Sourcing Toolkit

Contract Management

Version Control

Version No.	Amendments	Date	Document Reference No.
1.0	First published version	30/09/22	FI1/21/786706

Contents

Foreword

It has been acknowledged there are a number of strategic drivers requiring a transformation in public procurement practice and procedure. This requires a shift in focus away from procedural instruction to a more commercial approach to help deliver the Programme for Government commitments through public procurement.

In recognition of this, the Procurement Board agreed to apply the themes contained within the Sourcing Playbook, published by Cabinet Office, to procurements in Northern Ireland with the aim of improving commercial focus.

As a result of this work, the Sourcing Toolkit was developed to incorporate the best practice guidance from the Cabinet Office's Playbook, along with guidance developed for public procurement here.

The Toolkit is a living document which will be updated to include any relevant topics added to the Cabinet Office Playbook.

The Toolkit is not mandated. It is a compilation of helpful guides and templates which public bodies may wish to use, as appropriate.

A proportionate approach should be taken to achieve a balance between the value of the contract and the transactional cost of applying the guidance outlined in the Toolkit.

The information set out in this document is neither legal advice nor statutory guidance and is not intended to be exhaustive. If there is any conflict between the Toolkit and Procurement Policy Notes (PPNs), the PPNs will take precedence.

Training on the different sections within the toolkit is provided through the Government Commercial College.

SECTION 4 - CONTRACT MANAGEMENT

4.1 Introduction

Purpose

The purpose of this section is to provide contracting authorities, Centres of Procurement Expertise (CoPEs) and those responsible for the day-to-day contract management with best practice principles. It covers both straightforward and more complex contracts. It takes due cognisance of the National Audit Office (NAO) report 'Transforming government's contract management'[1] published in September 2014.

What contract management is and why it is important?

Approximately £3bn is spent annually on public contracts across Local and Central Government here. It is therefore important that contracts are actively managed to ensure they deliver best value for money for the tax payer. The reputations of a contracting authority and contractor can be damaged by a poorly managed contract that does not deliver its expected outcomes, thereby wasting public money.

Successful contract management is an extension of the tendering/contract award phase and should be planned for from the start of the procurement process. It comprises a variety of activities ranging from core administration (such as paying invoices promptly and the inspection of goods on receipt) to more developmental and strategic activities (such as supplier relationship management, supplier development management and market management). Ensuring the delivery of social value also forms part of active contract management.

Contract management becomes more important as contract risk, value and duration increases. A proportionate approach is recommended as a contract that has little inherent risk attached to it, and little opportunity for additional value, would not warrant significant contract management resource, as the benefits that could be achieved from greater

[1] Report findings at Appendix 1

contract management would be limited. However, even if contract risk is low, the potential to generate additional value from the contract should never be overlooked and could, on occasions, justify increasing levels of contract management resources and activities, possibly for short or intermittent periods. Extra value could come, for example, from cost reduction through process development or from encouraging and helping a contractor to increase service levels without additional cost.

Good contract management aims to achieve continuous improvement throughout the life of the contract. This will involve the contracting authority and contractor building an effective working relationship. Both parties' approach to managing the relationship is critically important in ensuring successful contract delivery. The relationship, however, must also maintain an appropriate degree of commercial tension and be maintained in a professional manner.

Standards expected of those involved in contract management

It is important that those involved in contract management adhere to the principles underlying probity. Their behaviour should be consistent with the Principles of Public Life, the NICS Code of Ethics and any ethical standards governing the particular professions of those involved in the process. Staff involved in contract management or contract oversight should not accept gifts or hospitality from contractors. Public sector employees should comply with DAO 10/06 - Guidance on acceptance of gifts and hospitality.

It is the contracting authority's responsibility to ensure that there are no conflicts of interest or the perception of bias at any stage of the relationship with the contractor.Regulation 24 of the Public Contracts Regulations 2015 (PCR 2015)[2] clearly states that appropriate measures should be taken to prevent, identify and remedy such action. Any connections between a member of staff and a contractor must be formally disclosed, and documented at the earliest possible opportunity. The contracting authority

[2] Regulation 42 of the Utilities Contracts Regulations 2016 (UCR 2016) and Regulation 35 of the Concession Contracts Regulations 2016 (CCR 2016). Where the Procurement Regulations are paraphrased or referenced, the full provisions of the Regulations should be considered and legal advice sought where necessary.

should then take (and record) action deemed appropriate in each particular circumstance. Public sector employees should also comply with DAO (07/21) - Conflicts of Interest

Staff involved in contract management should be aware of the appropriate anti-fraud policies and fraud response plans, and should be encouraged to undertake fraud awareness training. Fraud is not a victimless crime and public servants are entrusted with taxpayers' money. Contracting authorities should take a zero tolerance approach to fraud, reporting instances of fraud to the police as necessary, and taking all appropriate steps to recover monies lost as a result of fraud. All staff should be familiar with the guidance issued by the Department of Finance and the guidance issued by the Northern Ireland Audit Office.

Mobilisation

Immediately following contract award and prior to the contract start date, mobilisation is a key phase in setting up a successful contract. Adequate time should be set aside for mobilisation activities in the planning of a procurement to make sure that the right contract management processes and relationship can be developed prior to the contract commencement. Contracting authorities should consider how performance and a service may benefit from a phased introduction rather than a day one step change. If a phased introduction is required, this should be made clear in the procurement documentation.

Effective contract management

All contracts should be built on a robust contractual relationship overseen by an appropriately skilled contract manager with a clear operational understanding of the contract.

How a contract will be managed is a key strategic decision that needs adequate consideration early in the procurement process and shall be reflected in the procurement documentation. Good contract management will involve a wide range of activities, including:

- understanding the practicalities of how the contract is delivered
- oversight, approvals and/or governance across the contract lifecycle
- specification, preparing the business case and policy development

- day-to-day management including robust administration
- conducting risk assessments
- effectively managing disputes and resolutions using appropriate contractual and non-contractual levers
- reviewing and managing performance, including in relation to social value requirements
- strategic relationship and/or supply chain management

Training/skills

Consideration should be given to what training is required for contract management staff. The skills and experience required will vary from one contract to the next. Similarly, the skills and experience required to manage contract delivery may be different from those required to manage the relationship between the parties. To be effective, contract managers should have the necessary commercial skills.

The Cabinet Office's Government Commercial College offers on-line accredited foundation training for Contract Managers which is recommended for contract managers at all levels. Staff managing construction contracts should have completed NEC4 training.

Staff managing contracts which are categorised as 'Gold' or 'Silver' (following the outcome of 'contract tiering') would benefit from formal accredited training. Learning and Development to 'expert' or 'practitioner' training can be carried out through the Cabinet Office's Government Commercial College.

Resources and training specific to managing social value in public sector contracts is available here: Contract Managers - Buy Social NI.

Working together

Working together and acting together with suppliers drives mutual understanding, improves service delivery and helps to solve problems more effectively.

The nature of the relationship between a contracting authority and supplier should be tailored to the specific contract and can vary depending on the specification, outcomes and complexity of the service/works/goods being delivered. It is important to engage early with the market to understand what type of relationship, from transactional to partnership model, may be most appropriate for your contract.

A good approach is to consider the following questions:

- What type of relationship have you had previously with suppliers for similar contracts? Did it drive the intended outcomes?
- Have you engaged with the market and senior internal stakeholders to understand what type of relationship may be most appropriate for your contract?
- Does your evaluation strategy align with the intended supplier relationship?
- Do your contract terms, including risk allocation, liabilities, payment and incentive structure, and SMART KPIs align with the relationship you want to achieve? Is there flexibility within the contract to enable the type of relationship to change if required?

For complex projects, experience has demonstrated that a partnership model with the principles of collaboration, openness, transparency and flexibility based on contractual delivery can be beneficial in driving successful outcomes. Critical success factors of a partnership model include a focus on successful delivery by both partners, clear roles and responsibilities, a shared understanding of how to effectively resolve disputes, and a collaborative culture. This could include:

- the co-location of employees
- developing joint-partnership principles and adopting a one-team 'win-together, fail-together' approach
- having a contract delivery manager working alongside the contract manager

Contractual flexibility should also enable periodic review and update to relevant contract provisions and KPI targets.

Strategic supplier relationship management

Where a contracting authority has several important contracts with a single supplier, they should adopt a strategic supplier relationship management approach. This can be defined as the practices and behaviours adopted to engage more collaboratively with strategic suppliers to improve delivery of government objectives and increase mutual value beyond that originally contracted.

In addition to a contracting authority's own management of its suppliers, the Markets and Suppliers team in the Cabinet Office is responsible for maintaining the government's strategic suppliers, spanning a number of contracting authorities, to improve supplier relationships and create value.

If you have contracts with Government Strategic Suppliers, you should engage with the Markets and Suppliers team regularly to ensure that you are aligned with government's overall objectives.

4.2 Supplies and Services Contracts

Day-to-day management

Some CoPEs will be responsible for all aspects of contract management or monitoring on behalf of their public sector clients. However, in other cases the contracting authority will be responsible for its own contract management. In these cases, the CoPE may offer support and advice post contract award and may, in particular, become involved:

- at agreed review dates; or
- when there are problems of a contractual or commercial nature that put at risk the delivery of the supplies or services to the quality, standard or timelines contracted for; or
- where there are problems of persistent poor performance, including failure to deliver sustainability requirements or commitments given in tender documents.

Cabinet Office's Crown Commercial Service, has developed a Contract Management Checklist (Appendix 2) that provides a useful guide to best practice. It is broken into four areas:

- preparation;
- managing service delivery;
- managing the relationship; and
- contract administration.

Preparation

The foundations for contract management are laid in the stages at the outset of the procurement. The procurement documents should include details on how the contract will be managed by the contracting authority. After contract award, there should be a contract management plan for actively managing the contract, which should include ensuring the right people are in place to manage all aspects of the contract and supplier relationship, where appropriate. If possible, key contract management staff should be involved in contract development. It may be necessary for complex or high value contracts to appoint a full-time contract manager or contract management team to develop and deliver the contract management plan.

It is important that the right contract is put in place. The contract should include (as appropriate):

- a definition of what is to be provided and requirements to be met;
- agreed service levels and mechanisms for payment reduction, if not met;
- means to measure performance including key performance indicators (KPIs);
- pricing mechanisms including (where appropriate), milestone payments, incentivisation/rewards, retentions;
- a plan to cover implementation/transition/rollout;
- acceptance strategy/test plan;

- ownership of assets and intellectual property;
- escalation and alternative dispute resolution procedures;
- change control procedures;
- invoicing arrangements;
- communication routes, typically at three levels:
    - operational (end users/technical support staff);
    - business (contract manager and relationship manager on both sides);
    - strategic (senior management/board of directors);
- agreed exit strategy and agreed break options;
- subcontractor details;
- the contracting authority's responsibilities; and
- contract management, oversight and review arrangements.

A good contract not only identifies clearly the obligations of the contractor, but identifies KPIs against which the contractor must perform throughout the contract. A template contract management obligations matrix can be found here.

Managing service delivery

During the contract delivery phase, contracting authorities should ensure the agreed service levels are maintained. Service level management is the process of managing the contractor's performance as specified in contractual performance metrics. However, where specific service levels have been set, it may sometimes be appropriate to take a flexible approach to enforcement, particularly in the early stages of contract performance.

Qualitative metrics are measurements that allow the quality of a service to be measured. Qualitative measures might include assessing aspects; such as completeness, availability, reliability and timeliness amongst others. Some aspects of a service may be measurable by quantitative means, while others may require subjective assessment (for example, customer satisfaction surveys).

It is important to ensure that the contract continues to achieve value for money over its life. Benchmarking is the practice of making like for like comparisons between similar contracts with the aim of ensuring this, as well as getting better performance from the contractor and improving business practices. Price comparisons offer a quick and effective way of gauging whether value for money is being obtained.

Some contracts may cover long periods of time and have options to extend after the end of the initial contract period (for example, the option to extend for a period of a year after a three year initial contract period). Properly managing the supplier's performance will help contracting authorities decide whether or not the optional extension represents value for money or whether the contract should be put out to tender.

Risks should be identified and managed as they arise. They can relate to many aspects of the contract including fluctuation in demand, lack of contractor capacity, modification in requirement and transfer of skilled staff (on either side). Where appropriate, a risk register should be maintained and constantly reviewed to ensure those best placed to manage the associated risks do so.

A major part of contract management is considering service continuity/contingency – what will happen if the service fails or is interrupted? It will normally be the contractor's responsibility to manage service continuity and this will be stipulated in the contract. Those aspects of a service identified as critical will require careful consideration and the creation of a business continuity plan. The risks associated with service interruption or failure should be identified and formally recorded in a risk register, so they can be more effectively managed. The financial health of contractors should be regularly monitored; for example, by using databases such as Dun and Bradstreet.

Managing the relationship

The contracting authority's relationship with the contractor should be managed, as well as the more formal aspects of the contract. It is in the contracting authority's interest to make the relationship work.

Good two-way communication is always key to managing any relationship. This allows problems to be identified and resolved early, and builds an atmosphere of mutual trust and appreciation of each other's priorities.

However good the relationship between the contracting authority and contractor, and however stable the service being delivered, problems may arise. These should be dealt with promptly. The contract should define the procedures for undertaking corrective action if, for example, target performance levels are not being archived.

Contract administration

Contract administration is concerned with the mechanics of the relationship between the contracting authority and the contractor. Clear administrative procedures ensure that all parties to the contract understand who does what, when and how.

The elements that need managing are likely to include:

- ordering procedures;
- payment procedures;
- charges and cost monitoring;
- contract maintenance and change control;
- notice period, contract closure or termination;
- budget procedures;
- resource management and planning;
- social value monitoring;

- management reporting; and
- asset management.

Contract modifications

It is important for contracts to evolve over time in response to changing needs. This may include unforeseen additional requirements, extension of a collaborative contract to new bodies, or when a supplier is taken over. For above threshold contracts, such modifications are made under Regulation 72 of the PCR 2015[3]. Appendix 3 sets out the range of allowable modifications.

Contract modifications may have an effect on the contract delivery and costs, and on whether the contract represents value for money. Appropriate structures need to be in place with representatives of both the contracting authority and contractor, for reviewing and authorising modification requests. Contracting authorities should ensure that any modifications comply with Regulation 72. Contracting authorities should seek appropriate procurement or legal advice prior to progressing any modifications.

Contracting authorities should consider future proofing contracts by drafting appropriate review provisions within contract and should seek procurement or legal advice (as appropriate).

Maintaining contract documentation is an important activity, especially where there are any modifications to the contract, including modifications to services and procedural modifications. Formal agreement to any contract modification should be recorded and all contract documentation should be kept up to date.

[3] Regulation 88 of the UCR 2016 and Regulation 43 of the CCR 2016.

4.3 Complex and High Value Contracts

Introduction

The NAO's 'Good practice contract management framework' is a guide for managing a broad range of contracts[4]. It is particularly relevant for contracts where services are delivered over a long period (five years plus).

The framework consists of four blocks:

- structure and resources;
- delivery;
- development; and
- strategy.

The four blocks comprise eleven areas that contracting authorities should consider when planning and delivering contract management, together with the key activities that fall under each. Not all of the eleven areas are equally relevant to all contracts. Generally, the more developmental and strategic areas and activities (areas 8 to 11) become increasingly important the higher the contract risk and the greater the opportunity to add value. Below is a summary of the eleven areas.

Structure and resources

Area 1: Planning and governance

Contract ownership, management processes and governance mechanisms are clear with defined roles and responsibilities. There is a clear contract management plan that involves appropriately senior and experienced people at each level.

[4] The NAO has also published 'Commercial and contract management: insights and emerging best practice'. This interactive publication draws on their audits of government contracts and engagement with government, to provide practitioners with insights on the new emerging higher standard for government contracting.

Area 2: People

Contract management is adequately resourced in proportion to the importance of the contract and the skills make-up of the team reflects the nature of the contract. The team have the range of skills, capability and experience to effectively and efficiently discharge their roles and responsibilities and are appropriately performance managed.

Area 3: Administration

An up to date copy (annotated with relevant agreed modifications) of the contract is stored, logged and easily accessible with an operating manual where appropriate. All relevant correspondence in relation to contract modifications is stored and easily accessible.

Delivery

Area 4: Managing relationships

The relationship between both parties is clear and well defined, responsibilities are documented, there are structural and informal communication routes that include other stakeholders outside the contract manager (such as, users of the contract, technical experts).

Area 5: Managing performance

There is a comprehensive performance management framework in place with meaningful metrics and suppliers receive regular and routine feedback on their performance both formal and informal.

Clear documented processes are in place for managing problems efficiently and effectively. There is clear documentation of any disputes and their resolution.

Area 6: Payment and incentives

There are appropriate defined mechanisms and processes to ensure that payments are made to the supplier in line with the contract, including validation such as spot checks on invoices.

There are defined mechanisms and processes that are managed to ensure appropriate incentives relating clearly to outcomes. Where open book or similar financial/pricing mechanisms are used, open book accounts can be mapped to real accounting events and internal reports in the supplier organisation.

Open Book Contract Management (OBCM) is the scrutiny of a supplier's costs and margins through the reporting of, or accessing, accounting data. Its use is often associated with managing and controlling delivery of large, high value, high risk and complex contracts. OBCM has been deliberately named to differentiate it from the more well-known term of Open Book Accounting (OBA) as the strategic objective extends way beyond reporting, or accessing, accounting data and into areas of collaborative working with suppliers to control costs, improve processes and create value throughout the lifecycle of the contract. Its aim is to promote collaborative behaviour between client and supplier through financial transparency. The outcomes should be a fair price for the supplier, value for money for the client and performance improvement for both over the contract life.

Crown Commercial Service has produced guidance on OBCM. The guidance explains how to 'Tier' contracts so that the most appropriate processes and tools can be applied.

Area 7: Risk

There is a risk management policy and risks are subject to ongoing review and assessment in line with organisational risk management processes. There is clear understanding by both parties of who is best placed to manage risks.

Development

Area 8: Contract development

Contract management staff understand the contractual terms including contract extension (services and duration), termination warranties, indemnities, insurance, security, confidentiality and dispute resolution.

Clear documented processes and governance are in place to manage contract modifications, and any modifications are communicated and understood by both parties.

Area 9: Supplier development

Processes are in place that clearly set out how supplier development activities will be planned, managed and governed. Clear processes for benefits measurement and capture are in place, to ensure that supplier development is focused on continuous improvement and achieving value.

There is an understanding of what motivates and drives the supplier and development is aligned with the supplier's goals. Joint working or shared activities between the two parties benefit both. There are shared risk reduction programmes or activities and shared management activities to drive performance improvement.

Strategy

Area 10: Supplier relationship management

A supplier relationship management programme is planned and structured with appropriate governance and senior ownership. The programme considers all the supplier's interactions across the organisation and across government. There is a focus on continuous improvement and capturing innovation with a clear sense of what value is to be generated for both parties.

Area 11: Market management

Market intelligence is used to maintain an understanding of the market, and of alternative suppliers to inform benchmarking, contingency planning and strategies for future delivery. Exit planning and a strategy for when the contract ends are put in place in a timely manner and include input from the contract manager.

4.4 Expiry, Extension, Transition and Termination

Early planning puts us in a position to conduct orderly transitions to new contract arrangements, whether extending, re-tendering or bringing delivery back in-house.

Early planning for contract end

The expectation is that outsourcing projects should assess the market during the preparation and planning phase. This guiding principle equally applies when approaching the end of an existing contract. The market may have changed sufficiently to alter the basis of previous decisions and the market health and capability assessment should therefore be updated.

Consideration should be given to managing a smooth transition to new arrangements. The contract should have included clear plans for exit and transition arrangements, including obligations on the supplier to warrant data transfer to the contracting authority at the end of the contract.

In practice, contracts should include a requirement to develop an exit plan that joins together the exit strategy of the outgoing supplier with the mobilisation of the incoming supplier (or in-house provision). Exit plans should be updated during the lifecycle of a contract to reflect modifications or contract variations.

Preparing for exit takes time and needs to be allocated sufficient resources. The exit arrangements should be initiated in sufficient time to ensure all activities can be completed in advance of the contract end date.

The exit plan may be separate or included in the contract management plan, and should include:

- a clear outline of activities, milestones and required resources
- roles, responsibilities and accountabilities for each activity
- a joint risk register
- defined timelines, criteria and standards that each activity is required to meet
- relationship and behavioural expectations
- key interfaces and dependencies
- data transfer (including the format of data to be transfer)
- arrangements for the Transfer of Undertakings (Protection of Employees) (where applicable)
- asset registers and transfers

Where a contract runs its full term, there should be sufficient provisions within the contract to incentivise the incumbent supplier to maintain both resources and performance up to the end of the contract.

The department should ensure clear protocols are in place detailing the format and content of contract data, including whole life KPI performance, to inform the baselining process for future procurements. Sufficient time should be allocated to knowledge transfer and lessons learned analysis. Did the KPIs drive the required behaviours and outcomes from the contract? How can they be improved for any successor contract, to improve outcomes?

It is also important to remember, and plan for, the additional burden on operational and commercial staff of simultaneously managing an existing contract, tendering a replacement contract, on-boarding a new supplier and off-boarding an incumbent.

Extensions

Some contracts contain an option to extend. Whether to take up this option or not should be considered well in advance of when notice needs to be served. Effective management of our commercial pipelines helps to ensure we are prepared for this decision.

Where we have failed to plan early enough in the past, we have been left in the very weak position of having inadequate time to carry out a re-procurement.

We shall plan early and set out our requirements for any extension to the contract. Some contracts provide for an extension to be on the same terms and conditions, while others rely on a review clause that, if it is to be relied upon, should set out a clear, precise and unequivocal review process. If we decide not to extend the contract, this decision shall be taken far enough in advance to allow for a re-procurement.

Key points

1. Plan early for what happens at the end of a contract.
2. There should be sufficient means within the contract to incentivise the incumbent supplier to maintain both resources and performance up to the end of the contract.
3. Suppliers are expected to warrant data and information back to contracting

authorities at the end of a contract.

4. Be prepared for the additional burden on operational and commercial staff of simultaneously managing an existing contract, tendering a replacement contract, on-boarding a new provider and off-boarding an incumbent.
5. Allow sufficient time to decide whether or not to extend a contract (where contract provisions allow).
6. Review exit arrangements and benefits realisation on a regular basis.

4.5 Determining Contract Management Activities

The type of contract management activities to undertake will be dependent upon the contract value and risk (including the complexity of the contract and its importance to the client). CCS has developed a useful contract tiering tool[5] that, based on these factors, can be used to identify a contract category/tier. This helps define the frequency and scope of related contract management activities.

The tool identifies three contract categories:

- **Gold (Category 1).** These are high value, high risk contracts, which require key contract management with a focus on development and strategy.
- **Silver (Category 2).** These are contracts of lower value and risk than category 1, which require mid-level contract management with focus on risk, challenge and relationships.
- **Bronze (Category 3).** These are low value, low risk contracts, which require basic contract management with a focus on administration and performance.

[5] https://khub.net/group/gcf-community/cm-guide/-/knowledge_base/b-3-1-tiering-the-contract (KHub account required)

Contract management activities for each category

The table below gives a quick, at-a-glance indication of the recommended activities resulting from the contract category. More details are provided in the CCS guidance on contract management standards

Ref No.	Contract Management Activity	Gold - Category 1	Silver - Category 2	Bronze - Category 3
1	**Supplier performance meetings**	Monthly	Quarterly	N/A
2	**Supplier performance reporting**	Monthly	Monthly	As dictated by KPIs/SLA in terms of frequency, if there are KPIs/SLAs in contract

Ref No.	Contract Management Activity	Gold - Category 1	Silver - Category 2	Bronze - Category 3
3	Customer satisfaction surveys (supplier Performance)	Annual (if automated/online helpdesk system is in use, short questionnaire should be sent at call resolution to every user)	Annual (if automated/online helpdesk system is in use, short questionnaire should be sent at call resolution to every user)	At end of contract (if automated/online helpdesk system is in use, short questionnaire should be sent at call resolution to every user)
4	Supplier liaison meeting (innovation/ relationship/ forward planning)	6 Monthly	Annual	N/A (can be initiated by contract manager, if they see potential for service improvement)
5	Customer meetings	6 Monthly	Annual	As necessary
6	Operations Manual	Produced and reviewed annually	Produced and reviewed annually	N/A

Ref No.	Contract Management Activity	Gold - Category 1	Silver - Category 2	Bronze - Category 3
7	Contract Management Planner	Produced and reviewed/actioned monthly	Produced and reviewed/actioned monthly	Produced and reviewed/actioned in accordance with the most frequent activity listed. (Single Contract Management Planner can be used across multiple contracts managed by same contract manager)
8	End User Handbook	Produced by supplier and updated annually	Produced by supplier and updated annually	End user guide produced by supplier and updated as required (only for contracts with service provided to a large group of end users)

Ref No.	Contract Management Activity	Gold - Category 1	Silver - Category 2	Bronze - Category 3
9	**Contract Change Controls**	Change Control Register and change control forms used for all contract/specification changes	Change Control Register and change control forms used for all contract/specification changes	Change Control Register and change control forms used for all contract/specification changes and extensions (Single Change Control Register can be used across multiple contracts managed by same contract manager)
10	**Budget Controls**	Budget monitor in place and updated monthly	Budget monitor in place and updated quarterly	Check invoice/s sum/s match the procured contract sum. If not, query with P2P/client lead

Ref No.	Contract Management Activity	Gold - Category 1	Silver - Category 2	Bronze - Category 3
11	**Benchmarking**	Benchmarking review carried out every 2 years during the contract	Benchmarking review carried out once during the life span of the contract	N/A
12	**Supplier financial and business standing review**	Annual	Annual	By exception (only if alerts received from category/market intelligence tool)
13	**Contingency and Business continuity plans**	In place and reviewed annually, or in case of increased risk	In place and reviewed every two years, or in case of increased risk	N/A

Ref No.	Contract Management Activity	Gold - Category 1	Silver - Category 2	Bronze - Category 3
14	**Benefit Realisation update**	Annual	Annual	Ensuring contract deliverables have been delivered and is it in line with customer expectations (done under Ref No 3 above)
15	**Risk Register**	Produced and updated annually	Produced and updated annually	N/A
16	**Exit Plan**	Produced at start of contract and updated annually, with final version in place 1 year before end of contract	Produced at start of contract and finalised 6 months before contract end	List of transition data and documentation agreed with supplier at start of contract, with contract manager ensuring all relevant data and documentation is provided by supplier before end of contract

Ref No.	Contract Management Activity	Gold - Category 1	Silver - Category 2	Bronze - Category 3
17	Soft Market Testing	To be carried out one year before contract end	To be carried out one year before contract end	N/A (can be initiated by contract manager, if client needs or market conditions changed significantly since original contract was procured)
18	Dealing with escalations, disputes and complaints (indicative, as will depend on type of provision and number of stakeholders involved)			

The recommended extent and frequency of these contract management activities should be applied only in case these are not defined in the relevant contract documentation.

Assessing the contract risk

When evaluating the contract risk, you should consider the following:

- **how strategically important is the contract to the contracting authority?**
    - would failure of that contract or serious under performance be likely to create any significant and far-reaching reputational, economic, political, security or health and safety issues?
    - would failure or serious under performance cause only very minor issues?
    - would failure prevent the contracting authority achieving its strategic objectives?
- **how complex is the contract?**
    - is there a large number and type/variety of stakeholders?
    - is there a large number of different goods/services, with different payment and monitoring requirements for each category?
    - does the contract contain complex payment provisions (for example, fixed and variable payments requiring regular verification of invoices/and issue of multiple/updated POs; regular price changes due to contract variations/benchmarking)? How transparent is the costing model?
    - does a complex incentive mechanism exist (combination of deductions/ratchets/withholding parts of payment for partial under-performance/non-provision; incentive payments; profit share)?
    - has there been or is there likely to be a large volume of contract changes (major regular changes and/or large number of smaller changes)?
    - is there an expected/existing large volume of disputes and escalations (for example, in case of provision of high impact goods/services to large numbers of end users, such as IT support or FM provision)?
    - is benchmarking built into the contract?

- is the supplier expected to deliver continuous innovation/development that requires regular adjustments to contract/specification/scope/payment regime?
- does the contract involve the processing of personal data and subject to UK data protection legislation?

Section 4 Appendix I: Problems with Contract Management

The National Audit Office (NAO) report 'Transforming government's contract management' responded to internal reviews of contracts carried out by a number of Whitehall Departments. Of these contracts, 60 were tested for overbilling, 34 of which had issues in the amount billed, and 73 were tested against Areas 1 to 8 of the NAO's 'Good practice contract management framework'. Issues were found in all eight areas; for example:

- **Planning and governance**: Contracting authorities lack visibility of contract management at board level and lacked senior-level involvement.
- **People**: Government does not have the right people in the right place for contract management. There were gaps between the numbers and capability of staff allocated to contract management, and the level actually required.
- **Administration**: Contract management is not operating as a multi-disciplinary function. There was often limited interaction between finance, commercial and operational contract management functions.
- **Payment and incentives**: Government is not fully using commercial incentives to improve public services. Levels of payment deductions allowed by contracts are often insufficient to incentivise performance. Open-book clauses were rarely used.
- **Managing performance**: Contractual performance indicators are often weak and government is too reliant on data supplied by contractors.
- **Risk**: Government does not have sufficient understanding of the level of risk it is retaining on contracted-out services. None of those in the cross-government review shared risk registers with the contractors, in order to ensure all understood who was managing what.
- **Contract development**: Contracting authorities are paying insufficient attention to the impact of contract modification. For example, contracting authorities made modifications at operational level in isolation from other service areas.

Systems for maintaining up-to-date versions of contracts remain weak.

- **Managing relationships**: Not all contracting authorities have had a strategic approach to managing supplier relationships. Senior management engagement with suppliers has not been widespread across government. A lack of meaningful incentives for innovation can inhibit shared approaches to problem solving and service improvement.

Section 4 Appendix II: Contract Management Checklist

Preparation

This deals with laying good foundations before a contract is awarded. The contract should be actively managed. There should be a plan for doing this ensuring the right people are in place to manage all aspects of the contract.

What you need to do	Points to consider
Ensure the right contract is in place The foundations for contract management are laid in the stages before contract award. These formal contract aspects form a framework around which a good relationship can grow. If the contract was poorly constructed, it will be much more difficult to make the relationship a success.	**The contract should include as appropriate:** • a definition of what is to be provided and requirements to be met • an agreed level of service and mechanism for payment reduction if not met • means to measure performance • pricing mechanisms including where appropriate, milestone payments, incentivisation/rewards, retentions and price variation mechanisms (avoid variation of price clauses in contracts of less than two years' duration; see Managing Public Money Northern Ireland A.4.4.13) • a plan to cover implementation/transition/rollout • acceptance strategy/test plan • ownership of assets and intellectual property • escalation and alternative dispute

What you need to do	Points to consider

	resolution procedures
	• change control procedures
	• invoicing arrangements
	• communication routes, typically at three levels:
	    ○ operational (end users/technical support staff)
	    ○ business (contract manager and relationship manager on both sides)
	    ○ strategic (senior management/board of directors)
	• agreed exit strategy and agreed break options
	• premises (where the goods/services will be delivered)
	• subcontractor details
	• authorities and responsibilities
	
	a good contract not only identifies clearly the obligations of the provider, but also forms the foundation for a productive relationship built on communication and trust

What you need to do	Points to consider
Be prepared to manage all aspects of the contract Contract management activities can be divided into three areas: • service delivery management including social value requirements • relationship management; and • contract administration.	All three areas must be actively managed. Decide how to organise your people to manage each of the areas. You might assign a group or individual to each area or a single individual may cover two or more areas. Bear in mind that different areas will require different skills and knowledge.
Put the right people in place to manage the contract Contract management forms the interface between demand (the customer organisation) and supply (the provider organisation). The individual or team responsible for contract management must have adequate knowledge (business, contractual and technical) to understand both sides of the arrangement.	If possible, involve key contract management staff in contract development. Consider developing a contract guide or commentary explaining why the contract was developed. Consider whether training is required for contract management staff. The skills and experience required to manage the relationship may be different from those required to manage service delivery. If you do not have expertise in house to manage a contract, consider training existing staff or recruiting an experienced professional contract manager.

What you need to do	Points to consider
Assign adequate resources to manage the contract	There will be an overhead of in house resource to manage the contract. The financial resource required to manage a major contract has been estimated at 2% of the contract value. This proportion increases for contracts of lesser value.
Managing the supply chain Once a supplier or suppliers are chosen and the contract awarded, the tender process is completed. At this point, there is considerable scope to work with suppliers to develop supply chain capabilities.	Effective contract management is critical in ensuring that good supply chain management is implemented over the duration of the contract.
Ensure there is mechanism for feedback on client performance	Feedback from suppliers (as well as the client's perspective on the supplier's performance) increases the likelihood of problems and issues being promptly solved.

Managing service delivery

This deals with establishing service levels and ensuring they are maintained. You may need to strike a balance between quality and cost to ensure a value for money outcome. This should include benchmarking to establish a 'should cost' estimate. During this phase, risks should be managed and business continuity plans should be in place should service failure or interruption occur.

What you need to do	Points to consider
Establish what levels of service are required, and ensure they are maintained Service level management is the process of managing the performance provided to the customer as specified in contractual performance metrics. It balances cost and quality of services in order to provide the customer with value for money.	There should be a detailed agreement of the required service levels and, thus, the expected performance and quality of service to be delivered. However, where specific service levels have been set, it may sometimes be appropriate to take a flexible approach to enforcement, particularly in the early stages of contract performance.
Measure quality as well as quantity The quality of the service being delivered must be assessed. This means creating and using quality metrics – measurements that allow the quality of a service to be measured.	Quality measures might include assessing aspects such as completeness, availability, capacity, reliability, flexibility and timeliness, amongst others. Some aspects of a service may be measurable by numerical means; others may require subjective assessment.

What you need to do	Points to consider
Ensure value for money Ensuring value for money is about the balance between service cost, quality and sustainability to meet customer requirements. A key objective for contract management is to ensure that it continues to achieve value for money over its life.	Aim to optimise the ratio between value and cost. Value for money is not synonymous with lowest cost. Carefully consider all the benefits that the contract provides in relation to the ongoing investment it requires. All costs associated with the contract must be taken into consideration, including: set up costs, recurring costs, fixed costs, unit costs and the organisation's own overheads in managing the contract.
Compare prices and learn from others Benchmarking is the practice of making like-for-like comparisons between organisations; with the aim of ensuring continuing value for money, getting better performance and improving business practices.	Price comparisons offer a quick and effective way to gauge whether you are getting value for money. Providers could be obliged to benchmark their own costs or those of their sub-contractors by the contract. Compare the value for money you are getting with what other organisations are getting. Compare the way you manage contracts with the way other organisations manage theirs.

What you need to do	Points to consider
Managing Risks Risk is defined as uncertainty of outcome, whether positive opportunity or negative threat. In contract management, managing risk means identifying and controlling factors that may have an impact on fulfilment of the contract.	Risks can relate to many aspects of the contract, including fluctuation in demand, lack of provider capacity, change in requirement and transfer of skilled staff (on either side). All risks must be identified and managed. Risks should be placed with the party best placed to manage them – possibly the provider, although they will want compensation for this. Risks placed with providers are referred to as transferred risks. Business risk cannot be transferred to the provider. The final responsibility for achieving outcomes remains with the customer.

What you need to do	Points to consider
Ensure service continuity A major part of contract management is considering service continuity – what will happen if service fails or is interrupted?	Barring *force majeure*, it will normally be the provider's responsibility to manage service continuity, and this will be stipulated in the contract, but it will need to be taken into account in the organisation's wider business continuity plan. Where contracts are interrupted due to *force majeure*, such as natural disasters or terrorist attacks, contract managers should work with the provider to identify the best way to enable the services to resume. Those aspects of a service identified as critical require careful consideration and the creation of a business continuity plan. The risks associated with service interruption or failure should be identified, formally recorded in a risk register, assigned to an individual owner and actively managed in accordance with good risk management practice.

Managing the relationship

This deals with building up mutual trust and understanding, so that there is openness in communication and a joint approach to managing delivery. When problems arise, they should be dealt with promptly, which requires good communications channels, with the aim of delivering 'win-win' outcomes.

What you need to do	Points to consider
The relationship must be managed as well as the more formal aspects of the contract It is in the organisation's interest to make the relationship work.	The three key factors for success are: • mutual trust and understanding • openness and excellent communications • a joint approach to managing delivery
Communication is crucial Good communications are always the make or break in managing a relationship. They allow problems to be identified and resolved early, and build an atmosphere of mutual trust and appreciation of each other's priorities.	The routes and media, through which information will flow during the contract, should be defined and ideally tested before the contract commences. There are three levels of communication in a contractual arrangement: • strategic (senior management/board of directors); • business (contract managers on both sides); and • operational (technical and frontline staff). Communication between supplier and client should be peer-to-peer; that is operational problems are resolved by staff at the operational level, not discussed with business managers.

What you need to do	Points to consider
Culture, attitude and behaviour are as important as the terms of the contract There will always be some tensions between the different perspectives of customer and provider. Contract management is about resolving or easing such tensions to build a win-win relationship.	Consider whether the culture of the organisation will support the kind of arrangement that is sought. The right attitudes will engender the right behaviours. Both sides' objectives must be shared and understood, and the arrangement directed to achieving them. Adversarial approaches will increase the distance between customer and provider.
Deal with problems promptly However good the relationship between customer and provider, and however stable the services being delivered, problems may arise.	The relationship managers should ensure that the provider has problem management procedures in place, including escalation procedures within the provider's organisation, and that these are used when needed. These procedures should seek to prevent problems as well as resolve them. The contract must define the procedures for undertaking corrective action if, for example, target performance levels are not being achieved. If a dispute cannot be managed at the level at which it arises, it will be necessary to escalate to a higher level of authority. This escalation process needs to be managed.

Contract Administration

This deals with the mechanics of the relationship between the customer and provider. In particular, contract documentation must be maintained, especially where any changes to services, requirements, procedures or contracts are concerned. Senior management should be kept informed through a clear reporting mechanism.

What you need to do	Points to consider
Administration of the contract is important Contract administration is concerned with the mechanics of the relationship between the customer and provider. Its importance should not be underestimated. Clear administrative procedures ensure that all parties to the contract understand who does what, when and how.	The elements that need managing are likely to include: • contract maintenance and change control • notice periods, contract closure or termination • charges and cost monitoring • ordering procedures • payment procedures • budget procedures • resource management and planning • management reporting • asset management

What you need to do	Points to consider
Maintain the contract documentation The contract will have to evolve to reflect changes in arrangements. Contract maintenance means keeping the documentation up to date and relevant to what is happening on the ground. Maintaining contract documentation is an important activity.	Establish procedures to keep contract documentation up to date and ensure that all documents relating to the contract are consistent and that all parties have the correct version.

What you need to do	Points to consider
Changes must be controlled Changes to services, procedures or contracts may have an effect on service delivery, performance, costs and on whether the contract represents value for money. The specification and administration of change control is an important area of contract administration.	Appropriate structures need to be in place with representatives of both customer and provider management for reviewing ad authorising change requests. Be careful that changes do not fall outside the scope of the original the UK e-notification service Find a Tender (FTS) advertisement and conflict with procurement regulations – seek advice if you are unsure. It is particularly important that additional demands on the service provider should be carefully controlled. Formal authorisation procedures will be required, to ensure that only those new requirements that can be justified in business terms are added to the service contract. A single change control procedure should apply to all changes.

What you need to do	Points to consider
Make sure management understands what is happening Management reporting procedures ensure that information about problems with a contract reaches those with power to act as soon as it is possible.	Requirements for service performance reports and management information should be built into the contract and confirmed at the tender stage. Where possible, use should be made of the provider's own management information and performance measurement systems. For many business managers, a summary of the service they have received along with a note of exceptions is normally sufficient. Information requirements may change over the life of a contract.

Seeking Improvements

This deals with seeking to make improvements principally through providing incentives to the provider; usually these are built into the contract itself. The aim is to have a continuous improvement in performance or value for money

What you need to do	Points to consider
Give providers reasons to improve The aim of incentives is to motivate the provider to improve by offering increased profit, or some other desirable benefit, as a reward for improved performance and/or added value.	Types of provider incentive include guaranteed levels of capacity, revenue sharing and commercial opportunities. Incentives to improve are normally built into contract terms. It is important that incentives are balanced. They should not emphasise one aspect of performance at the expense of other, perhaps less visible, aspects. Financial incentives should offer rewards to both parties that fairly reflect any investment they have to make to achieve the saving in the first place. Seek to bring down costs, not margins, to allow a supplier a reasonable return to cover such items as training and development.

What you need to do	Points to consider
Public sector managers are under constant pressure to improve. In contract management, this translates into a need for continuous improvement in the performance or value for money of providers' services.	A requirement for continuous improvement can be built into the contract; for example, through a price decreasing year on year. It is important that continuous improvement is seen as being desirable and beneficial to both parties, rather than as a means to drive down prices.

Section 4 Appendix III: Modifications to Contracts

Regulated contracts[6]

Regulation 72 of PCR 2015[7] sets out the rules concerning modifications/changes to regulated contracts/framework agreements. There are a number of steps that should be taken when approaching the question as to whether a modification will be lawful.
When considering a change, you should first of all determine whether the change is 'substantial'. If it is not substantial, then that is the end of the matter. There may be situations where, for example, a modification for additional works does not actually amount to a 'substantial' change. The modification may lawfully be made and there will be no need to apply any of the gateways, as set out under Regulation 72[10]. Those gateways outline some limited situations where a modification, which is substantial, may nevertheless be made without a new procurement competition being necessary (that is, without re-advertisement in the UK e-notification service Find a Tender (FTS)(formerly OJEU).

What is a substantial change?

A substantial change is defined in Regulation 72(8) of the PCR 2015[8] as any change, irrespective of value that meets one or more of these conditions:

- materially alters the character of the original contract;
- would have allowed other potential suppliers to be selected, or another tender to be accepted, or have attracted additional participants to the procurement procedure;
- changes the economic balance in favour of the contractor;
- extends the scope of the contract "considerably"; or
- a new contractor replaces the original contractor, other than where the change arises from a review or option clause in the original contract or from corporate

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[6] Those above the applicable UK threshold to which the Regulations fully apply.
[7] Regulation 88 of the UCR 2016, Regulation 43 of the CCR 2016.
[8] Utilities should refer to Regulation 88(7) of the UCR 2016. For concession contracts please refer to Regulation 43(9) of the CCR 2016.

changes such as merger, takeover or insolvency.

Gateways that allow a substantial change without a new procurement competition being necessary

If a change to a contract is substantial, this will render the modification unlawful (and require that a new procurement competition be commenced) unless the proposed change can fit through one of the gateways under Regulation 72(1)(a)(b)(c) or (d).
The gateways are:

- Regulation 72(1)(a): The change is provided for in the initial procurement documents in a clear, precise and unequivocal review or option clause, that specifies the conditions of use and the scope and nature of the change; and ensures that the overall nature of the contract/framework is not altered.
- Regulation 72(1)(b): Additional works, services or supplies "have become necessary" and were not included in the initial procurement and a change of supplier would not be practicable (for economic, technical or interoperability reasons) **and** would involve substantial inconvenience/duplication of costs – provided the change does not exceed 50% of the value of the original contract.
- Regulation 72(1)(c): The need for the change could not have been foreseen by a "diligent" contracting authority, provided the changes do not affect the overall nature of the contract or exceed 50% of the value of the original contract value.
- Regulation 72(1)(d): Certain corporate changes have occurred in the supplier such as merger, takeover or insolvency, provided:
    - The new contractor meets the original qualitative selection criteria; and
    - Other substantial modifications are not made to the contract.

Note: With respect to Regulation 72(1)(b) and (c), in theory more than one such change could be made during the life of the contract even if, in total, the value is more than 50% of the original contract value; however, the successive changes must not be made in order to circumvent the regulations.

In addition, a contract modification notice must be sent to the UK e-notification service Find a Tender (FTS) for any change under Regulation 72(1)(b) or (c).

Changes that fall below certain monetary values (minor changes)

Aside from the provisions above, which concern only ‘substantial’ modifications to a contract, there are times when a proposed modification **falls below a certain monetary value** (a ‘minor’ change). Regulation 72(5)[9] deals with this situation.
A ‘minor’ change is one that does not:

- exceed the relevant threshold;
- exceed 10% (services/supplies) or 15% (works) of the initial contract value; and
- affect the overall nature of the contract. (Care is needed, as to the extent to which the minor change may affect the nature of the contract).

It should also be noted that, where several successive minor changes are made, the value is calculated to be the net CUMULATIVE value of the successive modifications. This is different to the modifications under Regulation 72(1)(b) and (c), where the value is permitted to be calculated separately for EACH modification.

Below threshold modifications

Changes to below threshold contracts/frameworks fall outside the procurement regulations.

[9] For concession contracts please refer to Regulation 43(5) of the CCR 2016.