



Australian
National
University

Contract Management Handbook

A Guide to contract management at the University

July 2012

CONTENTS

- 1. INTRODUCTION..... 4**
- 2. PURPOSE..... 4**
 - 2.1 Using this Handbook 5
- 3. CONTRACT MANAGEMENT FRAMEWORK..... 5**
- 4. THE UNIVERSITY’S PROCUREMENT AND CONTRACTS OFFICE (UPCO) 6**
- 5. THE ROLE OF BUSINESS AREAS/DELEGATES 6**
- 6. EFFICIENT, EFFECTIVE AND ETHICAL USE OF RESOURCES 7**
- 7. CONTRACT MANAGEMENT ETHICS..... 7**
 - 7.1 Conflict of Interest 7
- 8. COMPLIANCE WITH GOVERNMENT LEGISLATION..... 8**
- 9. VALUE FOR MONEY 8**
 - 9.1 Life Cycle (or Whole of Life) Costing..... 9
- 10. ENCOURAGING COMPETITION..... 9**
- 11. CONTRACT MANAGEMENT TRAINING 9**
- 12. PLANNING..... 10**
 - 12.1 Senior Management Commitment 10
 - 12.2 Identifying Resources and Responsibilities 11
 - 12.3 Risk Management 11
 - 12.4 Determine the Form of Contract..... 12
 - 12.5 Communications Plan 13
 - 12.6 Contract Management Plan 14
 - 12.7 Determining the Procurement Method 14
 - 12.8 Developing and Defining Contract Objectives and Purpose 15
 - 12.9 Needs Assessment 16
 - 12.10 Research 16
 - 12.11 Cost Estimates 17
- 13. PROCUREMENT 17**
- 14. CONTRACT FORMATION 19**

14.1	Contract Basics	19
14.2	Contract Creation	19
14.3	Awarding the Contract.....	23
14.4	Debrief Tenderers	24
14.5	Developing a Contract Management Plan	24
15.	CONTRACT ADMINISTRATION.....	24
15.1	Contract Manager Responsibilities	25
15.2	Manage Contract Start-up.....	26
15.3	Contract Register	26
15.4	Identify and Manage Risk.....	27
15.5	Monitoring Performance.....	27
15.6	Contract Reporting	29
15.7	Monitoring by Third Parties	29
15.8	Contract Payments.....	30
15.9	Change Management.....	31
15.10	Dispute Resolution	32
15.11	Contract Completion.....	33
15.12	Contract Administration Record Keeping.....	35
16.	SUPPLEMENTARY BEST PRACTICE GUIDANCE MATERIAL.....	36
17.	GLOSSARY	37

1. INTRODUCTION

Contract Management is a critical function for the University, one in which Colleges and Service Divisions should have in place processes and management arrangements that are designed to maximise overall value for money of contracting activities, and enable them to meet all internal and external management and reporting responsibilities in a cost effective manner. These arrangements should be an integral part of the University's governance and control environment within which individual contracts are developed and managed.

Contract management is the coordination and management of four core processes:

- (a) Planning;
- (b) Procurement;
- (c) Contract formation; and
- (d) Contract administration.

There is no single 'right' way to contract. Various types of purchases and contracts may require different practices, processes, and strategies for successful implementation. The suggestions, techniques and recommendations included in this Handbook are **not** appropriate for every type of contract. The nature and level of risk associated with each of these elements vary depending on the nature of the business relationship.

2. PURPOSE

The purpose of the *Contract Management Handbook* is to offer Colleges and Service Division Contract Manager's recommendations on improving existing contract management processes and practices. A Contract Manager is responsible for coordinating the processes required for effective contract management. Contract management may involve a variety of distinct disciplines and roles including:

- (a) Executive management;
- (b) Organisation management;
- (c) Project management;
- (d) Planning;
- (e) Program staff (subject matter experts and advisers);
- (f) Contractor management;
- (g) Purchasers;
- (h) Accounting/budget;
- (i) Legal, including OH&S;
- (j) Audit; and
- (k) Quality control/assurance.

2.1 Using this Handbook

The *Contract Management Handbook* is the companion guide to the [Procurement Handbook](#) and both should be used to achieve maximum benefit. Where appropriate, links are provided to the *Procurement Handbook* to provide detailed information not included in the *Contract Management Handbook*.

In addition, legal references that are made throughout the *Contract Management Handbook* to provide assistance to College and Service Divisions' purchasing and contract management staff, should not be used by College and Service Division staff in lieu of consultation with the University's Legal Office.

This *Handbook*, and the tools and processes set out in it, were developed for:

- (a) project teams established to run and manage the procurement project;
- (b) staff in purchasing and contract management positions throughout the University;
- (c) continued support by senior management and executives of the Contract Management Framework; and
- (d) the Contract Manager who is responsible for the life cycle of the procurement processes and contract.

3. CONTRACT MANAGEMENT FRAMEWORK

Effective contract management is dependent on the interaction of the following elements:



- **Plan** – Identify contracting objectives and contracting strategy.
- **Procurement** – Fairly and objectively, select the most qualified contractors.
- **Contract Formation** – Ensure the contract contains provisions that hold the contractor accountable for producing desired results, including all relevant terms and conditions as well as established processes that are cost effective, and aligned with the cost of providing the goods and/or services.
- **Contract Administration** – Monitor and enforce the terms and conditions of the contract.

4. THE UNIVERSITY'S PROCUREMENT AND CONTRACTS OFFICE (UPCO)

The University is a major purchaser of goods and services in the region. *UPCO* was established to provide a centre for procurement and contracting advice, assistance and guidance on campus, and to streamline and consolidate procurement and contracting across the University.

UPCO is responsible, in consultation with areas within the University, for coordinating and reporting on the University's procurement and contracting activities to the Director, Finance and Business Services. *UPCO* develops the University's procurement and contracting policy, establishes contracts and standing offers for campus-wide requirements, and will assist other areas with procurement and contracting issues or projects.

The Manager, *UPCO* (mgr.contracts.office@anu.edu.au) is the central point of contact for advice on any aspect of the University's procurement and contracting activities.

5. THE ROLE OF BUSINESS AREAS/DELEGATES

The University [Code of Conduct](#) policy requires staff to have regard to:

- [Procurement Policy](#) and [Procedure](#); and
- [Procurement Probity Policy](#) and [Procedure](#)

when performing duties related to procurement and contract management.

The University's delegations framework requires that proposals to spend University money (including proposed procurement of property or services) must be approved by a *delegate*. A *delegate* is required to be satisfied, after making reasonable enquiries, that the spending proposal is in accordance with University policy and that it is an efficient and effective use of University money.

In addition, only an *authorised delegate* may sign a contract on behalf of the University.

College and Service Division management may issue instructions to officials on any matter necessary or convenient for carrying out or giving effect to contract management. Processes adopted by College and Service Divisions are to be consistent with:

- [Procurement Policy](#) and [Procedure](#); and
- [Procurement Probity Policy](#) and [Procedure](#)

6. EFFICIENT, EFFECTIVE AND ETHICAL USE OF RESOURCES

The [University's Expenditure Approvals Policy](#) requires that *delegates* approving expenditure of University funds must first be satisfied that such expenditure is an efficient and effective use of University resources.

Efficiency relates to the productivity of the resources used to conduct an activity in order to achieve the maximum value for the resources used.

Efficiency in contract management is enhanced by conducting transparent, fair and appropriately responsible relationship management of a scale commensurate with the size and risk profile of each particular project.

Effectiveness relates to how well outcomes meet objectives. It concerns the immediate characteristics of the University's outputs, especially in terms of price, quality and quantity, and the degree to which outputs contribute to specified outcomes.

Effectiveness can be achieved by ensuring that the property or service entered into by the University will make the maximum possible contribution to the relevant outcome. This entails comprehensive monitoring, interaction and assessment at all stages of the contract life-cycle to ensure the ongoing contribution of efficient and effective value-for-money to the University.

7. CONTRACT MANAGEMENT ETHICS

The [University's Expenditure Approvals Policy](#) requires that *delegates* approving expenditure of University funds must first be satisfied that such expenditure is an ethical use of University resources. In addition, contract management conducted in an ethical manner will enable purchasers and contracted suppliers to deal with each other on a basis of mutual trust and respect. Adopting an ethical, transparent approach enables business to be conducted fairly, reasonably and with integrity.

Ethics are the moral boundaries or values within which officials work. Ethical behaviour encompasses the concepts of honesty, integrity, probity, diligence, fairness, trust, respect and consistency. Ethical behaviour identifies and avoids conflicts of interests, and does not make improper use of an individual's position.

7.1 Conflict of Interest

The [Procurement Policy](#) provides that staff involved in procurement shall disclose any actual or perceived conflict of interest, and such conflicts shall be resolved in accordance with the University's Policy and Procedure on Conflicts of Interest.

The potential for adverse impact with contract management because of actual or perceived conflict of interest is minimised by:

- (a) open, honest and cooperative business relationships with colleagues and suppliers;

- (b) ensuring the confidentiality and privacy of personal and commercial information obtained in performing the purchasing and contracting function;
- (c) avoidance of conflict of interest or perceptions of bias;
- (d) disclosure of possible conflict of interest, whether it be real or capable of being reasonably perceived;
- (e) fair dealing and impartiality in the conduct of relationship management;
- (f) the non receipt of any remuneration, benefit or advantage, any gift, hospitality or travel, from present or potential suppliers, that might compromise, or be reasonably perceived to compromise, the integrity of the contract management function; and
- (g) fostering the highest possible standard of professional competence amongst purchasing staff members.

8. COMPLIANCE WITH GOVERNMENT LEGISLATION

University purchasing and contracting activities must comply with Commonwealth, State and Territory governments' legislation.

For the most part, this requirement will be reflected in the University's own Procurement Policy and procedural standards¹.

University purchasers should be mindful, however, that there might be specific legislative requirements affecting their particular purchasing activities. For instance, when acquiring furniture and fittings, staff should observe occupational health and safety requirements, in particular those relating to ergonomic needs.

Further information on the University's Occupational Health and Safety (OH&S) policies can be found at <http://hr.anu.edu.au/staff-health-and-wellbeing/ohs/policies>.

It is particularly important that purchasers of any hazardous plant or substance consider OH&S issues as a matter of routine.

9. VALUE FOR MONEY

Value for money is the fundamental principle underlying University procurement and contract management. Value for money is enhanced in University procurement by:

- (a) encouraging competition by ensuring non-discrimination in procurement and using competitive procurement processes;
- (b) promoting the use of resources in an efficient, effective and ethical manner; and
- (c) making decisions in an accountable and transparent manner.

¹ http://info.anu.edu.au/fbs/Business_Functions/Purchasing_and_Contracts_Office/ANU_Procurement

9.1 Life Cycle (or Whole of Life) Costing

Life cycle costing for goods is the total cost that is incurred in buying, owning, use and disposal of items at the end of their usable life. The life cycle costs for services includes the cost of the services, any continuing costs for the use of the services, and any costs that may be incurred in discontinuing the service.

Life cycle costing should be applied to all purchasing decisions (goods or services) where there is an ongoing cost of ownership (e.g. photocopiers). The three broad stages at which life cycle costing should be applied are:

- (a) the conceptual stage, when a business case for justification of the purchase is being prepared;
- (b) the evaluation stage, when the potential offers from respondents are being assessed; and
- (c) the in-service stage, when decisions are being made on whether to maintain, improve or dispose of the asset purchased (or in the case of a service, discontinue the service).

10. ENCOURAGING COMPETITION

Competition is a key element of the University's procurement policy. Effective competition requires non-discrimination in procurement and the use of competitive procurement processes.

The University's procurement policy is non-discriminatory. All potential suppliers should have the same opportunities to compete for University business and must, subject to the University Procurement Policy, be treated equitably based on their legal, commercial, technical and financial abilities, and not on their degree of foreign affiliation or ownership, location or size. The property or services on offer must be considered based on their suitability for their intended purpose, and not based on their origin.

The procurement process itself is an important consideration in achieving value for money. Participation in a procurement process imposes costs on the University and potential suppliers and these costs should be considered when determining a process proportionate with the scale, scope and relative risk of the proposed procurement.

11. CONTRACT MANAGEMENT TRAINING

University Contract Administrators are responsible for the cost-effective contract management of supplies to support the University's teaching, research and administrative activities. They deal with suppliers who rely on trade with the University for their income, and spend a significant amount of the University's money. They need to have adequate knowledge and skills to deal in an ethical and fair way with suppliers and to make sound purchasing and contract decisions.

Depending on the level of their involvement, individual Contract Administrators will need to be able to do some or all of the following:

- (a) establish and sustain contracting capability;

- (b) identify and manage risks;
- (c) establish effective lines of communication with stakeholders;
- (d) establish effective supplier relationship management; and
- (e) establish systems and procedures.

Contract Administrators should discuss knowledge and skill requirements with their respective *Authorised Delegate* or their agent and seek further training where this is needed to improve their level of competence. Contract Administrators must be trained in new University procedures when these are being implemented.

The University is committed to ensuring that those involved in contract management have the knowledge, competencies and skills necessary to perform their duties competently and to be able to deal fairly and ethically with suppliers. Requests for training should be submitted to the Manager, UPCO (mgr.contracts.office@anu.edu.au).

Quarterly procurement and contract management forums are hosted by UPCO, with dates published in the Finance and Business Services (F&BS) key dates calendar, and further details are available from the Manager, UPCO (mgr.contracts.office@anu.edu.au).

University staff are strongly encouraged to consider pursuing formal study through the Certificate IV in Government Procurement and Contracting, available from a range of external training providers (contact the Manager, UPCO mgr.contracts.office@anu.edu.au for further details). The medium term plan is for University complex procurement projects and contracts to be managed by staff with formal procurement and contract management qualifications.

12. PLANNING

The first step in contract management is planning. Planning is crucial to the successful outcome of any procurement. With proper planning Colleges and Service Divisions are more likely to successfully achieve their contracting objectives. Planning assists Colleges and Service Divisions in determining need, preparing the statement of work, choosing the appropriate procurement type, solicitation, negotiation, drafting the contract, and contractor monitoring and oversight. These steps are complex, and there are many instances where errors can be introduced into the process.

Proper planning will reduce or eliminate the risk of error

Planning includes several areas which assist in getting the project started – such as development of the contract management team, assessing risk, developing a communication plan, determining the procurement method, planning for the content of the procurement, and determining a cost estimate.

12.1 Senior Management Commitment

Each contract management initiative should include an executive sponsor, a Contract Manager, procurement department staff and program staff to assist in the contract management process.

The extent and degree of executive sponsorship and participation should be directly related to the level of risk associated with the procurement.

An appropriate delegate in the University must undertake expenditure approval and contract signing. To obtain expenditure approval, a Purchase Order Request (POR) must be prepared and signed by the delegate.

12.2 Identifying Resources and Responsibilities

The Contract Manager should be experienced with the proposed type and size of procurement. The procurement department should review all contracts to ensure that procurement statutes are followed and that the procurement is handled in a fair and competitive environment. The program staff will provide input as to the technical requirements and serve as the subject matter experts for the procurement.

There may be instances where the University does not have the necessary technical expertise or staff for developing an approach to market. For example, a contract for building construction would need the expertise of a licensed architect and a licensed engineer when preparing plans and specifications for a building. In these instances, if the University does not have a licensed architect and engineer on staff, the University would contract out for that expertise.

12.3 Risk Management

Risk management is a three-part process:

1. Identify risk;
2. Quantify and analyse the likelihood, and the potential impact, of identified risks; and
3. Mitigation and/or limitation of the risk.

Contract management risks are as varied as are the types of contracts. Risk categories common to contract management include:

- (a) product risk;
- (b) process risk;
- (c) financial risk;
- (d) schedule risk; and
- (e) OH&S risk.

There is not an objective or mathematical formula that can be used to identify or quantify the risk imposed by a particular contract. Risk determination is based on subjective experience. Several factors that may be useful in identifying the level of risk may include:

- (a) the complexity and subject matter of the procurement;
- (b) the dollar amount of the procurement, and whether the procurement will result in a major contract;
- (c) the anticipated payment methodology;

- (d) the experience the University staff has with the type of procurement;
- (e) whether the results of the procurement will affect the public or only impact the University;
- (f) time constraints or the expected duration of the procurement; and
- (g) the type, availability or experience of staff resources required to implement the objectives of the procurement.

A preliminary risk assessment should be conducted to make an initial determination about the level, type and amount of management, oversight and resources required to plan and implement the contract from beginning to end.

A high-risk contract such as a cost-plus percentage of profit arrangement, an outsourcing project or software development procurements should involve significant executive management sponsorship, participation and oversight. A low-risk contract, such as routine purchases of goods and/or services does not typically require the participation or sponsorship of University executive management.

The primary approach to managing risk after a preliminary risk assessment level is to document the initial perception of the level of risk and/or specific risks that are identified. Once risks are identified, assign experienced staff resources to assist in the contract management process.

Risk assessment is an on-going process. Risk should be reviewed and re-evaluated by the Contract Manager on a continual basis until the contract is fully performed and final payment is made. Please refer to the [Risk Management and Audit Office](#) for assistance.

12.4 Determine the Form of Contract

In most circumstances, it is necessary to have a written contract which provides the basis for a constructive and cooperative relationship between the University and the contractor. However, there are instances where a separate written contract may not be required. These include:

- (a) commercially available software, which may be purchased using a standard licensing agreement and standard purchase order for the contracted products;
- (b) lower value products or services may be purchased by using a University Purchase Card;
- (c) products or services that are listed on a Panel of Period Contract as a preferred supplier; and
- (d) medium to large-scale procurement up to \$250,000 may not require a written contract.

In all instances, any procurement processes must comply with the UPCO [Procurement Procedure](#) and [Threshold](#) requirements.

12.4.1 Standard Form of Contracts

UPCO has developed standard form contracts in short and long forms. These can be obtained from UPCO and should be used to ensure there is consistency, predictability and efficiency in contract development and contract management.

Standard form contracts may need modification and additions to tailor for specific circumstances, but when changes are proposed, they must be discussed with UPCO and may require additional advice from the University's Legal Office.

12.4.2 Panels or Deeds of Standing Offer

A Panel or Deed of Standing Offer can be held with a single contractor or a panel of contractors. This arrangement allows quick easy access to goods and services without having to go through the mandatory procurement procedure for every acquisition. The contractor must provide specified goods or services for a predetermined rate, and on terms and conditions agreed in the standing offer.

12.4.3 Memorandum of Understanding (MoU)

Legally, one Commonwealth entity cannot enter into a contract with another Commonwealth entity. Instead, a MoU is used to:

- (a) set out the services to be provided by the entities.
- (b) establish performance indicators or standards for service delivery.
- (c) formalise arrangements for custody of information.
- (d) formalise dispute and problems escalation arrangements.

MoU should be managed with the same rigour as contracts, with a Contract Manager being assigned.

12.5 Communications Plan

The effective management of the University's contracting activities requires establishing and maintaining open and constructive lines of communication with internal and external stakeholders.

Senior managers are important internal stakeholders who will require periodic assurance that the University's policies are being adhered to and that its reporting and accountability responsibilities are being met. In this regard, the University will have:

- (a) clearly articulated contract reporting and accountability responsibilities, including the individual and/or work areas with primary responsibility for meeting those responsibilities.
- (b) incorporated reporting of its compliance with these requirements into its regular management reporting regime.
- (c) included the oversight of compliance with contracting responsibilities as part of the broader compliance responsibilities of the University's Audit Committee.

Arrangements should be agreed with all relevant external stakeholders aimed at ensuring that their needs are met. Such arrangements could be expected to include:

- (a) relevant contact points.

- (b) the timing and content of briefings and other communications.
- (c) the preferred mode of communication, for example, face-to-face meetings, formal correspondence or email.

12.6 Contract Management Plan

The Contract Management Plan should document major aspects of the contract, which could include performance measures, reporting requirements, parties' obligations, and communication strategies.

A Contract Management Plan should be prepared for all major and complex contracts.



A sample *Contract Management Plan* can be provided by UPCO. Please send an email to contracts.office@anu.edu.au and sample documents will be sent to you.

12.7 Determining the Procurement Method

A major aspect in the planning process is to determine the procurement method, and an important consideration is the procurement lead-time for the procurement method selected. The table provided below is to assist in making the appropriate choice in selection of a procurement method.

Procurement Method	Use When	Advantages	Disadvantages
Request for Quotation (RFQ) – greater than \$5,000, however less than \$250,000.	When requirement for goods and/or services is less the tender threshold	<ul style="list-style-type: none"> • Less structured process than tender process, therefore shorter timeframes can be utilised, and greater flexibility can be experienced 	<ul style="list-style-type: none"> • Service requirements can sometimes be complex and a contract is required rather than a purchase order to be issued to the contractor
Expression of Interest (EOI)	There is insufficient information to write detailed specifications for any procurement method	<ul style="list-style-type: none"> • Provides information to prepare a complete bid or proposal document • Allows the business community to have input into the University's market document based 	<ul style="list-style-type: none"> • Lengthens the procurement process

		<p>on current industry practices and market factors</p> <ul style="list-style-type: none"> • Informs the University of any potential problems early in the procurement 	
<p>Competitive Proposals (Request for Proposals - RFP, Request for Tender - RFT) – greater than \$250,000 whole-of-life costs</p>	<ul style="list-style-type: none"> • When factors other than price are evaluated • When negotiations are desired • Supplier is expected to provide innovative ideas 	<ul style="list-style-type: none"> • Allows factors other than price to be considered • Allows for customised proposals suggesting different approaches to the same business need • Allows for negotiations in order to obtain the best value for money 	<ul style="list-style-type: none"> • Lead times for procurement are much greater • Evaluations are more complex and subjective

12.8 Developing and Defining Contract Objectives and Purpose

An important step in the contracting process is clearly identifying general contracting objectives, assumptions, and constraints. This step may seem obvious, but when the contract fails, it often fails because the expectations were not met and there was not a true meeting of the minds. A clear understanding of the contracting objectives is essential to success; where typically contracts are part of a larger organisational project and/or strategy. The University must carefully consider how the objectives, assumptions and constraints integrate into the larger organisational project and/or strategy. Additionally, identify and document potential integration risks so that a strategy for mitigating or managing those risks can be developed later.

Defining the contracting objectives, assumptions, and constraints may sound simple and straightforward, but this definition process can be quite complex. The University may find that individuals on the contracting team hold different views as to the procurement's objectives. The following questions are intended to assist the team in clarifying and harmonising potential divergent objectives and interests. Answering the following three questions will aid the contracting team in defining and refining the contracting objective:

1. What does your College or Service Division specifically need?
2. What will fulfilling this need do for your College or Service Division, or more widely for the University?
3. How will your College or Service Division know when the need has been met?

Each procurement is different; therefore, the description of the objective, assumptions and constraints will vary. A good measure of the quality of the statement of work is whether the contracting objectives, assumptions and constraints make sense.

12.9 Needs Assessment

The purpose of the needs assessment is to ensure that the contracting team plans for the correct contracting objectives. A clear definition of the contracting objectives and purpose to be accomplished by the contract is intended to assist the team later in developing the statement of work, market documentation, negotiation and contracting documents, and in verifying the performance of a contractor. This assessment should incorporate the initial needs assessment conducted by the College or Service Division when the determination was made to contract out for the service instead of performing it in-house.

If the contracting purpose implements, changes or supports the University's statutory duties, it is useful to identify existing statutory requirements, University policies, procedures and business processes that will be impacted by the contract. If business processes or practices are not documented, it is often useful to document the business processes. Once the legal requirements and business processes are clearly identified the College or Service Division can assess how the duties or processes will be changed or impacted. Document any concerns or risks identified by the assessment so that the changes and risks can be managed or mitigated in the contract document.

The success of many contracts is dependent upon how well business requirements are documented, communicated and understood by the University. Do not assume that the University understands the business of your College or Service Division. Detailed business practices are frequently incorporated into the statement of work in a contract, so College or Service Division staff input and cooperation is critical when planning and developing a statement of work and during acceptance testing.

12.10 Research

Contact and consult with people within the University and other external organisations who have developed market documents, draft contracts and engaged in contractor oversight similar to the one being procured. Document the strengths, weaknesses, problems and the lessons learnt during the consultation. Use the internet to search for copies of market documents, contracts and white papers or products used by other organisations. Review websites for useful information, check with trade associations and professional organisations to identify industry practices, methods, standards and rules that will deliver the goods or perform the services. Another approach to identifying information regarding the availability, features or measures for the purchase of goods or services is to publish an Expression of Interest (EOI). Potential

suppliers may respond to the EOI with information that will assist the University during the contract management process.

While researching, the University may wish to contact potential suppliers to discuss the procurement. This is an acceptable practice as long as the University solicits information from more than one supplier and advises the supplier that the University's interest at this point is strictly for research purposes, and that any formal requests for pricing or other information will be made through the formal competitive sealed bid or competitive sealed proposal process.

12.11 Cost Estimates

During the planning stage of the procurement, it is necessary to develop an estimated whole-of-life cost. The cost estimate should assist the University in determining which type of procurement method to use. Even if limited by budget restraints, estimated cost will provide an idea of the range of services that the University can include in the statement of work.

If suppliers are contacted, be sure to advise them that the University is obtaining price estimates for information purposes only, and that the estimate is not a formal market approach. In obtaining cost estimates from potential suppliers, care must be taken to avoid giving a potential supplier a competitive advantage.

13. PROCUREMENT

The companion guide to the *Contract Management Handbook* is the [Procurement Handbook](#)². It is required that you refer to the *Procurement Handbook* when undertaking a procurement process; this will ensure that you have all relevant guidance material and documentation necessary to achieve a value-for-money outcome for the University.

In order to ensure that contracts are processed efficiently prior to their effective dates, the table below is an indicator to assist the University for the planning process.

Task	Suggested Minimum Lead Time ³	Comments
Begin preparation of Market Documentation (Internal and External) – Project/Contract staff work with UPCO to develop Market Documentation	~8 weeks	This is where the planning and research discussed earlier pays off. UPCO can provide Project/Contract staff with templates to assist in preparation of Market Documentation.
Submit final Market Documentation to delegate for approval, and provide approved documents to	1 week	Dependent on UPCO endorsing that the Market Documents are complete and suitable to be issued to the marketplace.

² http://policies.anu.edu.au/guidelines/anu_procurement_handbook/guideline

³ Lead times are dependent on level of risk and complexity of requirement for goods and/or services to be delivered.

UPCO for reference		
Advertise and Issue Market Documentation	25 days (calendar)	A 25-day advertising period is typical for most EOI, RFP and RFT approaches. However, if the procurement is very complex and requires respondents to submit significant documentation and/or complex pricing, additional time for the Market Documentation period should be allowed.
Receipt of responses	1-2 weeks	This lead-time will allow procurement project staff time to check compliance against any Minimum Requirements listed in the Market Documentation.
Evaluation of responses	2-4 weeks	Evaluation of responses may take more or less time, depending on the size of the Evaluation Team and the complexity of the evaluation. The evaluation period could also increase if oral presentations, discussions or site visits are utilised.
Due Diligence, Negotiations and Contract Formation	4-6 weeks	Timeframes may vary depending on the complexity of the procurement.
Evaluation Report for Delegate Approval	1-2 weeks	The timeframe may vary depending on the complexity of the procurement, including suggested/requested report amendments, and availability of the delegate for review and signing.
Contract Execution – all signatures are obtained	1-2 weeks	This timeframe may also differ significantly between a purchase order and a contract. Depending on the signature requirements of the University and the contractor, the contract execution lead-time may need to be adjusted.
Transition/Commence Performance	Commencement of contract period	Timeframes may vary depending on the complexity of the goods and/or services to be delivered, and if transition activities are required to replace incumbent contractors.

14. CONTRACT FORMATION

14.1 Contract Basics

A valid contract may be defined as 'the creation by agreement of legally enforceable rights and obligations between two or more parties'. Officials who purchase goods and/or services on behalf of the University should be aware that their actions are binding on the University.

Care must be exercised not to:

- (a) Inadvertently enter into a contract issued by a supplier with terms and conditions unfavourable to the University.
- (b) Create a contract orally or by exchange of informal documents or letters.
- (c) Create a contract by issuing instructions to a supplier to proceed with work or the delivery of goods before a contract is signed and issued.
- (d) Amend, vary or extend a contract either orally or by exchange of informal documents or emails.

For this reason, all procurements valued at over \$5,000 should be formalised prior to the delivery of the goods and/or services by the creation and issue to a supplier of either:

- (a) a signed purchase order that includes the University's [terms and conditions](#)⁴ for low value procurements of 'off-the-shelf' products; or
- (b) a more detailed formal contract for all complex procurements involving non-standard and/or high value goods and services.

University officials must not commit the University to contractual liabilities for more complex, high-valued procurements (such as contracts for consultancy services) without having the contract vetted by the University's Legal Office first.

14.2 Contract Creation

The written contract must be an accurate reflection of the terms and conditions nominated in the request documentation and must take account of any matters of significance emanating from the post-evaluation negotiation process. It is important that consultation and involvement of UPCO or the University Legal Office has taken place during this process.

Contracts must be fair and reasonable for suppliers but, at the same time, they must protect the University and its interests, both in the performance of the contractual arrangement and against any possible civil action.

It is a requirement to include a copy of the draft contract in the Request for Tender (RFT), and where appropriate, the Request for Proposal (RFP). This enables respondents to see, and register their compliance with the terms on which the University proposes to deal. Providing a

⁴ http://info.anu.edu.au/fbs/assets/Business_Functions/Purchasing_and_Contracts_Office/ANU-TC-for-PO-vFinal.pdf

draft contract should also assist in shortening the negotiation period once short-listed respondents are selected.

UPCO have contract templates available that contain standard University agreement clauses that have been reviewed by the University's Legal Office. As with the standard conditions of tender or proposal, the draft contract clauses will need to be reviewed in each case, in consultation with UPCO and if warranted the University Legal Office.

In reviewing the draft contract, it is important to:

- (a) Ensure that all variable details are completed and that contractual provisions clearly establish a legally enforceable obligation on the contractor.
- (b) Ensure that changes in University policy, law, practice and other relevant developments are taken into account.

Some special issues that may need to be taken into account include:

- (a) **Intellectual Property Rights:** Generally, the University would expect to own or have a licence for any intellectual property paid for and developed to meet its specific requirements. In some cases, the University may negotiate other arrangements, subject to legal advice.
- (b) **Common Law Liability:** Common law liability should apply in all University contracts unless, in special circumstances, the University agrees to an alternative arrangement.
- (c) **Confidentiality and Privacy:** There should be adequate provision made to protect confidential information and information that is covered under the privacy legislation that the University may disclose for the purpose of an agreement.
- (d) **Insurance:** Special insurance provisions may be required in some cases, subject to a proper *Risk Assessment*.
- (e) **Access and Security:** Special requirements may be needed in some cases.
- (f) **Payment of Workers Employed by Contractors:** The University can be liable for wages that have not been paid by a contractor unless it is clearly defined that the contractor is responsible.
- (g) **Guarantees:** In some cases, the University may need to require the contractor to provide security for performance. Commonly this takes the form of a bank guaranteeing that it will pay a specified amount in the event of default by the contractor. Other options include performance guarantees lodged by a parent or related company of the contractor, or director's undertakings.
- (h) **Liquidated Damages:** in some cases, it may be in the University's interest to provide for the recovery of an amount in lieu of damages that could result from a breach of contract by a contractor.
- (i) **Risk Management:** In addition to insurance and financial and performance guarantees, the contract may need to include provisions to cover project specific risks, including OH&S risks.

In all cases, the draft contract should be prepared in consultation with *UPCO* staff, who will consult with the University Legal Office where appropriate.

The requiring area, after consultation with and advice from *UPCO*, will prepare two copies of the contract for signature, and where there is a significant impact or change will, if advised by *UPCO*, seek further contractual advice with the University Legal Office. The *Authorised Delegate* will sign the contract on behalf of the University.

After signing of the two original copies of the contract, one copy is provided to the other party and the University's copy of the contract is forwarded to Central Records for secure storage or placed on the University file for the subject. A copy of the contract is required to be made available to the Contract Manager/Administrator for day-to-day management purposes, but must be clearly marked "copy" and kept secure. The appointed Contract Administrator will photocopy and keep a copy of the contract for day-to-day management purposes.

Activity	Responsibility	Approval
Forming the contract	When negotiations are finalised, the negotiation team prepares the schedules and refines the draft contract (if necessary).	Where a University template contract is modified, <i>UPCO</i> advice should be sought. Advice of non-standard contract should be sought from the University Legal Office.
Entering into the contract	The <i>Project Manager/officer</i> advises the successful tenderer and forwards two originals of the contract for signature.	After approval by the relevant <i>Delegate</i> .
Signing the contract	The successful tenderer signs both copies of the contract and returns them. They are then submitted to the <i>Authorised Delegate</i> for signature.	The <i>Authorised Delegate</i> signs the contract (if within delegation).
Secure storage of the contract	The <i>Project Officer</i> returns one signed copy to the successful supplier/s. The University's copy of the contract is forwarded to Central Records for secure storage or placed on the University file for the subject. A copy of the contract is required to be made available to the Contract Manager/Administrator for day-to-day management purposes, but must be clearly marked "copy" and kept secure.	

14.2.1 Setting Performance Targets (Service Levels)

For high value and complex projects, it is important to set targets and performance measures to encourage better management of the project and to achieve savings from improved purchasing outcomes.

Targets are the results by which the success of the purchase will be measured. They should be demanding but achievable, and capable of being measured. They should clearly reflect stakeholder expectations and wider University policy as well as the operational requirements of the purchasing process and subsequent contract. They must be able to be controlled and, ideally, they should be few in numbers.

Generally, targets focus on:

- (a) **reducing and containing costs**, for example:
 - (i) from informed predictions about cost movements in industry sectors
 - (ii) negotiating lower offer prices, or agreements to implement strategies to avoid cost increases
 - (iii) consolidating common requirements to make effective use of market leverage
 - (iv) expecting suppliers to achieve improvements in the cost, quality and maintenance of their goods and services
 - (v) containing tendering costs through well managed tendering strategies.

- (b) **contractual performance**, for example:
 - (i) achievement of milestones
 - (ii) achievement within budget on a whole of life basis
 - (iii) acceptance testing of Contractor performance.

- (c) **internal customer service**, for example:
 - (i) timeliness
 - (ii) responsiveness
 - (iii) extent to which needs are met and value for money achieved.

To this list might be added general targets for reducing or eliminating complaints from unsuccessful tenderers or respondents through well-managed open and transparent processes, and the elimination of instances giving rise to legal challenge, through careful planning and attention to probity and fair dealing.

Viewed objectively, these targets outline the critical measures of value for money, i.e., is within budget (and with savings if possible), meets performance expectations on time (end users are satisfied), through open and fair processes (tenderers or respondents and the University community are satisfied).

Activity	Responsibility	Approval
Managing the contract	A <i>Contract Manager/Administrator</i> must be appointed to administer the contract and manage the relationship with the provider. This will normally be the <i>Project Manager/Administrator</i> , but may be an end user, depending on the nature of the requirement.	The <i>Authorised Delegate</i> of the requiring area.
Contract variations	The <i>Contract Manager/Administrator</i> is responsible for amending the contract to reflect agreed variations and amendments.	The <i>Contract Manager/Administrator</i> can approve minor variations subject to budget considerations or delegation. Any major changes in scope and/or budget must be brought to the attention of the <i>Authorised Delegate</i> .
Receiving goods and services	The <i>Contract Manager/Administrator</i> is responsible for ensuring that goods and services are received as specified in the contract. If goods and services are provided directly to end-users, the <i>Contract Manager/Administrator</i> will need to ensure appropriate information is available to monitor and measure performance, and authorise payments.	End users should certify those goods and services received are acceptable and meet the requirements of the contract, and report defects to the <i>Contract Manager/Administrator</i> .
Paying the contractor	The <i>Contract Manager/Administrator</i> should ensure payments are made on time, and in accordance with the terms and conditions of the contract.	The receiving area for the goods and/or service or finance area make payments in accordance with the contract.

14.3 Awarding the Contract

Once the contract is drafted in preparation for execution by the parties, UPCO is available to review the contract documentation to ensure all aspects of the contract are completed. The Contract Manager should then arrange for the appropriate delegate to endorse the contract.

Once endorsed, UPCO or the Contract Manager can arrange for the contract to be signed by the contractor, before arranging for the University delegate to sign the contract.

Once the contract is awarded, the Contract Manager should inform all unsuccessful tenderers of the decision.

The Contract Manager will retain a signed copy of the contract and forward to the other to the contractor. The University's copy of the contract is forwarded to University Central Records for

secure storage or placed on the University file for the subject. A copy of the contract is required to be made available to the Contract Manager/Administrator for day-to-day management purposes, but must be clearly marked "copy" and kept secure. The Contract Manager will arrange for a purchase order (internal document only) to be raised to enable payments to occur against the executed contract.

14.4 Debrief Tenderers

If under request, the Contract Manager must provide the unsuccessful tenderer with an explanation as to why its submission was not successful.

A debrief can be conducted face-to-face or by telephone. Debriefs should be carefully planned and should provide feedback on the tenderers' performance against the evaluation criteria, emphasising their responses, strengths and deficiencies. Details of other Tenderers' response must not be discussed.

Debriefs should be conducted by at least two University representatives, including the Contract Manager and a procurement member who was involved on the procurement process. A documented record of the debrief should be kept on file for audit purposes.

14.5 Developing a Contract Management Plan

A Contract Management Plan containing all the key information about how a contract will be managed should be developed. A Contract Management Plan is not required for all contracts, however, it is recommended where the contract involves large dollar amounts, includes complex technical requirements, or in situations where a Contract Manager is responsible for managing a large number of contracts simultaneously.

The Contract Management Plan should be developed by the Contract Manager and should be fully developed and finalised by the time the contract is executed. UPCO can assist in developing the plan by providing advice on what information should be included.

The Contract Management Plan is one of the essential contract management tools to assist the Contract Manager to:

- (a) develop a good understanding of the contract and responsibilities of the parties
- (b) establish a system of measuring performance and reporting.



A sample *Contract Management Plan* can be provided by UPCO. Please send an email to contracts.office@anu.edu.au and sample documents will be sent to you.

15. CONTRACT ADMINISTRATION

Contract administration, which is as important as the purchasing process, involves monitoring performance and ensuring that both parties meet the commitments made in the contract. Successful contracts often depend on getting the relationship right. This requires the commitment of both parties to achieving the objectives set out in the contract and establishing and maintaining trust and mutual support.

Comprehensive and accurate records must be kept to establish and maintain an audit trail in relation to responsibilities, claims, payments, negotiations, agreed changes, incorrect deliveries, poor service and other significant activities. This information must be filed for retrieval at a later stage, if required.

University staff ordering goods or services under University [Preferred Supplier](#) contracts should ensure that *UPCO Contract Administrators* are informed/involved in disputes with *Preferred Suppliers* that are not resolved at first instance with the supplier.

15.1 Contract Manager Responsibilities

Once the contract is signed, there are a number of activities that should be addressed by the Contract Manager. The primary responsibilities of the Contract Manager are:

- (a) Monitor the contractor's progress and performance to ensure goods and services conform to the contract requirements;
- (b) Manage any University property used in contract performance;
- (c) Authorise payments consistent with the contract terms;
- (d) Document significant events;
- (e) Maintain appropriate records;
- (f) Exercise University remedies, as appropriate, where a contractor's performance is deficient;
- (g) Resolve disputes in a timely manner; and
- (h) Participate, as necessary, in the development of market documentation (when the contract is due for termination), both internal and external. Contract administration must be considered during this process.

The number of participants in the contract administration process will vary in number from one to many depending on the size, level of risk and complexity of the contract. Early in the procurement process, identify staff to participate in contract management. Identify a single Contract Manager and others to assist the Contract Manager. Assign roles and responsibilities, which may include:

- (a) determining the sequence of activities, dependencies, required or desired outcomes, and acceptable performance levels
- (b) developing a timetable and start and end dates for each performance component. Include milestones with accompanying timeframes, and monitoring and reporting requirements
- (c) monitoring contractor activity on a specified frequency to identify problem areas
- (d) meeting with the contractor on a regular basis to review progress, discuss problems and consider necessary changes
- (e) providing access to University facilities, equipment, data, staff, materials and information
- (f) contacting other staff as necessary to provide equipment and data

- (g) establishing scope of authority, clear lines of communication and reporting, and specific individuals who will interact directly with the contractor
- (h) establishing control of correspondence, data and reports
- (i) identifying potential problems and solutions
- (j) defining terms and conditions of default
- (k) establishing a procedure, identifying a responsible person and establishing a timeframe for handling non-compliance
- (l) establishing a procedure, identifying a responsible person and establishing a timeline for making necessary contract decisions or modifications.

15.2 Manage Contract Start-up

After a contract has been awarded, it is important that the Contract Manager understands the contract provisions and contractual relationships. In particular, a detailed review of the contract at start up may identify issues that require clarification or elaboration with the contractor, and this should be done as early as possible. UPCO can assist the Contract Manager in understanding the responsibilities and obligations of the parties, and how best to undertake the contract management role.

There may also be situations where the contract requires a transition to a new contractor. In these situations, it is important to minimise the risk of reducing or losing services during the transition. Depending upon the complexity of the contract, a transition plan may need to be developed to plan and manage the transition.

15.3 Contract Register

A contract register must be maintained centrally, with staff in work areas providing details to the work areas responsible for maintaining the register of all contracts entered into. Alternatively, details can be input remotely by individual work areas. The contract register could also consist of a number of sub-registers maintained by Colleges and/or Service Divisions that collectively represent the University's contract register.

As well as assisting in meeting any University reporting responsibilities, a contract register should be used to monitor contract end dates, and opportunities to exercise contract extensions to assist the University to commence new procurements in a timely manner.

A better-practice contract register will have the following characteristics:

- (a) The register will contain all relevant contract details and be configured to be able to produce reports that can be used to meet any University's management and reporting responsibilities.
- (b) Responsibility for maintaining the register will be clearly assigned to an individual(s) or work area(s).
- (c) Formal procedures will be promulgated for maintaining the accuracy and completeness of the register. These procedures will provide for reconciliation or crosscheck between

the register, and the University's financial information management system. They should also provide for a periodic quality assurance review of the register.

- (d) The automation, to the extent feasible, of the input of data that will limit or eliminate the multiple input of data into different systems, assist in improving consistency, and reduce the incidence of human error.
- (e) The provision of links to individual contracts, subject to security and confidentiality considerations.
- (f) System access controls designed to ensure unauthorised staff do not have access to, and cannot amend or alter, contract details.
- (g) The periodic review by internal audit or other review mechanisms.

15.4 Identify and Manage Risk

Risks and risk treatments established earlier in the contract management cycle need to be reviewed once the contract is signed, and new risks and mitigation strategies need to be considered. New risks may include:

- (a) Contract Manager who does not have the time, or experience to capably manage the contract
- (b) Contractor failing to meet contract deliverables on time, to agreed standards, or to agreed contract pricing schedule
- (c) Contract Manager fails to act on contractor underperformance
- (d) Contract changes not dealt with as a contract variation
- (e) Stakeholders not being consulted or kept informed.

15.5 Monitoring Performance

Monitoring the performance of the contractor is a key function of proper contract administration. The purpose is to ensure that the contractor is performing all duties in accordance with the contract and for the University to be aware of, and address any developing problems or issues.

Small dollar or less complex contracts normally require little, if any, monitoring. However, that does not preclude the possibility of more detailed monitoring if deemed necessary by the University. Conversely, large dollar contracts may need little monitoring if the goods and/or services are not complex, and the University is comfortable with the contractor's performance, and the level of risk associated with the contract.

Activity	Responsibility	Approval
Monitoring Performance	The <i>Contract Manager/Administrator</i> is responsible for monitoring and managing risks, and reporting on contractual outcomes in accordance with progress and review schedules.	The <i>Contract Manager/Administrator</i> should regularly report to end-users. The <i>Authorised Delegate</i> should approve reports of any major reviews.

15.5.1 Monitoring Types

There are different types of monitoring available, including but not limited to:

(a) Site Visit (full and limited scope)

Full scope site visits are typically scheduled visits to the contractor's place of business. They are based on risk assessment and cover a broad range of contract compliance and performance issues. Limited scope site visits typically focus on a particular problem. Examples of some typical reasons for considering a limited scope site visit are, but are not limited to:

- (i) Contractor is responsible for administering funds from two sources and one source has noted serious problems with the way the contractor used the funds.
- (ii) Other contractors have experienced problems in a specific area, and there is an indication that this contractor might be experiencing the same problem.
- (iii) Inconsistencies in the expenditure draw requests are identified and clarification from source documents is required.
- (iv) Contractor has provided a corrective action plan for a problem, including OH&S breaches, but the University is not certain that the proposed solution will resolve the problem.

(b) Desk Review

Typically, these are University reviews of reports submitted by the contractor to the University. The University should review the reports for the following:

- (i) Compare the actual performance against the contractual requirements. Is the contractor performing in accordance with the contract requirements?
- (ii) Compare actual expenditures to the approved budget. Is the contractor following their approved budget plan?
- (iii) Compare the current periods to prior periods. Are there any unexplained trends? Is the contractor performing work significantly different from the last period or the last year?
- (iv) Compare what the current contractor is doing in comparison with other contractors performing similar work.
- (v) Compare the relationship between key components of the report, such as:
 - A. the cost per unit of service or the percentage of the fees charged to the project
 - B. the change in variable costs compared to the units of service provided
 - C. reported salaries match staffing plan.

- (vi) Compare the report with what is known about the contractor's operating environment. Did a weather emergency in the area recently increase the cost of construction supplies or is the cause of a temporary reduction in services provided?

- (c) Expenditure Document Review

These are reviews of contractor invoices and expenditure draw requests to determine if the rates and services are the same as allowed by the contract. Determine if the supporting documents such as cost reports, third party receipts for expense, detailed client information, for example, and adequately support the request for payment. If the contractor consistently provides incorrect invoices and/or the supporting document is insufficient to support the request, then additional monitoring such as an on-site visit may be necessary.

15.6 Contract Reporting

Reporting includes both a Contract Administrator reporting to executive management, and the contractor reporting to the Contract Administrator. There are generally two (2) categories of reports: status reports and activity reports, and both types of reporting serve useful functions.

15.6.1 Status Reports

Describe the progress of the work. The content of the status report should be consistent with and track, the organisational structure of the statement of work, i.e. phases, segments, deliverables and products. A status report should describe what work is complete and what work is pending, and that status should be contrasted against the contract schedule. Only work that has been verified as completed or accepted should be categorised as complete. If there are any unresolved issues that the University is contractually obligated to resolve, those issues should be included in the status report and a resolution should be requested.

If the scope of work has changed during the contract (by written amendment), insist that status reports track the original contract schedule, not a revised contract schedule as there is a risk that the schedule will continually change and the status report will be rendered meaningless. If the contract does not provide for periodic status reports, the University should ensure that the contractor is making sufficient progress. This may be accomplished by requesting a status update from the contractor or a site visit to view the progress.

15.6.2 Activity Reports

Describe any activity on the project (project activity is not the same as a status report). A project may have a great deal of activity without making substantive progress. On the other hand, activity reporting can be a core feature of contract management. For example, activity reporting is critical to contract administration.

15.7 Monitoring by Third Parties

In some instances, the obligation of monitoring the progress of a contract is assigned to another contractor. This is also known as independent oversight. For example, in the case of a construction contract, the task of ensuring progress in accordance with the contract may be

performed by the architectural firm that provided the construction plans. For highly technical work, consultant subject matter experts may perform monitoring services independently or in conjunction with University staff.

15.8 Contract Payments

The costs incurred by the contractor should be in accordance with the contract rate schedule. Invoices should be reviewed to ensure that the contractor's billing coincides with the contract's progress, and this requires that the contractor's progress be measurable. Cost incurred or invoices submitted, in and of themselves, are insufficient indicators of the contractor's performance.

If the University believes that the requested payment exceeds the contractor's progress, an explanation should be requested from the contractor prior to the arrival of the invoice. Payment should be withheld pending University satisfaction with the contractor's progress.

Project and contract administration staff must approve invoices prior to payment. Payments must be made in accordance with Commonwealth legislation, which requires that correct invoices be paid within 30 days from the date of a correctly rendered invoice being received, or the goods and/or services, whichever is later. The invoice should be reviewed to ensure:

- (a) the contractor is billing only for goods and/or services received by the University
- (b) the goods and/or services have been accepted
- (c) the invoice is correct and complies with the terms and conditions of the contract
- (d) the total payments do not exceed the contract limits
- (e) a delegate with the relevant level of delegated authority has approved expenditure
- (f) the account has not previously been paid
- (g) account is in the name of the payee
- (h) expenditure is recorded against the correct charge code(s) as described in the delegates approval
- (i) correct inclusion of contractor ABN number
- (j) the invoice is appropriately identified as a 'Tax Invoice' and the amount(s) of GST are shown separately when payment relates to taxable supply.

15.8.1 Withholding Payment

The University has the responsibility to protect the interests of the University and under appropriate circumstances, it may be necessary to withhold payments from contractors. Circumstances where it may be necessary to withhold payment include, but are not limited to:

- (a) there is a material breach of the contract by the contractor
- (b) errors in the invoice
- (c) unsupported and/or undocumented costs
- (d) to remedy previous overpayments on the same contract

- (e) Contractor's performance is non-conforming or unacceptable.

15.9 Change Management

Throughout the term of the contract, it may become necessary to make changes to the contract. These changes can be minor administrative changes, such as a change of address; or they can be substantial changes that affect the price and delivery.

The University should have an effective change management process in place. Failure to manage and control changes can result in an unintentional modification to the scope of work, extension of the schedule, increase in the contract cost, circumvention of management controls and diminished contractor accountability. An effective change management process includes, but is not limited to:

- (a) Formal, written approval of all changes prior to the change-taking place. Do not verbally authorise the contractor to begin working on a change before a formal process is fully analysed, documented and approved in writing.
- (b) Evaluation of the impact of each change to the contracting objective, the corresponding deliverable and/or products, the schedule, cost, and increase in University overhead resulting from the change, impact to work in progress/completed work, standards, and acceptance criteria.
- (c) If the contract contains a contingency allowance, develop a plan for how it draws against this allowance, and how it will be requested and approved.
- (d) Documentation of all changes, no matter how small and avoids an informal undocumented change process.
- (e) Establish a single point of contact to recommend or authorise change. Document the change as approved or disapproved. If a change is approved, document the change and the impact to the scope of work through a contract amendment or purchase order change notice, whichever is applicable.

15.9.1 Administrative Changes

These changes are within the scope of the contract and do not affect or alter the rights of the parties. Examples of changes include:

- (a) changes in billing instructions or address
- (b) corrections of typographical errors not affecting the substance of the contract
- (c) changes as permitted by the specific contract language
- (d) Changes in University personnel assigned to the contract.

15.9.2 Substantive Changes

These contractual changes affect the rights of both parties. Such changes require bilateral amendments (agreements by both parties). Examples of substantive changes include:

- (a) changes in the price of the contract

- (b) changes in the delivery schedule
- (c) change in the quantity
- (d) change or nature of deliverables (i.e. the specifications)
- (e) change of key personnel
- (f) Change of any terms and conditions.

15.9.3 Constructive Changes

If a contractor perceives that the University ordered work beyond the scope of the contract, the contractor may claim that the contract was “constructively” changed, and the contractor may be entitled to additional compensation for the changes. Generally, a constructive change will require a bilateral amendment (agreements by both parties). Constructive changes may occur when University personnel:

- (a) provide suggestions to a contractor
- (b) accelerate the delivery schedule
- (c) direct the work to be performed differently
- (d) change the sequencing of the work
- (e) delay accepting or rejecting deliverables
- (f) delay reviewing invoices and approving payment
- (g) interfere with or hinder performance.

15.10 Dispute Resolution

The goal of any dispute resolution process is to resolve all problems before they escalate to the next level. To avoid escalation of problems to the next level and ensure the University has not exacerbated potential problems, it is imperative that University personnel respond promptly to all contractor enquiries. Initial steps to be taken are:

1. Identify the problem – many times what may appear to be a problem can be resolved by providing the contractor with information or clarification.
2. Research facts – the University should obtain all the information regarding the potential problem from all relevant sources, including the project manager and the contractor.
3. Evaluation – the University should review all of the facts in conjunction with the requirements, and terms and conditions of the contract. The University should then determine the appropriate course of action, ensuring that the Legal Office and UPCO have been appropriately consulted.
4. Proper dispute resolution is a core skill of successful contract management. Identification of problems early in the performance period, effectively communicating and formalising the process in writing via a *cure notice* procedure or less formal procedure is essential. A contract termination is a failure by **both** parties to contract. Termination is the last resort that rarely needs to be done.

15.11 Contract Completion

The contract completion process is usually a simple but detailed administrative procedure. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining. In addition, contract completion is the time to assess the success of the contract and determine if there are any lessons learnt for future contracting.

A contract can be discharged in two ways:

- (a) all obligations under the contract are fulfilled
- (b) not all obligations have being completed.

When not all obligations are completed, a contract can be terminated in a number of ways including mutual agreement or discharge; release; waiver; or novation or substitution.

The Contract Manager should seek advice from the Legal Office and/or UPCO for appropriate courses of action.

15.11.1 Identify and Manage Risk

When contract closure occurs, new risks need to be considered. The new risks may include:

- (a) failure to return all relevant documents or materials
- (b) failure to agree on final payment details
- (c) if transition arrangements are to occur:
 - (i) failure to appropriately manage transition
 - (ii) disruption to existing services
 - (iii) not managing the process of re-tendering in line with probity; and disputing existing services.

15.11.2 Contract Obligations Are Met

A contract is completed when all goods and/or services have been received and accepted, all reports have been delivered and accepted, all administrative actions have been accomplished, all University furnished equipment and material have been returned, and final payment has been made to the contractor.

To initiate the completion process, the University should first determine that the contractor has satisfactorily performed all required contractual obligations. A contract is ready for completion when:

- (a) all deliverables, including reports have been delivered and accepted by the University. Contract Managers should compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed
- (b) final payments have been made

- (c) all monitoring issues have been resolved
- (d) all property inventory and ownership issues are resolved including disposition of any equipment or licences purchased under the contract
- (e) final acceptance from the Project Manager has been received (if applicable)
- (f) obtain all necessary contract material, information and clearances
- (g) contractor is aware of and in compliance with records retention requirements, and a plan has been developed for contract file maintenance
- (h) make adequate provision for warranties
- (i) any deficiencies found as part of the completion process are documented and communicated to all appropriate parties
- (j) terminate the contractor's access to the premises.

15.11.3 Not All Contract Obligations Have Been Met

Where it is considered necessary to end a contract with all obligations not being complete, or for convenience, careful consideration must be taken before terminating the contract. Before taking any action, the Contract Manager must discuss the situation with the UPCO and should seek legal advice in addressing legal subtleties in some forms of termination.

15.11.4 Managing Transition Arrangements

In some instances, the ending of a contract may result in a changeover from one contractor to another, or from one contractual arrangement to another. In these circumstances, handover arrangement should be carefully planned.

Prior to the original contract ending, a new procurement process needs to be undertaken and completed, unless the University has deemed that the goods and/or services are no longer required. This would normally result in a tender process being conducted for the engagement of a new service provider in parallel with the continued provision of services by the existing contractor.

To manage the transition arrangements, and to minimise the risk of not achieving a seamless transition, a *Transition Out Plan (Disengagement Plan)* needs to be established before or at the commencement of the procurement process. The Plan should include:

- (a) a description of how the tender process will be conducted, including outlining how the existing contractor will be prevented from accessing any material relating to the tender process that is not for public viewing
- (b) handover arrangements, including outlining how the processes for the new service provider will be provided in parallel with the existing contractor
- (c) identification of records, information, equipment and other assets and how these will be transferred from the existing contractor to the new service provider
- (d) a communication plan identifying ways of keeping stakeholders informed of the new service arrangements.

The development of the *Transition Out Plan* needs to be undertaken by the Contract Manager in consultation with the existing contractor. Both parties must approve the plan.

15.11.5 Evaluate Contractor Performance

It is good practice for the Contract Manager to undertake a contract evaluation once a contract has been completed, particularly for complex contracts. The purpose of the evaluation is to identify weaknesses in the process, and strengths and lessons that could be applied to other contract management activities.

The evaluations would normally include:

- (a) reviewing all aspects of contract performance and management
- (b) evaluating the outputs and outcomes of the contracted activity
- (c) assessing effectiveness of the contract through feedback from stakeholders
- (d) identifying reasons for problems arising and appropriateness of remedial action
- (e) reporting on lessons learnt to improve future performance.

15.12 Contract Administration Record Keeping

Keeping one master contract administration file is critical. The file will provide a basis for settling claims and disputes should they arise in administrative or court actions. Throughout the life of the contract, the contract administration file should contain such things as:

- (a) a copy of the current contract and all modifications
- (b) a copy of all specifications, drawings or manuals incorporated into the contract by reference
- (c) a reference list or a list of prior contracts with the specific supplier (if they offer valuable historical data)
- (d) the market approach documentation, the contractor's response, evaluation determination, and the notice of award document
- (e) a list of contractor submittal requirements
- (f) a list of government furnished property or services
- (g) a list of all information furnished to the contractor
- (h) a copy of the pre-award meeting summary, if conducted
- (i) a schedule of compliance review, internal correspondence, if applicable
- (j) a copy of all general correspondence related to the contract
- (k) the originals of all contractor data or report submittals
- (l) a copy of all routine reports required by the contract such as service level reports, pricing schedules, approval requests, and inspection reports
- (m) a copy of all notices to proceed, to stop work, to correct deficiencies, or change orders

- (n) a copy of all letters of approval pertaining to such matters as materials, the contractors' quality control program, prospective employees, and work schedules
- (o) the records/minutes of all meetings, both internal and external. Include sign-in sheets and/or agendas
- (p) a copy of all contractor invoices, information relative to discount provisions for prompt payment, letters pertaining to contract deductions or fee adjustments
- (q) a copy of all backup documentation for contractor payments or progress payments, and copies of any audits.

The University should maintain an original of all contracts on file in the University Central Records. This allows Contract Managers to reference past or current contracts for useful information relating to a current project.

16. SUPPLEMENTARY BEST PRACTICE GUIDANCE MATERIAL

ANAO Better Practice Guide: Developing and Managing Contracts. Getting the Right Outcome, Achieving Value for Money (February 2012).

<http://www.anao.gov.au/html/Files/BPG%20HTML/Developing%20and%20Managing%20Contracts/index.html>

17. GLOSSARY

<p>Authorised Delegate</p>	<p>Depending on the context this may be referring to an expenditure delegation (i.e. an authority to purchase goods or services on behalf of the University), or a tender delegation (i.e. authority to call for and accept tenders.</p> <ul style="list-style-type: none"> • 000240: Finance Delegation: Authority to call for and accept tenders (University-wide - including exemptions from tendering), limited or public, in line with University policies and procedures. • 000241: Finance Delegation: Authority to call for and accept tenders, limited or public, up to \$1m University-wide (excluding exemptions from tendering), in line with University policy and procedures. • 000220: Finance Delegation: Authority to purchase goods and services (including the signing of related purchasing contracts) within budget limit. • 000221: Finance Delegation: Authority to purchase goods and services (excluding the signing of related contracts) within budget limit. • 000222: Finance Delegation: Monthly expenditure via purchase cards, within budget limit. • 000223: Finance Delegation: Expenditure via online requisitioning (using University-approved provider), within budget limit. • 000227: Finance Delegation: Authority to purchase pool and research vehicles for ANU Fleet. <p>For more information about delegations, please refer to http://info.anu.edu.au/ovc/Delegations</p>
<p>Contract Manager/administrator</p>	<p>The Contract Manager is usually the person in charge of co-ordinating the contract management/procurement process; a Contract Administrator may be a person that is part of the contract management/procurement team.</p>
<p>Delegate</p>	<p>Depending on the context this may be referring to an expenditure delegation (i.e. an authority to purchase goods or services on behalf of the University), or a tender delegation (i.e. authority to call for and accept tenders. For more information about delegations, please refer to http://info.anu.edu.au/ovc/Delegations</p>
<p>EOI</p>	<p>Expression of Interest - refer section 12.10 for further details.</p>
<p>F&BS</p>	<p>Finance and Business Services</p>

OH&S	Occupational Health and Safety
Preferred Supplier/s (panel)	Suppliers appointed by the University's Procurements and Contracts Office as preferred providers of goods and services to the University.
Procurement Handbook	http://policies.anu.edu.au/guidelines/anu_procurement_handbook/guideline
RFP	Request for Proposal - refer section 12.7 for further details.
RFT	Request for Tender - refer section 12.7 for further details.
Risk Assessment	A detailed assessment consisting of risk identification, control identification, risk treatment analysis etc. Refer 12.3 for further details.
UPCO	University Procurement and Contracts Office, that sits within the Australian National University's Finance and Business Services Division.