



AUSTRALASIAN **PROCUREMENT AND**
CONSTRUCTION COUNCIL

APCC Contract Management Guide for Schools

March 2018

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Over the past 50 years, the APCC has established itself as a leader in government procurement, construction, asset management, and property strategies and practice. The work of the APCC is committed to procurement innovation, solutions and efficiencies designed to create savings and maximise service delivery to the communities of Australia and New Zealand. The APCC Council of Chief Executive Officers leads the direction of the APCC, supported by Special Interest Groups driving the overall work program.

The APCC promotes a cohesive government procurement environment and harnesses the benefits of nationally consistent approaches for its members. The APCC community is made up of individuals with a wealth of skills and expertise. Collectively, it represents the hub for public sector procurement, construction, asset management, and property excellence.

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About this Guide

This Contract Management Guide for Schools has been developed by the APCC Procurement for Schools and Training Special Interest Group. As individual schools have autonomy over their own spend on goods and services, the Special Interest Group identified it as a critical issue to provide contract management guidance written specifically for school staff.

The Guide is aimed at non-contract managers in the school administration office, including principals, executive staff, business managers and administration staff. It provides step-by-step procurement guidance, with examples relating to the school setting. This document should be used as a guide in conjunction with jurisdictional policies and practices, and can be incorporated into existing or new policies.

The Guide aims to help school staff understand the management of contract obligations, performance requirements and deliverables so they can manage their own contracts more successfully.

Glossary of terms

Performance standard	Observable behaviours and actions which explain how the job is to be done, plus the results that are expected for satisfactory job performance.
Contract management	Contract management is the process of managing contract creation, execution and analysis to maximise operational and financial performance at an organisation, all while reducing financial risk.
Selection process	The evaluation of suppliers to choose the right one for your contract.
Contract Management Plan (Appendix A)	A Contract Management Plan enables the Contract Manager to: develop a good understanding of the contract, and the responsibilities of the parties involved; and. establish a system against which the performance of both parties can be monitored and problems can be identified early – either before or as they occur.
Contract formation	Formation of a contract generally requires an offer, acceptance, consideration, and a mutual intent to be bound.
Planning	Planning within contract management involves identifying and achieving the objectives, and accountability.
Procurement	Procurement is the process of finding, agreeing terms and acquiring goods, services or works from an external source, often via a tendering or competitive bidding process. The process is used to ensure the buyer receives goods, services or works at the best possible price, when aspects such as quality, quantity, time, and location are compared.
Risk Register (Appendix B)	A risk register is a master document created during the early stages of your project. It is a tool that plays an important part in your Risk Management Plan, helping you to track issues and address problems as they arise.

1. Key overview

This Guide highlights a number of Contract Management principles that will help you with managing any contract. The principles are divided into three areas: (1) Context; (2) Mechanics; and (3) Issues and Change. The following table provides a key overview of the principles, which are discussed in detail in Section 5.

Contract Management Principles

Principles	Considerations
CONTEXT	
<p>1. Ensure there is only one authorised Contract Manager</p> <p><i>When a contractor is dealing with your organisation, there must be only one person authorised to deal with them. The authorised Contract Manager must also understand the scope of their authority with regards to the contract.</i></p>	<ul style="list-style-type: none"> • As the Contract Manager, you should be the sole point of contact. • Understand the scope of the levels of authority. • Reduce potential uncertainty. • Understand your responsibilities as the Contract Manager. • Understand what you are allowed to change under the contract. • Any advice or direction to the contract should be confirmed by you.
<p>2. Understand your governance requirements</p> <p><i>There is a range of mandatory and best practice requirements that you may need to comply with, or at least consider, during contract management. Identifying and understanding what these are will provide significant support and structure to the decisions you make.</i></p>	<ul style="list-style-type: none"> • Know the mandatory and best practice requirements that you may need to comply with. • Understand your legal and ethical obligations. • Comply with your school's policies and procedures. • Ensure that those who come onto a school site meet their minimum requirements. • Become familiar with the requirements of the contract you are managing. • Read the appropriate departmental or school guidance. • Ensure a safe and ethical environment is provided. • Declare any actual, potential or perceived conflict of interest. • Avoid any personal benefit.
<p>3. Collect, read and understand all relevant contractual documents</p> <p><i>You must have the complete contract before you can read and try and understand it.</i></p>	<ul style="list-style-type: none"> • Understand the entire contract and put the related document together. • Discuss any contractual clauses and mechanisms that do not make sense. • Sit down with your contractor and confirm you are both on the same page. • Get involved in the contract planning and formation stages. • Understand how the clauses work to protect your organisation. • Always ensure you have the current version of the contract, even when minor and justifiable amendments have been made. • Do not be in breach of your own contract.

Principles	Considerations
CONTEXT	
<p>4. Understand, identify and manage risk</p> <p><i>A best practice approach to procurement is always to understand the potential risks involved in a contract and to manage them.</i></p>	<ul style="list-style-type: none"> • Identify a range of risks that might impact the contract and plan for them. • Be flexible to deal with both the risks you have already identified and those you have not. • Identify a risk and then allocate it to the party in the contract best able to deal with it. • Undertake risk assessment consistent with the size, scale and complexity of your contract. • Take some additional action to reduce the risk. • Think constantly about how identified and unknown risks may impact your contract. • Remember that risks will affect whether your contract will be successful. • Both parties should work together to resolve a risk, should it materialise.
<p>5. Maintain appropriate records</p> <p><i>Maintaining comprehensive records of discussions with your contractor and capturing contract performance data is essential.</i></p>	<ul style="list-style-type: none"> • Capture the requirements that have or have not been met. • Maintain appropriate records to provide evidence in a dispute. • Capture the requirements to be met, the delivery and acceptance details, and the final payment process. • Keep a record of every invoice received from the contractor. • Keep copies of required insurances or 'working with vulnerable persons' registration in a file, with a reminder in the Contract Management Plan to confirm that they are regularly updated. • Routinely capture all relevant information.
<p>6. Develop Contract Management Plan</p> <p><i>Develop a Contract Management Plan outlining how the contract will be managed, roles and responsibilities, key dates, deliverables and milestones, as well as supplier insurance, qualifications and licensing requirements.</i></p>	<ul style="list-style-type: none"> • Include critical dates in your calendar. • Read and understand all the requirements in your contract. • Outline the risks, responsibilities and obligations of both parties. • Check the qualifications of the contractor and their team. • Go through the entire process again if the contractor brings along new staff. • Check relevant documents every year to confirm the contractor has renewed their policy. • Identify the critical requirements. • Ensure the contractor is on-track to deliver on time.

Principles	Considerations
MECHANICS	
<p>7. Manage your contractor relationship</p> <p><i>Contract management is all about being flexible enough to deal with inevitable issues and problems while still achieving the aims of the contract. Having a good relationship with your contractor, and related stakeholders, is essential for successful contract management.</i></p>	<ul style="list-style-type: none"> • Be flexible enough to deal with inevitable issues and problems while still ensuring the requirements of the contract are met. • Work with your contractor to resolve when things go wrong. • Maintain a mature constructive relationship with your contractor, while still enforcing the terms of the contract. • Consider other stakeholders such as your Principal, Supervisor, or the staff and students. • Treat your contractor and other stakeholders in the same way you would wish to be treated. • Act in good faith. • Establish regular communications with your contractor and support mutual sign-off on contract requirements. • Share any savings generated with your contractor. • Contractors have a vested interest in maintaining their business relationship with you for future contracts; do not put yourself in a position where your relationship breaches probity standards.
<p>8. Provide appropriate induction and access</p> <p><i>A range of issues must be addressed before contractors are allowed onto school grounds or provided with appropriate equipment/data to complete their jobs.</i></p>	<ul style="list-style-type: none"> • Manage the legal obligations effectively. • Prepare a standard Induction Checklist for any contractor visiting your school. • Be clear about which party has legal responsibility when providing contractors with access.
<p>9. Manage the delivery and acceptance of supplies</p> <p><i>You should manage the physical delivery and acceptance of supplies so that you are clear about what has actually been delivered in order to make the appropriate payment.</i></p>	<ul style="list-style-type: none"> • Manage the physical delivery and acceptance of supplies • Only pay for what you have received. • You need a process to confirm if the wrong type or damaged supplies have been delivered. • Take appropriate steps to secure damaged goods delivered to you. • Inspect goods against what was stated in the contract before formal acceptance. • Make sure the contract outlines the process and timeframe for acceptance. • Follow the contractual process to rectify a problem or defect with the supplies. • Be aware of the warranty period and process. • Organise payments in accordance with the contract. • Record all supplies received in the School's Asset Register. • Remember: having clear processes protects both you and your contractor.

Principles	Considerations
MECHANICS	
<p>10. Manage performance and under performance</p> <p><i>In order to achieve your contractual objectives, you need to monitor performance and flexibly manage any issues, risks or underperformance.</i></p>	<ul style="list-style-type: none"> • Remember that contracts can never capture every detail or issue that may arise. • Understand what is to be delivered, monitor progress and adapt to changing circumstances. • Positive feedback to contractors can be balanced with negative feedback when problems arise. • Discuss and address a performance problem as quickly as possible. • Get your contractor to repair or replace faulty items. • Seek regular updates on the problem until it is resolved. • Delay paying contractors until they have met their contractual obligations. • Move into having a contractual dispute only when all other avenues have been explored. • Work with the contractor to find a way forward.
ISSUES AND CHANGE	
<p>11. Deal with issues and disputes</p> <p><i>Even with the best contracts, a dispute is likely to arise when it is not possible for the parties to resolve an issue informally and there is a need to rely on a more formal dispute resolution process.</i></p>	<ul style="list-style-type: none"> • Rely on a more formal dispute resolution process if it is not possible to resolve informally, noting that a formal process might be more expensive. • Be aware of the common issues leading to disagreements, such as contract requirements etc. • The best way to manage disputes is to stop them from happening in the first place by following sound contract management principles. • Identify and deal with risks by taking into account what the contract says; likely solutions may cost money or time. • If all else fails, rely on the dispute management clause in the contract. • Remember that the contractor should continue to perform under the contract while the dispute is being resolved. • Prepare carefully to ensure that you have all facts and evidence to back your argument. • Constantly refer back to your contract as the guide to how you handle a dispute. • Escalate to senior management in a timely fashion, providing regular updates throughout the dispute phase.

Principles	Considerations
ISSUES AND CHANGE	
<p>12. Manage contract changes</p> <p><i>It is relatively easy to amend a contract so you must be very careful to ensure you do not do so inadvertently.</i></p>	<ul style="list-style-type: none"> • Ensure you do not amend a contract inadvertently, just because it is easy to do so. • Beware that contracts can be created or changed in writing, verbally or by conduct between the parties. • Follow the formal contract variation clause in your contract. • Maintain a record of the variations and ensure both parties have the accurate current version. • Never change a critical contract clause (insurance, liability, warranty, IP, termination, extension etc.) without approval from the person within your organisation who signed the original contract. • Never just agree to a contract variation suggested by your contractor without thinking about it. • Keep a log of contract issues, including agreed and proposed amendments. • Keep an eye out for contract expiry date and make sure your organisation has enough time to consider its options. • Consider all the necessary actions for contract closure when the contract ultimately expires.
<p>13. Network, professionalise and capture lessons learnt</p> <p><i>You have a responsibility to always identify ways to improve your contract management skills.</i></p>	<ul style="list-style-type: none"> • You are responsible for improving your contract management skills. • Network with people doing similar work to share ideas. • Develop your own knowledge. • Capture appropriate lessons learnt to assist with next procurement process. • Capture every opportunity to improve your existing contract.

2. Introduction

The APCC acknowledges the importance for Education and Training Departments to re-examine jurisdictional goods and services procurement and contract management strategies. The APCC agreed that, through the Procurement for Schools and Training Special Interest Group, there would be a common aim to identify and explore strategic options which will improve value for money outcomes. There is also a common goal of elevating the quality and effectiveness of procurement within schools.

The Procurement for Schools and Training Special Interest Group was officially formed in 2017 to deliver on this purpose. The Group is tasked with considering and analysing possible strategies which aim to improve the outcomes for Government in managing procurement of education goods and services arrangements. It is a collaborative forum for the exchange of such intelligence, data and materials that enables potential opportunities for procurement savings, benefits, improved value for money, and enhances the positioning of member jurisdictions in the supply market.

As individual schools have autonomy over their own spend on goods and services, members identified as a critical issue the lack of contract management guidance written specifically for school staff. The outcome was a project, led by the APCC, to put together basic Contract Management Guidelines for new Contract Managers, in order to provide step-by-step procurement guidance and case studies for reference. Every effort has gone into providing relatable examples within the school setting, so as to reach the intended target audience of a Guide for non-contract managers in the school administration office. This document should be used as a guide in conjunction with jurisdictional policies and practices, and can be incorporated into existing or new policies by our members.

3. Scope

The purpose of this Guide is to break down complicated procurement jargon and approaches in order to simplify the management of contract obligations, performance requirements and deliverables so that school staff members are better able to manage their own contracts independently and successfully.

The Guide will cover contract management by schools or the Education Department, from the signing of the contract, to contract completion. It aims to provide a set of principles to follow, supported by examples, from best practice contract management methods currently available. It also aims to enable Contract Managers to have the ability to optimise outcomes from their contracts, notably by achieving value for money.

This Guide is targeted at staff with contract manager responsibilities within schools and training institutions, such as:

- Principals
- Executive Staff
- Business Managers
- Administration Staff.

This Guide brings together basic Contract Management Guidelines for new Contract Managers, in order to provide step-by-step procurement guidance and case studies for reference.

4. What is contract management

Public sector procurement exists to deliver value for money procurement outcomes, usually through a contract, in order to deliver a service to the community.

A contract is an agreement made between two or more parties, which details the legal rights and obligations that are enforceable by law.

Often one party provides goods or services (the ‘supplies’) to the other in return for payment. If one of the parties fails to meet their obligations, then there may be legal consequences. This is why the exact legal wording in a contract can be so important.

For example, if you hire a gardener to mow your lawn 12 times a year in return for payment, but you did not provide any details about how the work was to be conducted, then they could theoretically mow your lawn 12 times on the same day and argue they have fulfilled your contract. It would have been more appropriate to include a contractual clause that said that they had to mow the lawn, to a particular standard, approximately every 30 days.

To ensure a contract is correctly carried out, you have to know what is expected of you, and what is expected of the supplier.

The procurement lifecycle

Procurement is the coordination and management of three lifecycle phases:

- Planning
- Contract Formation
- Contract Management.

The reason procurement has become increasingly important is because the better your contractual arrangements are, the less money you may need to spend, which can then be used for other priorities. Imagine if you could mow your school lawns for four years for the price of two. You could free up additional funds for other priorities at your school.

Planning is all about deciding what you want – identifying the need and determining how you will meet it (the selection process). If you are looking at a cleaning contract, then you will want to be able to identify all the requirements (such as cleaning 24 classrooms) and what performance standard they should be cleaned to (bins emptied, white boards cleaned, etc.).

Contract Formation is all about getting into contract. Part of this process is about identifying the appropriate contractor who can actually meet your detailed requirements, but it is also about negotiating a contract with a simple plan, so that both parties know exactly what they have to do, and whether the contract requirements have been met.

There is no point paying a cleaner to specifically disinfect shower heads and air conditioning filters in the change rooms if: (a) you do not have a mechanism to confirm whether they have done this; or (b) whether they have done it to the agreed standard.¹

During the contract formation stage, you should also think about outcome-focused contracting. For example, rather than say the contractor must clean the windows every Monday morning, it might be better to include in your contract a requirement to clean the windows, where possible, following a rain period at any point during the contract week. Otherwise, you might clean the windows and then have them immediately dirty again because of the weather.

¹ While you may think that a cleaning contract is relatively low risk, large companies may identify cleaning of building water systems as a high risk because of the inherent dangers of a fatal Legionnaires disease outbreak.

The more planning you engage in, the more likely you are to get the right contract that will meet your requirements. The right contract will then ensure you have all the appropriate mechanisms to make contract management as easy as possible.

Contract Management is what happens after you have signed a contract. Many people in procurement allocate considerable time planning how to buy the identified requirement (the 'supplies') and getting into contract; but then fail to allocate the appropriate resources to effectively manage their contract to deliver exactly what they wanted.

Imagine having the best cleaning contract in the world; but if you don't actually monitor the contractor's performance, then you may be paying an agreed amount of money for only half the promised cleaning.

Contract management is, therefore, a critical function for any school. School staff should have in place contract management processes so that they know who has to do what, and when it has to be done, and what they have to check for.

Contract management also very much depends on exactly what you are buying. For example, if you want to buy 10 boxes of paper towels, then as long as they are delivered on time (the service) and meet the specific quality standards (the goods), it is a relatively simple contract with a clear performance standard. However, if you want to contract a three-person weekly gardening service for a two-year period, and it has 30 different performance standards, then this becomes a much more complex and time intensive arrangement to manage.

As there is no single 'right' way to manage a contract, this Guide will focus on providing a range of good practice that can be broadly applied to any contract during the contract management phase. The focus is on monitoring and managing the contract to achieve your requirements, while being flexible in how you enforce the contractual terms. It is designed to provide useful advice only, and whenever you have a situation where you do not understand a particular issue, you should seek appropriate specialist advice.

**Contract management is a critical function for any school.
School staff should have in place contract management processes
so that they know who has to do what, and when it has to be done,
and what they have to check for.**

5. What does Contract Management involve?

When the contracting process ends, the Contract Management phase begins. We have identified a range of Contract Management principles that should help you with managing any contract.

Context

1. Ensure there is only one authorised Contract Manager.
2. Understand your governance requirements.
3. Collect, read and understand all relevant contractual documents.
4. Understand, identify and manage risk.
5. Maintain appropriate records.
6. Develop a Contract Management Plan.

Mechanics

7. Manage your contractor relationship.
8. Provide appropriate induction and access.
9. Manage the delivery and acceptance of supplies.
10. Manage performance and under performance.

Issues and change

11. Deal with issues and disputes.
12. Manage contract changes.

5.1 Context

Principle 1: Ensure there is only one authorised Contract Manager

Principle

When a contractor is dealing with your school, there must be a sole point of contact authorised to deal with them. The authorised Contract Manager must also understand what is expected of them.

Why is this important?

One of the critical issues in contract management is certainty. If a contract has two different conflicting requirements, then the courts may allow the contractor to choose which obligation they must fulfil.

One of the biggest issues with maintaining certainty is when someone, who speaks on behalf of an organisation, like a school's Contract Manager, gives conflicting advice on different occasions, or gives advice which conflicts with the contract. This can be made worse when there are multiple people providing advice to your contractor.

A contractor is unlikely to understand how your organisation operates, so if they have a genuine belief that the person they communicate with is authorised to amend the contract, then the courts may rule in their favour. You want to ensure that this never happens by accident.

How do you do it?

Your school should provide you with a letter or form which appoints you as the Contract Manager, details your responsibilities, states that you are solely authorised to communicate with the contractor (noting specific exceptions), and outlines the scope of your authority, and when to seek further advice or approval.

Note: Each Education Department may have its own version of such a letter which may be called something different. The important thing is to have a document which provides you with certainty about your authority. Such a letter may also cover multiple contracts.

The scope of your authority should outline what you are allowed to change under the contract. For example, you might be authorised to change the delivery date (by a few days) for a non-critical delivery, but you may not be authorised to change the major terms of the contract without higher level approval.

The value of being the sole point of contact with a contractor is that you have confidence about what your organisation has told the contractor and what they have told your school. Further, you know exactly what you can and cannot do as contract manager.

It is always good to mention to the contractor that you are the sole point of contact, and that any advice or direction they receive from someone else in the organisation should first be confirmed by you. It is worth repeating this at every meeting you have with them and ask whether anyone else has provided them with any advice from within your organisation.

Risks to look out for

Your letter or form should have detailed information about what you can and cannot do in relation to either a particular contract or for all the contracts you are managing. This letter should also be clear about what happens when you are unavailable (perhaps you are on holidays) or what happens if you leave that role and are replaced by someone else (the need to then advise the contractor of the change).

As part of your school's approach to governance, other staff must understand that they are to direct all calls from the contractor to the authorised Contract Manager in order to ensure the contract is properly carried out. Everyone, including you, needs to maintain file notes of all interactions with the contractor.

Example

Your school has hired a contractor to deliver 200 seats to your school two days before your Annual School Carnival.

One afternoon, the contractor rings your office and a teacher walking by picks up your phone. When asked whether it is okay for them to deliver the chairs a few days later, the teacher responds, "That shouldn't be a problem". The teacher fails to inform you about the conversation.

A few days later, when the chairs do not arrive, you ring up the contractor and ask about the delivery. It is now urgent because the School Carnival is the next day.

The contractor says, "But we rang you, and the person on the other end of the phone amended the contract date by saying it was okay to deliver a few days later". He mentions that he has a recording of the conversation as evidence.

Now you have no chairs for your Carnival, the chairs will still arrive a few days later, and you will still have to pay the contractor for them. There is also a clause in the contract that if you cancel the chairs now, you will still have to pay the entire amount.

Principle 2: Understand Your Governance Requirements

Principle

There is a range of mandatory and best practice requirements that you may must comply with, or at least consider, during contract management. Identifying and understanding these will provide significant support and structure to the decisions you make.

Why is this important?

As a school providing educational services to a large number of students, there will be a range of requirements you must follow. Some of these include:

- Understanding your legal and ethical obligations, including relevant legislation and basic contract law principles
- Providing a safe environment for everyone, notably students or those with a disability
- Complying with your Education Department's Code of Practice for Suppliers
- Complying with your school's policies and procedures
- Ensuring that those who come onto a school site meet their minimum requirements (such as having their 'working with vulnerable persons' registration), have their minimum qualifications (an electrician's license) or have been advised of any relevant risks that might impact them
- Treating everyone in a fair and equitable manner, and understanding the reputational damage that could arise from a legal or ethical breach
- Understanding what constitutes standard business practice for a particular market.

How do you do it?

The first step is to identify all the relevant requirements with which you may need to comply. These should be available from your Education Department or your school.

Then you must become familiar with these, so they can inform your understanding of the contract you are managing and the decisions you make. This won't happen overnight, but the more systematic you are in getting up to speed, the more effective you are likely to be. And remember, the context you are in is constantly changing, so you must continue to stay current.

One of the significant issues that Contract Managers have to deal with is that the contract is only one part of the puzzle in understanding what the contract may actually mean. A particular term in a contract, which seems obvious to anyone reading it, may have a very specific legal meaning that is very different from what it might appear to say.

Risks to look out for

If there is a legal requirement you must comply with, and you are not even aware of it, then you are unlikely to comply. So, reading the appropriate departmental or school guidance is always an important step.

As a Contract Manager, you are only really focused on the risks of contract management, but you must still understand the potential contradictions between what your contract appears to say and what it actually means in law.

Regardless of what your contract states, you must always work to ensure a safe environment is provided and that you treat everyone ethically. If your contract says the electrician must complete their work by a certain day, but there is a storm and doing the work is dangerous, then you should discuss with the contractor how best to complete the work safely. This type of contract variation should be supported in your Scope of Authority letter.

You should also take steps to declare any actual, potential or perceived conflict of interest, and you should avoid any personal benefit. For example, if you hire a family member as a contractor, you may have failed to act ethically and may be disciplined. However, if you declare this conflict, and a more senior person in the organisation conducts the procurement activity and engages your family member, then you took the appropriate steps to manage this potential conflict.

Examples

Tendering process: A school advertised in the local newspaper for gardening services, with applications closing on a particular day. A week after the closing day, another gardening service put in a bid for the work. Because it was slightly cheaper, the school signed a contract with them. However, one of the other gardening companies, who knew the successful gardener had not put their bid in on time, took legal action against the school for not complying with its own process. In the end, the tender process was ruled inconsistent with the process the school had outlined in their original advertisement. While the gardening contract was worth \$20,000, the school's legal expenses were ultimately \$45,000. The school was also on the front page of the State's newspaper and, as a result, lost a lot of support from parents for how the school was managing its activities.

Language in the contract: A school engaged a local lawyer to provide some general legal guidance on how they should manage their contracts. However, the person managing this project did not like all the legal jargon and decided to make the language more accessible, especially because many of their employees came from multicultural backgrounds. So every time a legal term came up, it was changed to something simpler in plain English. However, what they did not realise was that generally in law, if you have two legal terms, then it must mean two different things. As a result, the new language used increased uncertainty. That's why it is so important to use the correct legal term and ensure that you do not use multiple terms for the same requirement.

Terminating a contract: A school wanted to deliver a short training course to teachers. The school signed a contract with one training provider which had a simple Termination for Convenience clause in it. A few days later, another contractor rang them up and offered to deliver the same course for a few hundred dollars less. The Contract Manager, thinking to save some money, immediately terminated the first contract and signed a second contract with the new contractors. However, what they did not understand was that a Termination for Convenience clause does not mean you can just terminate a contract and that was the end of it. Generally, this type of clause means you still have to pay costs already incurred and any profits from work already completed (just not anticipatory profits). The result was that the school had to pay the entire contract price to the first contractor, as well as to the second contractor. Regardless of what a clause may look like on a plain English reading, there may still be many things that may impact and change its meaning, such as legislation or case law.

Checking licenses and regulations: A school needed some work done to install some additional power points in their gymnasium and hired a local business to do the work. Unfortunately, the contractor did not have an electrician's license, and that night, sparks from the faulty power points burnt the entire gym to the ground. By not checking that the contractor had an electrician's license, and therefore was competent to do the work, it meant that the school lost an \$800,000 building. Further, while the school had an insurance policy, they later found out that by employing someone without the legal minimum standard to do the job, it meant that this particular insurance policy did not cover the loss of the building.

Principle 3: Collect, Read and Understand all Relevant Contractual Documents

Principle

You must have the complete contract before you can read and try and understand it.

Why is this important?

You must be able to understand the entire contract and the first step is to put it all together. If your contract is in multiple parts or refers to other documents (such as insurance policies), you must collect and read them all. If you make changes to your contract, even minor ones, you must update the contract so that both parties still have a single source of contractual truth. Remember, the devil is in the detail.

How do you do it?

It may take you many times reading the contract before it all makes sense. This becomes easier the more you do it and the more familiar you become with the language of contracts. Feel free to meet with your Principal or the person who signed the contract to discuss any contractual clauses or mechanisms that don't make sense.

Further, it is worth sitting down with your contractor and both working through your understanding of the contract to confirm you are both on the same page. Your contractor may have a different understanding of what a particular clause may mean, so it is worth understanding this and trying to resolve any differences.

That's why, as Contract Manager, it is extremely worthwhile being involved in the contract planning and formation stages, as this will provide a lot of the background regarding what particular clauses were intended to mean.

Risks to look out for

There may be particular clauses in the contract that the contractor would like to change. These may include clauses relating to liabilities, warranties, indemnities, intellectual property, exclusions or termination procedures. Whatever you do, be aware of these clauses, how they work to protect your organisation, and do not inadvertently amend them.

Even when you have minor and justifiable amendments to make to the contract, agreed to by both parties, always ensure that you have a current version of the contract that incorporates them all. Make sure that the contractor has the same updated version that you are using.

There are many unfortunate stories of Contract Managers racing around trying to identify all the contract amendments that have been made over many years in order to establish what the existing contractual terms are, before they meet with lawyers to talk about a contractual dispute.

Always refer to the contract when discussing issues with your contractor.

Example

As Contract Manager you have made a number of amendments to your school's cleaning contract. However, while you captured each of these amendments in writing, agreed to by both parties, you did not integrate them into a single updated version of the contract.

One day, you discover that your contractor is no longer sweeping the tennis courts. When you ask him about this, his response is that this is no longer a contractual requirement. The contractor explains that the fifth-amendment you both agreed to also modified your third-amendment, and now they are no longer required to clean the tennis courts.

After you incorporate each of your amendments into the existing contract you discover that many of the later amendments qualify the earlier amendments in unexpected ways or worse, it creates cascading uncertainty across the entire contract. You may need to sit down with the contractor and work out how to update the current contract so that it once again delivers everything that it was supposed to. And, as always, this may cost you a lot of money.

Principle 4: Understand, Identify and Manage Risk

Principle

A best practice approach to procurement is always to understand the potential risks involved in a contract and to manage them.

Why is this important?

Usually, a contract is signed by two parties at a particular time. However, both parties have incomplete information about what the future might hold. The best approach is to identify a range of risks that might impact the contract and plan for them. This may mean identifying a risk (such as using ladders to reach windows on the top floor of a building) and excluding that risk from the contract; or alternatively managing the risk through a specific contractual mechanism (using ladders but only with safety harnesses).

While the contract identifies measurable performance standards, contract management is about delivering the contractual objectives (the 'supplies') against these standards. In order to do this, you have to be flexible to deal with both the risks you have already identified and those you have not.

Generally, contracts identify a risk and then allocate it to the party in the contract best able to deal with it. For example, the school is best able to manage risk relating to its facilities, while a contractor is best able to manage risk relating to its work. Where they overlap, there needs to be great clarity between the parties regarding who has responsibility or an acceptance of mutual liability. As a back-up contingency, both parties also obtain insurance to cover them when their risk mitigations fail, noting they may never put the parties back in the position they were before the risk occurred.

How do you do it?

There is a lot of information about risk management, notably about identifying all the things that could possibly go wrong, thinking about how likely they are, what the consequences would be if it happened, and planning for them.

For example, while it is possible that a meteor may hit your school and result in catastrophic damages, this event is going to be 'extremely rare'. However, it is very likely that a contractor who is working with dangerous tools and who did not fence their work area effectively may contribute to someone being injured.

Depending on the size, scale and complexity of your contract, it is likely that a risk assessment was completed and relevant issues incorporated into your contract. You should become familiar with these.

Risks to look out for

Generally, if a risk could happen, it is worth planning for it in some way, depending on the complexity of your contract. Particular risks that are likely to impact your contract include:

- Safety
- Price increases
- Delayed delivery
- Performance standards not being met
- Whether you can get repairs, replacement parts or consumables
- Environmental impact
- What your insurance does not cover
- Reputational damage.

As a Contract Manager, you should be constantly thinking about how identified and unknown risks may impact your contract. If you have a risk assessment for your contract (check if your Education Department has one), meet with your contractor and identify ways to update it in order to better manage your risk.

The important thing to remember is that risk will affect whether your contract will be successful. If each party has lessened their known risks and something unknown occurs that could not have been foreseen, then both parties should work together should something occur.

Examples

Managing gardeners for public holidays: You have engaged gardeners to come once a week on a Friday to maintain your school facilities. However, there are a number of public holidays scheduled on a Friday. Given that you do not want the school grounds to miss out on gardening for a week, how would you manage this risk? For example, you may need a contractual mechanism that requires your gardener to simply turn up on the next business day.

Hazardous cleaning products: Your cleaners have a storeroom where they store a range of hazardous cleaning products. What potential risks could you identify – such as, can the storage room be locked, are all cleaning products appropriately labelled and monitored, and does the school have medical procedures in place to deal with poisoning or toxic exposure to those products?

Delay in supply of printer toner: You are managing a contract that provides photocopiers for your school. You are constantly in need of toner cartridges which you order through your contractor, who in turn gets them from an Indonesian supply warehouse. However, there is a volcanic eruption and all flights from this Indonesian supplier have been put on hold indefinitely. You are about to run out of toner. How could you have managed this risk?

You could manage the demand of toner by school staff (perhaps limiting each teacher to 100 pages until the crisis is over).

You could have ordered enough toner for an agreed stockpile (perhaps enough for a month).

You could have required the contractor to keep a similar local stockpile.

You could have required the contractor to identify how they would manage supply chain disruptions – perhaps having a back-up supplier or being able to use a slightly inferior toner cartridge for a short period in an emergency.

Principle 5: Maintain Appropriate Records

Principle

Maintaining comprehensive records of discussions with your contractor and capturing contract performance data is essential.

Why is this important?

Contract management often involves monitoring what has to be done or supplied before payment, and any determination about whether these requirements have or have not been met. Thus to maintain a good relationship with your contractor and to provide appropriate evidence in a dispute, it is important to maintain appropriate records.

How do you do it?

Capturing relevant contract-related information depends once again on the size, scale and complexity of your contract. But even the simplest contract should still capture the requirements to be met, the delivery and acceptance details, and the final payment process.

Keeping appropriate records may be done through file notes (a short outline of the content of a conversation), emails, meeting minutes, a checklist of whether performance standards have been met, relevant photos, or related documents, such as invoices and payment records.

In terms of payments, you should have a record of every invoice received by the school from the contractor. Details should include:

- Delivery date of the supplies and whether the delivery was accepted as complete
- Date the invoice was received
- Date the payment was made
- Amount of payment
- Linked school and contractor invoice numbers
- Reason for any variance, such as under-payments or over-payments
- Payment authorisation
- Cumulative expenditure against the contract.

All records should be maintained in the same place, such as a physical file or an electronic records management system.

If your contract requires proof of required insurances or 'working with vulnerable persons' registration, then copies of these should be kept on file with a reminder in the Contract Management Plan to confirm that they are regularly updated.

Risks to look out for

Building a standard records management approach to your contract will ensure you routinely capture all relevant information. If you don't do this, and there is a dispute, you may not be able to provide appropriate evidence to support your position, even though you may be right, and therefore, your contract might not be properly carried out.

A significant risk is when you have accepted a Supply but then weeks or months later you identify a significant issue. Having appropriate records may strengthen your case that the contractor should rectify any identified defects.

Example

Your school pays your cleaners based on whether they have met your 30-point performance standard. Each week you inspect their work and capture the data in a checklist, which is then signed off by the relevant cleaner on duty. Where there is a disagreement, you note this but also take a photo of the relevant area. A few months later, the lead contractor is disputing your checklist and threatening to take legal action because of the shortfall in payment. You show this contractor the signed-off checklists and the relevant photos, and then ask how you can both work together in the future to improve their performance.

Principle 6: Develop a Contract Management Plan

Principle

Develop a Contract Management Plan outlining how the contract will be managed, roles and responsibilities, key dates, deliverables and milestones, as well as supplier insurance, qualifications and licensing requirements. Include critical dates in your calendar.

Create a Master Contract Management Plan if you are managing multiple contracts.

Why is this important?

Once you have read and understood all the issues in your contract, you will identify a number of critical issues that need to be continuously monitored and managed.

A Contract Management Plan is a risk mitigation strategy that summarises the critical issues and outlines the plan to manage them. It should outline the risks, responsibilities and obligations of both parties, and outline how the performance management regime will be monitored.

How do you do it?

Your Contract Management Plan will depend upon the size, scale and complexity of your contract. The more involved your contract is, the more you will need an effective management strategy.

Your Contract Management Plan should capture the following information:

- What is the purpose of the contract – what needs to be achieved
- What are the minimum requirements before the contract can start
- What are the critical risks that need to be managed
- Who is responsible for doing what
- Where must it be done
- When must it be done
- How is it to be done
- What happens if something goes wrong or if there is a dispute.

Contract Management Plan templates may be available from your Education Department. There are also examples of Contract Management Plans on the Internet.² These may be many times more complex than is required for your particular contract risk profile, but they provide some insight into the key issues to monitor and review.

Risks to look out for

You must ensure that you have met with the contractor and their team, checked their qualifications, and introduced them to the worksite and any related risks. If they bring along new staff, you may need to go through the entire process again.

You must ensure that you check relevant documents every year to ensure they have been renewed. For example, if your contract requires your contractor to have a \$20 million public liability insurance that expires on 1 July each year, you will need to confirm they have renewed their policy before this date.

² For example, consider the short and long form Contract Management Plan templates available on the Victorian Government Purchasing Board's website: <http://www.procurement.vic.gov.au/Buyers/Policies-Guides-and-Tools/Contract-Management-and-Contract-Disclosure-Policy>.

You should identify the critical deliverables and the date they are due to be completed, and then work backwards. What do you need to do to ensure the contractor is on track to deliver on time? Finding out at the deadline that the contractor is two weeks behind allows you no opportunity to try and fix the problem. You needed to know they were behind on the deadline weeks earlier.

What are your contingency plans if something goes wrong? It is much easier to map this out in advance, possibly in conjunction with your contractor, than to have to make a decision at the last minute without the time to consider it properly.

Example

You are responsible for managing the stationery contract with a local business. Each fortnight, they deliver a large order, mostly paper and other consumables. You have included this date in your Outlook Calendar, having worked with the contractor about re-scheduling the delivery day when public holidays or other school activities might occur on the same day.

Three days before the delivery you have a checklist of activities.

1. Staff are reminded that any special stationery orders are due by 5pm.
2. You check the storeroom to see if you need to increase or decrease your standard order due to higher or lower consumption.
3. You check your budget to make sure you are on target.

Two days before the delivery, you phone the contractor to make any amendments to your standard order and confirm that there are no problems with the scheduled delivery.

On the day of the delivery, you monitor the stationery being placed in the storage room by the contractor, confirm that everything ordered has been delivered, and provide a copy of this checklist to the contractor. You then process the contractor's invoice by confirming delivery and acceptance, and initiating the standard payment process.

Two weeks after the delivery, you confirm with Accounts that the correct payment has been made. You then ensure that all your files are up-to-date.

5.2 Mechanics

Principle 7: Manage your Contractor Relationship

Principle

Contract management is all about being flexible enough to deal with inevitable issues and problems while still achieving the aims of the contract. Having a good relationship with your contractor, and related stakeholders, is essential for successful contract management.

Why is this important?

Things will always go wrong and you are going to need to work with your contractor to resolve them. Sometimes the problem may be their responsibility and other times it may be your responsibility. But more often it will be a mixture of both. You will need a mature constructive relationship with your contractor in order to resolve these issues.

Maintaining a good relationship with your contractor still includes enforcing the terms of the contract in a professional manner based on evidence of contractual performance. Your role as Contract Manager is about achieving the contract requirements properly.

You must also consider your other stakeholders that have a role in your contract management activities, such as your Principal, Supervisor, or the staff and students impacted by your contract management decisions.

How do you do it?

Treat your contractor and other stakeholders in the same way you would wish to be treated. Establish and maintain a good relationship that acts in good faith and is committed to procedural fairness. While it may be important to understand how a problem has arisen in order to manage it from happening again, most of the time laying blame is not going to be very productive (especially if next time you're to blame). You should work together to solve problems. Developing a relationship of trust means that you move away from a win-lose relationship to one which is more collaborative and win-win.

Depending on the size of your contract, you may want to establish regular communications with your contractor to discuss issues and risks as early as possible, ensure a mutual understanding of responsibilities and expectations, support mutual sign-off on performance standards, and provide positive and constructive feedback to each other. Always ask your contractor whether they have any suggestions to improve how the contract is managed; and if there are savings generated, share them with your contractor.

Risks to look out for

It is always appropriate to outline any professional expectations early in the relationship, for example, discussing potential risks early so that you can work together to resolve them.

Always remember that you are dealing with contractors who have a vested interest in maintaining their business relationship with you for future contracts. You should not put yourself in a position where your relationship breaches probity standards, such as accepting a weekly beer or coffee (a personal benefit) from them when meeting to discuss issues.

Example

You have been working with a local electrician who, despite always being busy, has always been very happy to come out to your school on short notice to fix urgent faults, even though the exact work may sometimes be outside the terms of the contract.

Recently, they failed to lock the Electrical Power Box when they finished some work, and you left a very explicit message on their answering machine about the issue. When they contacted you the following day, they told you they had double-checked locking the box before they left. You were not convinced and told them they had endangered the students and teachers who attended your school, and the next time it happened, you would submit a formal complaint and consider penalties.

A few days later, one of your science teachers mentions that when they plugged a large device into their classroom's power point, the fuse blew, and they had to open the Electrical Box to reset it. When questioned, they mentioned they had left it open in case they needed to come back, but the power was working when they'd returned to their classroom and then they were too busy to go back.

A few months later, the contract with your electrician expires. You email them a new contract, but a week later, you have still not heard from them. When you ring them, they tell you that, in fact, as they are the only electrician in town, they have recently signed up as the full-time contractor to the local factory and no longer have capacity to provide services to your school. The next nearest electrician is an hour away, and they charge a minimum callout fee which doubles the price of any electrical work. The impact on your budget will mean the school will now have to cancel the after-school science program.

Principle 8: Provide Appropriate Induction and Access

Principle

There is a range of issues that must be addressed before contractors should be allowed onto school grounds or provided with appropriate equipment/data to complete their jobs.

Why is this important?

Schools have a range of legal obligations, notably in relation to work, health and safety, and privacy, and these need to be managed effectively.

How do you do it?

You already know your governance and contractual requirements, and what risks need to be managed, so you are just making sure you are managing these systematically, through your Contract Management Plan, in relation to your contractors.

For example, you may have a standard Induction Checklist for any contractor visiting your school, explaining what the school does and any special circumstances. This may include what type of equipment can be used, when it can be used, how loud it can be during school hours, and what safety precautions are required. You may also double-check insurances are in place and that each contractor has met any relevant legal requirements such as a 'working with vulnerable people' registration.

If you are providing contractors with access to grounds, facilities, equipment or data, you should be very clear about which party has legal responsibility, when equipment should be returned, and you should discuss any identified risks in order to manage them effectively.

Risks to look out for

For legal liability reasons, you may need a written form transferring responsibility for the asset or facility to the contractor until they are ready to return it to the school. This helps establish their legal responsibility in caring for the asset and maintaining it in a safe manner.

If you are providing a contractor with data relating to students or staff, then you should ensure you have complied with all your privacy obligations and have sufficient confidentiality provisions in place.

Examples

Asbestos awareness: Your school has one wing that has been identified as having asbestos. You have included this in your standard Induction Checklist so that contractors are aware of this issue and take appropriate precautions if they need to access it.

Maintaining a Visitor's Log: You maintain a Visitor's Log recording arrival and departure times so that you can confirm which visitors were present on official duty at the school at any particular time.

Principle 9: Manage the Delivery and Acceptance of Supplies

Principle

You should manage the physical delivery and acceptance of supplies so that you are clear about what has actually been delivered in order to make the appropriate payment.

Why is this important?

There is a procurement principle that you should only pay for value received.

If you have asked for 20 boxes of A4 white paper, and only 16 have arrived, then you need to have a process that confirms this and only pay for what you have received. There may also be consequences for the contractor for failing to deliver the right number of supplies.

Similarly, if the wrong supplies are delivered or they arrive damaged, then you need a process that confirms this. Accepting damaged goods makes it much harder to go back to the contractor later and claim they were damaged before they arrived.

Once goods have been delivered, the school is likely to become legally responsible for them. If the contract says that the A4 paper should be delivered to the loading dock, but before you have them moved to the store room a number of boxes are stolen or damaged by students, then this would become the school's responsibility. The contractor would not want to be responsible for something beyond their control. Further, if accepted goods are subsequently damaged, and you did not take appropriate steps to secure them safely, this damage may not be covered by your insurance.

How do you do it?

Goods need to be inspected against the contractual standard before formal acceptance takes place. More complex goods may require acceptance testing, for example, having the contractor provide a certificate that the goods have been tested or alternatively inspecting them on-site, for example, testing each projector bulb to ensure they work.

Delivery and acceptance of services is probably going to be more complicated, especially if they are delivered on a continuing basis. Performance measures, such as particular standards of service, may be part of the acceptance process.

You should also be aware that some contracts may have a Retention of Title clause which means the contractor still owns the goods until they have received payment for them, even though responsibility for the goods' safety has passed to you upon delivery.

The contract should outline the process for acceptance. While conducting acceptance at the same time goods and services are delivered may be good practice, this may not always be possible, and the contract should outline the timeframe you have to conduct acceptance.

If you identify a problem or defect with the supplies, you should follow the contractual process for having them rectified. For example, if you order 10 florescent tubes but four of them are broken, how long does the contract give the contractor to replace them with working tubes?

If goods and services that have passed acceptance subsequently fail, what is the agreed warranty period and process so that they can still be fixed or replaced?

If you have a supply of goods over a period of time, for example, the delivery of one new oven each month for four months, then you may want to make milestone payments, which is to pay for each of the ovens after each have been accepted. Fortunately, your contract should have already considered such an approach.

Where the supplies meet the contractual standards, and you have received a correctly rendered tax invoice, you should organise payment in accordance with the contract.

Acceptance may also be an appropriate time to add the good to your asset list, perhaps by putting a barcode on the item and recording it the School's Asset Register.

Risks to look out for

Risks may be different for goods and services and may depend on how complex the requirements are. Having clear processes protects both you and your contractor.

Examples

Stipulating work inspection: Your school has some ageing infrastructure, so you hired an engineering consultant to identify what was required to fix them. One of the tasks was to repair a number of balconies. You then hired a balcony repair company to carry out the work. However, as you are not an expert, you stipulated in the contract that the work would be inspected and accepted by the original engineering consultant and payment would only occur if the work met the agreed contractual standard.

Fraudulent invoice: You receive an invoice for photocopying paper from a local supplier. Your finance officer proposes to pay it, however, as part of your acceptance process, you investigate whether this paper has actually been delivered. You then discover that your school is not in contract with this supplier, that they never delivered this paper, and this is simply an attempt to defraud your school.

Principle 10: Manage Performance and Under-Performance

Principle

In order to achieve the purpose of the contract, you need to monitor that contractual agreements have been met and flexibly manage any issues, risks or lack of performance.

Why is this important?

Contracts are written at a particular point in time and can never hope to capture every detail or issue that may arise. A good Contract Manager will understand what is to be delivered by the contractor, monitor progress well before potential issues becomes problems, and be able to adapt to changing circumstances.

How do you do it?

Managing performance under the contract is all about ensuring the goods and services provided by the contractor meet the requirements as specified in the contract (such as quality or schedule), or where they do not (for whatever reason), taking appropriate action.

This is why having a mature, professional and constructive relationship with your contractor is so important. Positive feedback to a contractor can then be balanced with negative feedback when problems arise.

If you identify a performance problem, you should discuss it as soon as possible with your contractor. Remember, do not assume that the problem is solely the responsibility of the contractor, it might have been caused (in part) by your own organisation or might be in response to a safety issue. But once you have agreed that the problem lies with your contractor, then encourage them to address the issue as quickly as possible with the least disruption. This is much easier if you are meeting with your contractor regularly to discuss how they are doing.

Usually, the best way to deal with under-performance is remedial action, such as getting the contractor to repair or replace faulty items, or by increasing the number of personnel working on the task to get back on schedule, or modifying processes or systems to resolve an issue; and always providing regular updates on the problem until it is resolved.

As per the principle of paying on value delivered, if the contractor has not met their contractual obligations, then you may be able to delay paying them until they have. But read your contract carefully for how this might work.

Risks to look out for

If your contractor strongly argues that the problem is not their fault, then you will need to resolve this disagreement. Identifying a problem as early as possible at least minimises the potential damage it may cause. You may even have to modify your position on a smaller issue in order to achieve the overall contract outcome. However, if you cannot resolve this disagreement, you may then move into having a contractual dispute.

Sometimes your contract may not be sophisticated enough to cover all eventualities that may occur during the life of a contract, and you may need to consider that no party is to blame when a particular problem arises. You will then need to work with the contractor to find a way forward, perhaps even making a small variation to the contract to address the issue. Remember, if your contract did not cover this unexpected eventuality, you may be paying for any changes.

Example

You are managing a cleaning contract and, once a week, you walk around the school grounds to confirm that all the cleaning has been done to the agreed standard. This week, you identify a number of issues: the gym change rooms and one of the classrooms has not been cleaned, toilet roll holders have not been filled, and the parking area has not been swept.

When you raise these issues with your contractor, they provide the following response. The gym change rooms were not cleaned because they were still being used by students when the cleaners came by. While the contract does not make an allowance for this, it was clearly not possible, and possibly inappropriate, for the cleaners to be in the change rooms when students were there. One of the classrooms was not cleaned because the door was locked and the cleaners did not have a key. The toilet roll holders were not filled because no toilet paper was available in the storeroom. The parking area was not swept because this requirement was not in the contract.

You agree that the contract should be modified so that the cleaners do not have to clean the change rooms while students are there. However, you also ask that the cleaners check the change rooms at both the beginning and end of their shift to maximise the likelihood of finding them empty. You also put up a notice in the change rooms reminding students that the change rooms officially close before the cleaners arrive.

You check and there is a new lock on the uncleaned classroom. You provide the cleaners with a copy of the appropriate key.

The toilet rolls were not in the storeroom because someone forgot to order them. This has now been rectified.

The parking area is in the contract, but it is not called that. In discussion with your cleaners, you both agree that 'cleaning concreted areas around buildings' includes the parking areas, supported by a highlighted map in the contract that identifies the area.

Remember, if you had not met with your contractor on a weekly basis and worked through the agreed performance requirements, many of these issues may have gone unaddressed for days, weeks or even for the rest of the contract life. You may also have simply blamed the contractor for all of these issues when, in some cases, they had legitimate reasons for why they could not complete their jobs.

Generally there is an assumption that if there is no effective management of a contract once it has been signed, the contract may lose, at minimum, 15% of its value. The numbers only get worse across the contract if performance standards continue to decline or are not being met.

5.3 Issues and change

Principle 11: Deal with Issues and Disputes

Principle

Even with the best contracts, a dispute is likely to arise when it is not possible for the parties to resolve an issue informally, and there is a need to rely on a more formal dispute resolution process.

Why is this important?

Many disagreements arise over the requirements of a contract and whether a contractor has met their performance standards. The minor issues can be dealt with as part of the performance management process, but some may still remain unresolved.

How do you do it?

The best way to manage a dispute is to stop it from happening in the first place by following sound contract management principles.

Identify and address any risks, issues or disagreements as early as possible. Deal with them in a professional manner taking into account what the contract says, the credibility of your evidence, how important the issue is, and how much the likely solution may cost in terms of money or time. This may include some negotiation, where both parties try and meet in the middle. Or it may involve elevating the problem to more senior people in both organisations to address.

If you cannot informally resolve the problem then rely on the dispute management clause in the contract (every contract should have one). It may also involve agreeing on a mediator, acceptable to both parties, to come in to investigate the dispute and recommend a way forwards.

As a final resort you may be required to take legal action.

Obviously, you should try and resolve your dispute at the lowest possible level and understand that the more formal dispute resolution approaches might be very expensive, including more costly than simply paying to fix the problem when it was first identified.

The contractor should also continue to perform under the contract while the dispute is being resolved.

Risks to look out for

If you are going to rely on the dispute management clauses in your contract, then you must make sure you have done your homework, hence the value of keeping detailed records. Careful preparation may be required to ensure you have all the facts and evidence to back up your argument.

As the Contract Manager, you must constantly refer back to your contract as the guide to how you handle a dispute. Do not make admissions of guilt or liability; instead offer to work with the contractor to address the issues as professionally as possible.

Do not threaten the contractor. They may have a valid reason for their position, much like you do. If you have a situation where both parties can justify the position they have taken, then you may have to work together to negotiate a way forward that benefits both parties.

Very rarely you meet a contractor that never intended to meet the contractual requirements they agreed to and there is no way to work with them to fulfil the contract. In such a situation, you should seek expert legal advice, such as through your Education Department. Hopefully, your contract has mechanisms to support you in this situation. Remember, a Termination for Convenience clause may still cost you money.

Ensure any dispute resolution agreement that you make is approved by someone with the appropriate authority, does not contravene any governance requirements, and that you have a complete record of it, preferably signed by both parties.

Example

Your contractor has identified a dispute under the contract and would like to rely on your contract's dispute resolution clause.

The first thing you do is gather all your documentation.

The second thing you do is sit down with your contractor to try to resolve the issue informally, with an intent to negotiate a settlement that benefits both parties.

If that does not work, then you may want to escalate it to someone more senior in both organisations.

Failing that, you proceed with using the contract's formal dispute management clause, with appropriate advice from your Education Department.

Principle 12: Manage Contract Changes

Principle

It is relatively easy to amend a contract, so you must be very careful to ensure you do not do so inadvertently.

Why is this important?

A contract establishes legal obligations between two or more parties. If you agree to amend the contract, you may be significantly changing the original agreement and what will be delivered.

Assuming other legal requirements are met, contracts can be created or changed in three ways: in writing, verbally or by conduct between the parties, with each amendment to a contract effectively creating a new contract. While you may be aware of needing written or verbal agreement, if you have a cleaning contract and you consistently sign-off on a lower performance standard, then if sufficient time elapses, you may have amended your contract by conduct.

However, there may be legitimate reasons to amend a contract. For example, your contract requires a range of food supplies to be delivered on a particular date, but this date is a public holiday, and therefore, it makes sense for these supplies to be delivered the following day.

How do you do it?

You should follow the formal contract variation clause in your contract.

All contract variations should be in writing, signed by both parties. This allows you to maintain a record of them. You may need to also create an updated contract so that all parties have an accurate current version to rely upon.

You should never change a critical contract clause without approval of the person within your organisation that signed the original contract (the approver). How can you tell what a critical contract clause is? Any contract variation that makes a minor change to delivery dates or quality for valid reasons that has no meaningful consequences should be okay. Any change to significant contract clauses like insurance, liability, warranty, intellectual property, termination, extension, etc., should not be changed unless it is signed off by the original approver.

This is once again why your Scope of Authority Letter is so important, so you know what you are allowed to change in the contract. For example, many contract variations may have a financial effect, such as costing you more money than was originally approved. Your letter should tell you that amending the contract up to a \$50 limit may be okay (as this amount was previously approved), but otherwise you will need a separate formal 'funds availability' approval because of the financial implications.

Risks to look out for

Consider your risk assessment to determine whether the proposed contract change may have any unforeseen consequences.

Never just agree to a contract variation suggested by your contractor without thinking about it. This is why putting it in writing can be so important because it allows you to think carefully about the impact and discuss it with others in your organisation.

If you are going to make a contract change solely in favour of the contractor, then consider whether there needs to be a more balanced approach. For example, you agree to pay more for the milk delivered, because the dairy prices have gone up and the original contract agreed the principle that milk would be at cost; but you also include a complementary clause that if the contractor benefits from discounted milk supplies, you get the benefit of those discounts. It may not happen, but at least you have maximised your chances of trying to lower future costs.

Other issues

Keep a log of contract issues, including agreed and proposed amendments, to help you when you are considering updating the contract for the next procurement activity. If you find that you have a large number of contract variations that significantly alter the original scope of the contract, then this might suggest the original contractual template you were using is not appropriate.

Keep an eye out for the contract expiry date and make sure your organisation has enough time to consider its options. For example, there may be valid reasons why instead of conducting a new procurement process for a particular activity, you may want to simply extend the existing contract (perhaps by 1–2 years). Before you do this, you will need to confirm that you have met all the relevant governance requirements. In particular, you do not want to renew an existing contract until after you have done a new value for money assessment. If you do go ahead with the extension, you may want to vary other clauses that benefits the school in some way, such as a cheaper contract price because of the increased certainty for the contractor.

If the contract is going to expire and you intend to conduct a new procurement process, make sure you have sufficient time to conduct all the necessary arrangements (for example, possibly six months depending on the size of your contract). This is a critical issue that should be included in your Contract Management Plan.

You must also consider all the necessary actions for contract closure when the contract ultimately expires. For example, is all the documentation complete and included in the file? If there are survivorship clauses in the old contract, such as a warranty period for defective items, then you should continue to rely on these if the defective parts were delivered under the old contract.

If a new procurement takes place and the same contractor is engaged, then this is less of a problem. However, you may have issues if a new company is appointed and you need to transition from the old to the new contractor. You should have planned for this in the original contract to make sure everything occurs as smoothly as possible.

Remember, sometimes companies sign up to be a contractor knowing that the contract is inadequate and that their relatively cheap quote will be offset by all the additional monies they will make through inevitable contract changes (this is known as a 'foot in the door' approach). Your contract may mitigate this risk by having a contractual mechanism that says additional work will be paid for at a contractually agreed not-to-exceed rate, based on the complexity of the task. This way, hourly rates for 'unexpected' work are locked in when the contract is signed.

Examples

Your contractor hires a new supervisor who looks over the contract. He identifies an error in the original contract because there is no indemnity clause. Clearly, if the contractor is working for the school, the school should indemnify the contractor if anything goes wrong, no matter what the cause.

You are very busy and give verbal agreement to this change in return for a slightly cheaper hourly rate which will save your school over \$1600 a year. As part of your regular communications, your contractor asks you to confirm the indemnity change in writing, which you do.

About three months later, the contractor negligently fails to put on their handbrake and their truck rolls down a hill killing two children and injuring another three, before seriously damaging a building.

After the school deals with the tragedy, the Education Department meets with you and your Principal. The Education Department says that the contractor may be liable for a range of civil penalties, with costs and fines of up to \$15 million, plus the repairs on the building. The lawyer asks for the latest version of the contract. When she discovers the amended indemnity clause, she explains to you that this now means the school may be liable for any financial costs or penalties.

Additional material

Appendix A: Sample Contract Management Plan

Sourced online from Department for Education and Child Development SA website

Appendix B: Sample Risk Register

Sourced online from Department of Education and Early Childhood Development VIC website



Appendix 1: Sample Contract Management Plan

CONTRACT MANAGEMENT PLAN

PROJECT NAME:	Provision of Out of school hours care at insert school name
CONTRACT MANAGER	insert name
CONTRACT MANAGER TITLE:	Principal, school name
ENDORSED NOT ENDORSED Date: / /	_____ INSERT CONTRACT MANAGER'S NAME PRINCIPAL
ENDORSED NOT ENDORSED Date: / /	_____ INSERT NAME SCHOOL GOVERNING COUNCIL CHAIR
APPROVED NOT APPROVED Date: / /	_____ INSERT NAME ASSISTANT DIRECTOR EARLY CHILDHOOD POLICY AND COMPLIANCE

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1. INSTRUCTIONS

DECD has awarded a Licence and Services Agreement (Contract) for the supply of Out of school hours care at **school name** to **insert OSHC provider name**.

The parties to the Contract are:

- the School governing council, as beneficiary of the service;
- the Minister for Education and Child Development (Minister), as owner of the land on which the service is to be provided and;
- the OSHC provider, as operator of the service.

This Contract Management Plan (Plan) captures the key tasks and responsibilities to effectively manage the contract, in accordance with DECD OSHC Policy. The Contract Manager must insert detail in highlighted areas.

This Plan relates specifically to the Contract referred above, which falls under the management responsibility of the School governing council. The Advisory committee (see section 3.3) also plays a key role in the operation of the OSHC service.

A separate Contract Management Plan exists for the overarching Panel Deed, for which the contract management requirements rest with Early Childhood Services.

This Plan should be read and used in conjunction with the Contract and any other relevant correspondence to be reviewed and updated as required.

In this Plan, clauses refer to clauses in the Licence and Services Agreement (Contract).

Once this Plan is completed and endorsed by the principal and school governing council chairperson, it is to be submitted to Early Childhood Services by emailing DECD.OSHC@sa.gov.au prior to service commencement for approval by the Assistant Director Early Childhood Policy and Compliance.

VERSION CONTROL

Date	Version	Revision Description
xxx	1	Initial completion

2. ROLES AND RESPONSIBILITIES

2.1 DECD Contract Manager

The DECD Contract Manager is the nominated representative of the Minister referred to in the Contract.

The DECD Contract Manager is responsible for ensuring that the Minister's contractual obligations are met and referred to the Advisory committee where appropriate.

Clause 10 of the Contract lists the Minister's key obligations. The DECD Contract Manager details are:

Name: **insert details here**

Position Title: Principal

Address Line 1: **insert details here**

Address Line 2: **insert details here**

Email Address: **insert details here**

Telephone: **insert details here**

2.2 School governing council Contract Manager

The School governing council Contract Manager is the nominated representative of the School governing council referred to in the Contract.

The School governing council Contract Manager is responsible for ensuring that the School governing council's contractual obligations are met.

Clause 11 of the Contract lists the School governing council's key obligations. The School governing council Contract Manager details are:

Name: **insert details here**

Position Title: Chair, School governing council

Address Line 1: **insert details here**

Address Line 2: **insert details here**

Email Address: **insert details here**

Telephone: **insert details here**

2.3 OSHC Provider Contract Manager

The Contract Manager is the nominated representative of the OSHC provider referred to in the Contract.

The OSHC provider responsibilities are detailed in [clause 12] of the Contract. The OSHC Provider Contract Manager details are:

Name: **insert details here**

Position Title: **insert details here**

Address Line 1: **insert details here**

Address Line 2: **insert details here**

Email Address: **insert details here**

Telephone: **insert details here**

2.4 DECD EARLY CHILDHOOD POLICY AND COMPLIANCE

Early childhood policy and compliance can provide advice and support with respect to contract management issues, where disputes cannot be resolved.

This Plan forms part of the panel arrangements managed by the DECD Early Childhood Services.

www.decd.sa.gov.au/childcare/out-school-hours-care-oshc/managing-oshc-service/resources-and-tools-oshc

2.5 DECD Procurement unit

The Procurement unit can assist with any procurement related enquiries, including the formalisation of extension options, and advice and assistance through the procurement process required to engage a third party provider in accordance with DECD OSHC Policy and procedure for the provision of OSHC services on DECD sites.

2.6 Ethical behaviour and conduct

All government officers involved in the procurement of goods and/or services must ensure their conduct is in accordance with South Australian Government procurement policies, guidelines and the [Code of Ethics for the South Australian Public Sector](#).

The Government also expects that Contractors ensure ethical practices are maintained in the conduct of their business.

School governing council members are bound by the *Governing Council Incorporated Code of Practice*.

3. CONTRACT KEY TERMS AND CONDITIONS

3.1 Contract Term and Extension Options

Three years, commencing **dd/mm/yy**, with 2, 3 year extension options (subject to satisfactory performance).

3.2 Contract Scope, Outcomes and Deliverables

The Contract is for the provision of Out of school hours care (OSHC) mostly for children attending school. Services can include before school care and/or after school care, and/or on pupil free days, and/or during vacation care periods.

The Education Act 1972 enables school councils, through their constitutions, to provide functions relating to the education, care and recreation of students outside of school hours.

A Panel Deed for the provision of an OSHC service has been executed to allow school governing councils to engage a third party provider to provide an on-site OSHC program for their school community.

The **insert School governing council name** has undertaken a secondary procurement process which has resulted in **insert successful OSHC provider** being selected to provide a service at **insert school name**.

Insert OSHC provider name has agreed to provide an OSHC service as per the terms and conditions set out in the Licence and Services Agreement.

3.3 Advisory Committee

The DECD Contract Manager, the School governing council Contract Manager and the OSHC provider must establish an OSHC Advisory committee to provide opportunity for open two-way communication regarding (but not limited to) the operation of the service, review of the service, resolution of grievances or concerns, upcoming maintenance or building work etc.

The primary role of the Advisory committee is to monitor performance of the OSHC provider and provide feedback to the School governing council on the operation of the service.

The Advisory committee Terms of Reference are outlined in Schedule 2, which can be varied by written agreement between the parties at any time.

The Advisory committee must consist of:

- the principal
- the director of the OSHC service
- the nominated supervisor of the OSHC service
- two elected parent representatives from the School governing council
- two parents whose children attend the OSHC service
- management representative from the OSHC provider
- the school finance officer.

3.4 Variations

Any proposed variations to the OSHC service which may impact on fees must be made in accordance with clause 13 and 28.6 respectively and must include appropriate justification for the variance.

Variations to the Key Performance Indicator's Annexure 3 must be agreed to by the Advisory committee clause 20.2.

Advisory committee Terms of Reference Schedule 2 should be undertaken in accordance with clause 19.3.

3.5 Insurance

Clause 23 lists insurance requirements.

Details of certificates of currency should be documented below and updated as required.

Insurance Type	Name of insurer	Policy No.	Insured Amount \$	Expiry Date	Exclusions
Public Risk	Managed by Early childhood policy and compliance under the panel arrangement				
Worker's Compensation	Managed by Early childhood policy and compliance under the panel arrangement				
Fixtures, Fittings, etc.	insert detail (Write N/A if not applicable)	insert detail	insert detail	insert detail	insert detail

3.6 Training and Screening

RAN-EC

The OSHC provider is required to ensure staff undertake Responding to Abuse and Neglect – Education and Care (RAN-EC) training prior to commencement at the service clause 12.1.11. OSHC provider personnel must update RAN-EC training every three years or as otherwise required clause 12.1.13.

The DECD Contract Manager must ensure that certificates confirming that RAN-EC training has been undertaken are recorded appropriately prior to the commencement of the OSHC provider and their personnel and as updated.

Relevant History Screening

The OSHC provider is required to ensure staff obtain and maintain "Relevant History Information" clause 12.4.4.

The DECD Contract Manager must ensure that relevant history screenings are recorded appropriately prior to commencement of the OSHC provider and their personnel and as renewed.

Suitability of Persons

Refer to clause 12.4 for Suitability of Persons obligations.

3.7 The Plan – Premises and Common Areas

The OSHC provider may access nominated 'exclusive' and/or 'shared' areas outlined in the site Plan in Annexure 1. In the Contract, the "Premises" refers to the exclusive areas highlighted in pink on the Plan and the "Common Areas" are the shared areas highlighted green in the plan.

Requirements relating to furniture, fittings and assets are as outlined in clause 14.

Repairs and maintenance must be undertaken in accordance with clause 17. (With the exception of a Private Public Partnership (PPP) site)

The Minister is responsible for compliance of the premises in accordance with the *Education and Early Childhood Services (Registration and Standards) Regulations 2011* clause 10.3;

3.8 Furniture, Fittings and Assets

Clause 14 outlines requirements regarding furniture, fittings and assets.

Assets are to be recorded on an asset register – an example of which is provided in Attachment 3.

3.9 Rent Charges

The rental amount payable per annum is \$xxx.

3.10 Cleaning, Repairs and Security

Clause 12.6 outlines requirements regarding cleaning, repairs and security. (With the exception of a PPP site)

3.11 Confidentiality

Clause 24 outlines confidentiality requirements.

School governing council members must keep all information received in the course of his/her duties confidential as per the [Governing Council Incorporated Code of Practice](#)

3.12 Incident Management

The OSHC provider is required to record incidents on the relevant DECD form (i.e. the critical, injury or security incident form) and provide to the principal in order for it to be placed on Incident Response Management System (IRMS) within 12 hours of incident, clause 12.12.5.

The OSHC provider must complete an ED155 Injury Report Form for accident / injuries to persons that result in hospitalisation / medical / dental treatment, where complications may result or where there is a possibility that legal action may be taken against the department and/or the user group clause 12.12.6.

The OSHC provider must provide a copy of any notifications made to the Education Standards Board of South Australia within 24 hours of receipt, clause 12.12.7.

Refer to the OSHC website for the reporting process – www.decd.sa.gov.au/childcare/out-school-hours-care-oshc/third-party-providers/reporting-incidents-oshc-third-party-providers

4. CONTRACT OPERATION

4.1 Management of Contract documents

The DECD Contract Manager will record and maintain within secure storage a copy of the following:

- the Contract documents
- key approvals and documents generated in the Contract's development
- all Contract correspondence between the Contract Manager(s) and OSHC provider
- the agenda and subsequent minutes of all relevant meetings
- all information provided by the OSHC provider
- any documents considered by the DECD Contract Manager to be relevant to the contract, including reporting requirements outlined in the Contract (e.g. schedule 5 & 6)
- any specific quantitative and qualitative data required under the contract, if applicable (e.g. statistical reports, KPI reports, etc.).

4.2 Risk Management

It is envisaged that robust management of the contract will minimise any potential risks.

Attachment 2 contains a Risk Management Plan detailing risks associated with the operation of an OSHC service on a DECD site by a third party provider.

The risk assessment must be monitored on a regular basis and updated when new risks are identified.

4.3 Statutory and Regulatory Requirements

The Minister is responsible for compliance of the premises in accordance with the *Education and Early Childhood Services (Registration and Standards) Regulations 2011* clause 10.3.

The OSHC provider is responsible for compliance with operational standards under the *Education and Early Childhood Services (Registration and Standards) Act 2011* including *Education and Early Childhood Services (Registration and Standards) Regulations 2011* and the National Quality Standard for Early Childhood Education and Care and School Age Care.

The provider must inform the DECD Contract Manager within 24 hours:

- Details of notifications, ratings, waivers and compliance action.

The DECD Contract Manager must inform the DECD OSHC unit if the provider receives a Significant Improvement Required rating or two consecutive Working Towards NQS service ratings immediately.

4.4 Transition-in

Transition-in covers the period between the awarding of the contract and the commencement of service delivery.

Prior to commencement of the contract, the Principal and the OSHC Provider are required to meet and confirm all necessary arrangements are in place prior to service delivery, including Service Approval and Child Care Benefit Approval.

The DECD Contract Manager must obtain copies of the OSHC Provider and their personnel Relevant History Information screenings and RAN-EC training prior to service commencement.

The principal and OSHC provider should meet weekly until the first advisory committee meeting.

4.5 Advisory Committee Meetings

The Advisory committee must have regular meetings (at least twice per school term or more regularly as agreed) to ensure that the operation of the OSHC service is meeting the needs of the school community and that any issues that arise are addressed to the satisfaction of all parties. The OSHC provider is required to provide written reports three working days prior to Advisory committee meetings as outlined in schedule 5 and reports will be tabled at the next School governing council meeting.

4.6 School governing council meetings

As beneficiary of the OSHC service and signatory to the Contract, the School governing council plays a key role in the contract management of the OSHC service. The OSHC service will be a standing item on the school governing council meeting agenda, with the OSHC provider's report tabled for discussion.

4.7 Reporting

Reports outlined in schedule 5 and 6 of the Contract will be required to be provided within the timeframes specified.

A template to assist with reporting is available at:

www.decd.sa.gov.au/childcare/out-school-hours-care-oshc/third-party-providers/information-sites-about-third-party-oshc-providers

4.8 Dispute Resolution

Every effort should be made to resolve the dispute and/or grievances at the local level. If disputes cannot be resolved within 14 days they will be referred to the Advisory committee for resolution in accordance with clause 26.

If a matter cannot be resolved locally, the school principal or OSHC provider may refer the issue on to the relevant DECD Education Director who may convene or arrange for a dispute resolution meeting with a representative of the OSHC provider and the principal, in accordance with clause 26.

Complaints or disputes outside of the terms and conditions of the Contract shall be referred to the OSHC Provider for consideration.

4.9 Contract Review

The DECD Contract Manager in conjunction with the School governing council Contract Manager will review the contract on a regular basis to monitor adherence to the key performance indicators specified within the Contract, and against the terms and conditions of the Contract.

Contract reviews will be undertaken annually.

Notify Early Childhood Policy and Compliance of the review decision. If the decision is to not offer the contract extension to the provider, a new procurement process must be undertaken.

Contract reviews may determine: Contract Extension or Contract Termination.

4.10 Contract Extension Option

The decision to exercise the 2, 3 year extension options rests with the School governing council and nominated Minister's representatives.

A review will be undertaken prior to exercising the extension option confirming if the contract objectives/outcomes have been met.

The discussion to extend the contract will be tabled for discussion at the School governing council meeting at least seven months prior to the expiry of the first two contract terms. The contract requires that DECD provide a minimum of three months' written notice to the OSHC Provider prior to extending.

The DECD Contract Manager will notify DECD Early Childhood Policy and Compliance to advise of the School governing councils decision to exercise the extension option and attach a copy of the School governing council minutes as evidence of this endorsement four months prior to end of initial term **insert date**. Early Childhood Policy and Compliance will forward the evidence of endorsement to the Procurement unit.

The Procurement unit will arrange the extension option by way of letter.

Outline your service commencement and completion dates in the table below:

	Service commencement date	Service commencement date
Original Contract	insert date	insert date
Two, 3 year extension (if options exercised)	insert date	insert date

Note: Once a contract and its specified extension options have expired, any further extensions with the current OSHC provider will be considered as part of a new procurement process as per the State Procurement Board's Approvals Process Guideline and DECD OSHC Policy and procedure for the provision of OSHC services on DECD sites.

4.11 Contract Completion

A Contract completion review must be completed seven months prior to the contract expiry date. The review outcome will inform the School governing council whether to:

- continue with an outsourced OSHC service or
- cease operation of the outsourced OSHC service
- operate the service themselves.

If the School governing council decides to continue with an outsourced OSHC service, they must undertake a competitive procurement process in accordance with the State Procurement Board's Approvals Process Guideline and DECD OSHC Policy and procedure for the provision of OSHC services on DECD sites.

4.12 Termination

In the event that an OSHC provider breaches any Contract Terms and Conditions, the Minister may give written notice to the OSHC provider requiring it to rectify the breach within seven days. If the provider fails to rectify the breach or make diligent progress towards rectifying the breach, the Minister may terminate the Contract by written notice to the Provider clause 27.

The Contract has provision for termination in the event that:

- The OSHC provider receives:
 - A 'Significant Improvement Required' NQS service rating
 - Two consecutive 'Working Towards' NQS service ratings
- Damage occurs to the premises and it is deemed to be not fit for use by the OSHC provider, the Minister may terminate the Contract on giving the Provider four weeks written notice clause 18.

In any instances, the matter will be referred directly to the DECD OSHC Unit in consultation with the Procurement Unit prior to any action being initiated.

4.13 Transition Out and Contract Handover

The OSHC provider must cooperate with Early Childhood Policy and Compliance to ensure a smooth and efficient handover of the OSHC service to the Minister or any incoming service provider.

Considerations to ensure smooth transition should include:

- return of security passes, keys
- all rental fees (if applicable) invoiced and paid
- consultation of the school asset register confirming all school assets to remain on the school's premises
- removal of equipment, fixtures and fittings owned by the OSHC Provider
- prompting the OSHC provider to ensure all financial matters are finalised, e.g. utilities.

4.14 Schedule Management – Key Obligations

Attachment 2 summarises key requirements, their timelines for completion, and who is responsible.

5. CONTRACT MEASUREMENT

5.1 Key Performance Indicators

The OSHC Advisory committee must undertake an annual review of the OSHC Provider's compliance with the KPIs outlined within the contract.

The Advisory committee can amend the KPIs if deemed necessary.

5.2 Annual Survey

The OSHC Advisory committee must undertake an annual survey to assess children, families and the School governing council's satisfaction of the OSHC service.

The survey results will inform the contract review.

ATTACHMENT 1 – CONTRACT MANAGEMENT OBLIGATIONS (TO BE TAILORED TO MEET INDIVIDUAL CONTRACT REQUIREMENTS)

Function	Obligation	Who is responsible				Due
		OSHC Provider Contract Manager	Governing Council Contract Manager	DECD Contract Manager	Other (Please specify)	
Transition-in	Complete Transition-In Plan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		2 weeks prior to service commencement (insert date)
Reporting	Provide schedule 5 Reporting requirements including detailed report to the Advisory committee up to 3 working days prior to the Advisory committee meeting	<input checked="" type="checkbox"/>				3 working days prior to the first Advisory committee Meeting on (insert date) and at each meeting thereafter
	Provide details of educators/personnel to School	<input checked="" type="checkbox"/>				3 days prior to service commencement on (insert date)
	Provide copy of quality improvement plan	<input checked="" type="checkbox"/>				Annually
Advisory committee Meetings	Attend Advisory committee meeting	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> other required parties	Twice per term
Governing council meeting	Attend and provide update		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		At each School governing council meeting
Review including annual survey (to gauge children and family satisfaction)	Assess performance and table at School governing council meeting		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Advisory committee	Annually Due: dd/mm/yy Due: dd/mm/yy Due: dd/mm/yy
Risk Management	Risk Management Plan for action and add to plan if new (Attachment 2)		<input checked="" type="checkbox"/>			Prior to contract execution, and updated as new risks are identified
Insurances	Maintain current insurances and provide certificate of currency annually	<input checked="" type="checkbox"/>				First certificate (insert expiry date) and annually thereafter.
	Review currency of insurance (contents and workers Comp)		<input checked="" type="checkbox"/>			Prior to expiry date

Function	Obligation	Who is responsible				Due
		OSHC Provider Contract Manager	Governing Council Contract Manager	DECD Contract Manager	Other (Please specify)	
Extension	Undertake review of OSHC provider as noted above in review		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		As stated in review
	Table decision to extension at School governing council meeting for endorsement		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		7 months prior to expiry of the first two contract terms (insert date)
	Contact DECD OSHC unit to action			<input checked="" type="checkbox"/>		4 months prior to contract expiry Due: dd/mm/yy
Termination	Contact Procurement unit for advice before any action is undertaken.			<input checked="" type="checkbox"/>		n/a
Transition-out	Complete Transition-Out Plan		<input checked="" type="checkbox"/>			End of Contract
Closure	Assess performance and complete contract closure report		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	End of Contract
Rental fee	Invoice rental fee			<input checked="" type="checkbox"/>		Due: dd/mm/yy include 4 dates per year if charged quarterly
RAN-EC Training	Obtain and maintain for all staff and copy to principal	<input checked="" type="checkbox"/>				5 days prior to service commencement date and upon commencement of new staff. Expiration of current staff training certificate.
	Record appropriately			<input checked="" type="checkbox"/>		Ongoing
Suitability of persons	Obtain and maintain a history clearance of a DECD approved screening authority for all staff and volunteers and copy to Principal	<input checked="" type="checkbox"/>				5 days prior to service commencement and upon commencement of new staff
	Record appropriately			<input checked="" type="checkbox"/>		Ongoing
	Inform school if Provider becomes aware that employee is an 'Unsuitable Person'	<input checked="" type="checkbox"/>				

Function	Obligation	Who is responsible				Due
		OSHC Provider Contract Manager	Governing Council Contract Manager	DECD Contract Manager	Other (Please specify)	
Asset register	Agree on assets etc., in accordance with [clause 14]	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Advisory committee	At first Advisory committee meeting (insert date)
	Determine what needs to be purchased [clause 14.2]	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/> Advisory committee	At first Advisory committee meeting (insert date) and then as required
	Keep and maintain register of the school's assets [clause 14.1]			<input checked="" type="checkbox"/>		As required
	Provide copy of asset register to Advisory committee [clause 14.4]	<input checked="" type="checkbox"/>				On regular basis
	Record assets on asset register					
Variations	To OSHC service that affect pricing				<input checked="" type="checkbox"/> Advisory committee	As required
	Variation to KPIs				<input checked="" type="checkbox"/> Advisory committee	As required
	Variation to committee terms and conditions				<input checked="" type="checkbox"/> Advisory committee	As required
	All other				<input checked="" type="checkbox"/> DECD Procurement unit	Contact OSHC unit if required
OSHC premises	Inform school Principal of service ratings, waivers, non-compliance notices etc. issued under NQF	<input checked="" type="checkbox"/>				Within 24 hours of receipt
	Ensure compliance of premises with NQF			<input checked="" type="checkbox"/>		

ATTACHMENT 2: OSHC RISK MANAGEMENT PLAN

Potential Risk	Impacts	Proactive strategies to prevent / reduce the risk (e.g. existing controls) (including whom is responsible)	Current level of risk ** (Likelihood x Consequence) (The level of risk taking into account 'proactive strategies' and how 'effective' they are)	Additional actions to reduce the level or risk (including whom is responsible and due date)
<p>Risk 1: The transition to and ongoing service provision with the Third Party Provider (TPP) may not be effectively managed.</p> <p>Causes: Sites unaware of contract management requirements.</p> <p>Risk Owner: The individual person who is accountable and responsible for the risk is the school principal: (Insert name)</p>	<ul style="list-style-type: none"> • Site unsure of new staff on site, status of history and approved qualifications (duty of care). • Lack of clarity regarding operating routine of new provider. • Parents not adequately informed of the new arrangements. • Provider not meeting their contractual obligations going unnoticed and/or not addressed 	<ol style="list-style-type: none"> 1. Reporting requirements template for both principals and providers. 2. Licence and Services Agreement signed by provider. 3. Records management systems (both IT and hard copy) including: <ol style="list-style-type: none"> a. Insert relevant systems used here 4. Fact sheet from OSHC unit which identifies the contractual responsibilities of each party. 	<p>Major Possible High</p>	<ol style="list-style-type: none"> 1. Conduct a pre commencement meeting with the provider on site at least 5 days prior to the commencement date. Responsibility: Insert name Due Date: xx/xx/xxxx 2. Ensure child care subsidy and service approval are progressed and obtained by provider prior to commencement date. Responsibility: Insert name Due Date: xx/xx/xxxx 3. Obtain a copy of the initial service program from the Provider. Responsibility: Insert name Due Date: xx/xx/xxxx 4. Ensure provider provides criminal history screening and RAN-EC training certificate for all staff. Responsibility: Insert name Due Date: xx/xx/xxxx 5. Obtain a copy of the annual insurance certificate of currency from the provider. Responsibility: Insert name Due Dates: xx/xx/xxxx

Potential Risk	Impacts	Proactive strategies to prevent / reduce the risk (e.g. existing controls) (including whom is responsible)	Current level of risk ** (Likelihood x Consequence) (The level of risk taking into account 'proactive strategies' and how 'effective' they are)	Additional actions to reduce the level or risk (including whom is responsible and due date)
<p>Risk 2: Provider not meeting their Key Performance Indicators.</p> <p>Causes: Sites unaware of contract management requirements.</p> <p>Risk Owner: The individual person who is accountable and responsible for the risk is the school principal: (Insert name)</p>	<ul style="list-style-type: none"> Site unaware of new staff on site – DECD employment requirements, e.g. criminal history screening clearances, RAN- EC, and qualifications. Provider not meeting their contractual obligations going unnoticed and/or not addressed for example variations, such as process for fee increase and DECD HR recruitment and termination process. 	<ol style="list-style-type: none"> Establish Advisory committee. See Schedule 2 for OSHC Advisory responsibilities. 	<p>Major Possible High</p>	<ol style="list-style-type: none"> Obtain a copy of the annual insurance certificate of currency from the Provider. Responsibility: Insert name Due Dates: xx/xx/xxxx Responsibility: Insert name Due Date: xx/xx/xxxx Obtain copy of annual survey. Refer to OSHC Advisory Terms of Reference Schedule 2 in the Licence and Service Agreement.

ATTACHMENT 3: OSHC SERVICE ASSET REGISTER

For recording of fixtures, fittings, furniture, equipment and any other asset purchased for the operation of the OSHC service.

ASSET	OWNERSHIP	SERIAL NUMBER	DATE PURCHASED	\$ COST	COMMENTS

Appendix 2: Sample Risk Register

School:

Supervising teachers/staff:

Program/Excursion:

Year level:

Dates:

Location(s):

Risk description	Existing Controls	Risk Assessment – with existing controls				Treatment	Residual Risk Assessment – after treatments			Actions
		Effectiveness of existing controls	Risk Consequences	Risk Likelihood	Risk Rating		Risk Consequences	Risk Likelihood	Risk Rating	
Describe the risk event, cause/s and consequence/s. For example, <i>Something occurs ... caused by ... leading to ...</i>	Describe any existing policy, procedure, practice or device that acts to minimise the risk					For those risks requiring treatment in addition to the existing controls. List: • What will be done? • Who is accountable? • When will it happen?				Options are: Extreme/High – Do not proceed Medium – Ongoing review required Low – Only periodic review required
		Satisfactory Poor Unknown	Severe Major Moderate Minor Insignificant	Almost certain Likely Possible Unlikely Rare	Extreme High Medium Low				Extreme High Medium Low	
		Satisfactory Poor Unknown	Severe Major Moderate Minor Insignificant	Almost certain Likely Possible Unlikely Rare	Extreme High Medium Low				Extreme High Medium Low	
		Satisfactory Poor Unknown	Severe Major Moderate Minor Insignificant	Almost certain Likely Possible Unlikely Rare	Extreme High Medium Low				Extreme High Medium Low	

Add more rows as required. This is one way of documenting the risk management process and does not preclude other approaches.