or the claim refuted.
- 8.8 It may also be necessary to report the claim to Committee or the Executive Director if additional expenditure is required above the previously agreed budget.

## **9. Reporting and record keeping**

- 9.1 Contract management should include the production of reports. There may be numerous reports required depending on the size and nature of the contract.



Small contracts may only require a report on satisfactory completion. Reports should highlight the results of monitoring and draw to the attention of senior managers any control issues.

- 9.2 Reports should be held on file and form part of the audit trail, and should assist in developing experience and knowledge about the area of procurement and can provide a source of information for others intending to undertake similar activities.
- 9.3 Accurate, timely and complete record keeping is essential. It provides important information about how the contract has been delivered and will form part of the assessment of the success or failure of the contract, which will need to be reported on.
- 19.4 The nature of the record keeping should include:
- failures in performance
  - number of complaints
  - satisfaction ratings
  - adherence to performance targets
  - adherence to timescales for delivery etc
  - frequency of reporting
  - frequency of progress meetings
  - invoices
  - variations to contract (and all supporting detail)
  - contract extensions.
- 9.5 The records kept will act as evidence in the case of breaches of contract, or contract termination. They will also provide a basis for payment and act as an audit trail.

## **10. Satisfactory completion**

- 10.1 The contract manager for the Council should sign off on a contract when they are certain that the goods, services, or works have been delivered within the terms of the contract and to their satisfaction.
- 10.2 Satisfactory completion can be of part of a contract, where progress payments or interim payments are being made against certain outputs, as well as at the end of the contract.
- 10.3 Satisfactory completion is a pre-requisite to the final approval and payment of the contract.