Administration and Tools

Checklist

Checklist

Contract Administration - Points to Consider

What you Need to Do	Points to Consider	Met?
Administration of the contract is important Contract administration is concerned with the mechanics of the relationship between the customer and provider. Its importance should not be underestimated. Clear administrative procedures ensure that all parties to the contract understand who does what, when and how.	The elements that need managing are likely to include: • Contract maintenance and change control • Notice periods, contract closure or termination • Charges and cost monitoring • Ordering procedures • Payment procedures • Budget procedures • Resource management and planning • Management reporting • Asset management	
Maintain the contract documentation. The contract will have to evolve to reflect changes in arrangements. Contract maintenance means keeping the documentation up to date and relevant to what is happening on the ground. Maintaining contract documentation is an important activity.	Establish procedures to keep contract documentation up-to-date (including how to store/archive documentation). Ensure all contract documents are consistent, and that all parties have the correct version.	

Changes must be controlled. Changes to services, procedures or contracts may have an effect on service delivery, performance, costs and on whether the contract represents value for money. The specification and administration of change control is an important area of contract administration.	Appropriate structures need to be in place with representatives from both customer and supplier management sides to review and authorise change requests. Be careful that changes do not fall outside the scope of the original PCS advertisement and conflict with procurement regulations – seek advice if you are unsure. It is particularly important that additional demands on the supplier should be carefully controlled. Formal authorisation procedures will be required to ensure only those new requirements (that can be justified in business terms) are added to the service.	
Make sure management understands what is happening. Management reporting procedures ensure that information about contract problems reach those with power to act as soon as possible.	Requirements for service performance reports and management information should be built into the contract and confirmed at the tender stage. Where possible, you should make use of your Organisation's own management information and performance measurement systems. For many business managers a summary of the service they have received along with a note of exceptions is normally sufficient. Information requirements may change over the life of a contract.	

Blank rows are provided for your use e.g. to add additional checklist items.

Contract Variations

Allowing and regulating contract variations should be a standard feature of all contracts. Although a supplier may request a contract variation, the ability to vary the contract must be approved, managed and controlled by the customer.

You should provide a method for contract variations to be agreed between the customer and the supplier. This should be in writing through a formal amendment of the contract. This practice is also known as a "change management process", "change control procedure" or something similar.

It is critical that no-one involved in managing and administering the contract agrees to informal contract amendments on their own. All potential contract variations/changes must be fully explored with the appropriate contract managers/stakeholders. Any agreed variations should be undertaken in line with the change management process.

The reasons for the variation should be clearly documented. Variations should not be used to mask poor performance or serious underlying problems. The variation impact on original timeframes, deliverables and value for money should be assessed. If the effects are significant, senior management and other stakeholders must be consulted.

Variations should be planned accordingly. Customers should be aware of the risk that multiple contract changes make to a contract over time i.e. this may shift the overall allocation of contract risk or transfer particular risks to your Organisation.

It is important to analyse all consequences of a proposed contract amendment. Make sure there are no detrimental effects to the contract or service levels.

Contract managers must ensure contract variations do not significantly change the contract's requirement and/or substantial parts of the original agreements made during the tender and mobilisation stages. This is referred to as a 'substantial modification' under **The Public Contracts (Scotland) Regulations 2015**. If this is the case, you must undertake another procurement exercise. This is because the revised arrangements are substantially different from those selected through the original procurement. If a new procurement if not undertaken your Organisation may be open to challenge from another supplier.

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Contract Variations Do's and Don'ts

Do	**Don't**
Assess value for money of the variation(s)	Change the original contract requirements i.e. there is no substantial modification.
Assess the effect of the variation on the original contract e.g. no detrimental effects on timeframes and deliverables.	Use variations to hide poor performance or serious underlying contract problems.
Consult senior management/stakeholders if variation(s) are significant. Follow your organisations governance procedures.	Agree to contract variations on your own.
Clearly document the reason(s) for the variation and the amendment in writing.	
Inform customer(s) of the contract change(s)	

Checklist

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Contract Variations Checklist

Key issues to consider in managing contract variations include:

Key Areas	**Achieved?**
Are procedures required by the contract being followed?	
Have the reasons for the proposed variation been assessed? Does this indicate an emerging or actual problem?	
Has the impact of the proposed variation on the contract's deliverables been assessed? Particularly whether the variation or the work it represents is actually required and is already part of the original contract deliverables?	
Has the effect of the proposed variation on the contract's price been determined?	
Has authority been given for making the variation?	
Has the variation and its impact been properly documented?	
Have you undertaken all reporting requirements?	

Blank rows are provided for your use e.g. to add additional checklist items.

For above threshold contracts, the starting position is that contract changes will require a new competition to be held. This is unless one of six exceptions can be applied.   These exceptions are:

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Exceptions from Holding a New Competition

1. Where the change is provided for in a clear, precise and unequivocal review clause. This clause must have been included in the initial procurement documents.
2. Where additional goods & services or supplies are now necessary and a change of supplier is not possible for economic or technical reasons. Where such a change would result in significant inconvenience or substantial duplication of costs. This is provided that any price increase does not exceed 50% of the initial contract value.
3. Where the need for change is brought about by circumstances which an Organisation could not reasonably have foreseen, does not alter the overall nature of the contract; and does not result in a price increase greater than 50% of the initial contract value or framework agreement.
4. Replacement of the original supplier by another under a review clause; universal or partial succession, perhaps due to takeover, merger, acquisition or insolvency; or where the Organisation steps in and assigns some or all of the goods, or services back to itself. The new supplier must meet the selection criteria of the original tender.
5. Where changes, irrespective of their value, are not substantial. This could include a change to the economic value of the contract in favour of the successful supplier(s).
6. For minor changes, these must not affect the nature of the contract, must be valued below the relevant threshold and be less than 10% of the initial contract value for goods and services.

When making successive modifications you must take care that the cumulative value of these does not breach any of the previous requirements. This does not apply in the case of point 3, where successive modifications would, by definition be unrelated and so the value limitation of successive modifications does not cumulate.

If planned modifications are determined not to meet the criteria, or have not been provided for in the original contract documentation, then a new procurement procedure must be undertaken. Legal advice should be sought. For more information on contract modification during the term of the contract, please see **Regulation 72**.

Change Management Process

There are a variety of issues that should be considered in any change management process to ensure that it is effective. Three key areas for consideration are:

- the need for change impact reports;
- any pricing principles that will apply to the change; and
- the supplier's obligation to undertake the change.

Where the consequences of getting things wrong are significant and it is recognised that a change is required, it makes sense to run a formal pilot. If the pilot fails to meet expectations, you can revisit and retest until you achieve the required results. This can be done before committing your resources to, and reputation on a wider scale contractual change.

For example "Plan, Do, Check, Act" (PDCA) is a recognised continuous improvement plan (CIP) model. It can be utilised to ensure your change will deliver the desired results. As its name indicates, there are 4 steps to the model of which steps 2 and 3 can be repeated until the desired result is achieved. The 4 steps can be summarised as:

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Plan, Do, Check, Act (PDCA)

1. **Plan:** Define the problem to be addressed. Collect the relevant data. Ascertain the problem's root cause
2. **Do:** Develop possible solutions. Select the most appropriate solution(s). Implement a small-scale pilot solution. Decide upon a measurement to gauge effectiveness of the pilot.

3. **Check:** Check the problems you have encountered during the pilot and identify the root causes. Measure how effective the solution has been by comparing pre-pilot and post-pilot data. Depending on the success of the pilot, you have the option of repeating the “Do” and “Check” phases. You can incorporate additional improvements until you get the desired result

4. **Act:** You can implement your solution. However, if you are using the PDCA as part of a continuous improvement initiative, you need to loop back to the Plan Phase (Step 1), and seek out further areas for improvement.

Supplier's obligation to undertake the change

Open or close

A detailed Change Management Process is of little value if the change required has been determined, and the supplier refuses to implement. Accordingly, the Change Management Process may mean the supplier cannot unreasonably refuse (either directly or indirectly) a change requested by the Organisation.

Unreasonable grounds for refusing a change might include:

- demanding unreasonable charges for the change;
- imposing unreasonable conditions for undertaking the change; or
- refusing to include the change under the agreement. This could be despite the subject matter being reasonably related to, or connected with, the services.

A carefully drafted Change Management Process can mean the difference between what the customer requested in terms of systems/services, and what they discover is actually needed during the term of the contract.

Change Impact Reports

Open or close

Before any change request can be properly considered, the customer and the supplier must understand the implications of the proposed change. To support this you may require the service provider to prepare an impact report. (The service provider will normally be in the best position to assess the likely impact of a change). Ideally, the impact report will present a full description of the change, including how the change is to be implemented and, where relevant, detail:

- the feasibility of the change;
- the likely effect of the change on the ability of the supplier to meet its obligations under the contract;
- any cost implications of the change;
- any consequential impact of the change;
- where appropriate, acceptance testing procedures and acceptance criteria for the proposed change; and
- any other information likely to be of relevance.

Pricing Principles

Open or close

You should specify how costs associated with any change will be allocated between your Organisation and the supplier(s). This should be done as part of the Change Management Process.

Ordinarily, the Organisation should be required to pay for a change when the change is not considered to be within scope of the existing contract.

Where a change falls outside the scope of the existing contract, the Change Management Process may detail the principles that will determine the price to be paid by the Organisation. For example, the Change Management Process may stipulate that the price for any change should be:

- reasonable;
- competitive; and
- not higher than the price a customer would pay for similar products or services from another supplier.

The Change Management Process may enable the Organisation to request the supplier to provide an auditor's certificate. This could confirm that the pricing of any change complies with the pricing principles.

Contract Termination

Open or close

It is possible for an Organisation to terminate a contract during its term. These circumstances are covered in the Exit Strategy Station.

Please note: you cannot terminate a contract with the aim of avoiding procurement rule obligations.