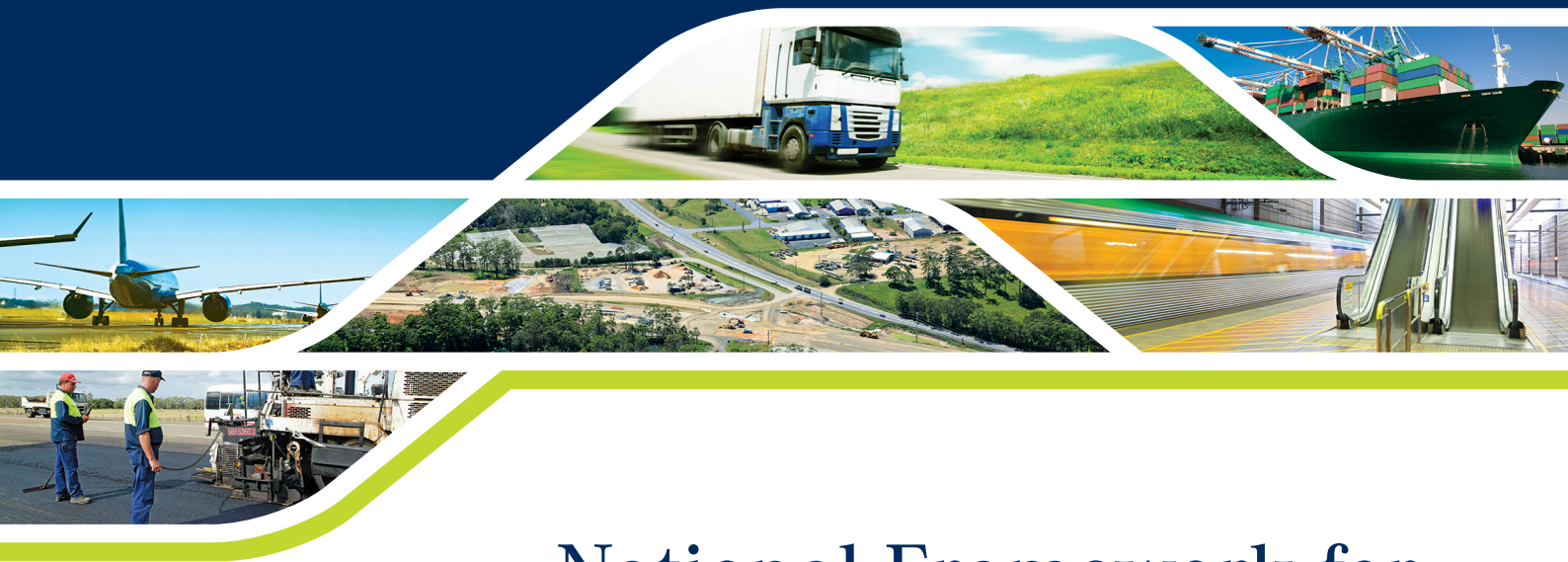




Australian Government

Department of Infrastructure and Regional Development



National Framework for Traditional Contracting

Topic Specific Guide 3
Governance and
Contract Management

September 2015



Australian Government

Department of Infrastructure and Regional Development

National Framework for Traditional Contracting

Topic Specific Guide 3
Governance and
Contract Management

September 2015

Document Updates

This guide will be updated from time to time to reflect evolving best practices and lessons learned.

Document change	Date
Exposure Draft distributed by the Department of Treasury and Finance (Victoria) for comment	29 April 2013
Final draft (interim format) published by the Department of Treasury and Finance (Victoria)	March 2014
Final published, including updates in response to the Productivity Commission Report No 71 of May 2014	September 2015

© Commonwealth of Australia 2015
ISBN 978-1-925216-82-0
September 2015/INFRA2618

Ownership of intellectual property rights in this publication

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

Disclaimer

The material contained in this publication is made available on the understanding that the Commonwealth is not providing professional advice, and that users exercise their own skill and care with respect to its use, and seek independent advice if necessary.

The Commonwealth makes no representations or warranties as to the contents or accuracy of the information contained in this publication. To the extent permitted by law, the Commonwealth disclaims liability to any person or organisation in respect of anything done, or omitted to be done, in reliance upon information contained in this publication.

Creative Commons licence

With the exception of (a) the Coat of Arms; (b) the Department of Infrastructure and Regional Development's photos and graphics, copyright in this publication is licensed under a Creative Commons Attribution 3.0 Australia Licence.

Creative Commons Attribution 3.0 Australia Licence is a standard form licence agreement that allows you to copy, communicate and adapt this publication provided that you attribute the work to the Commonwealth and abide by the other licence terms.

A summary of the licence terms is available from <http://creativecommons.org/licenses/by/3.0/au/deed.en>.

The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.

This publication should be attributed in the following way: © Commonwealth of Australia 2015, National Framework for Traditional Contracting – Topic Specific Guide 3, Governance and Contract Management

Use of the Coat of Arms

The Department of the Prime Minister and Cabinet sets the terms under which the Coat of Arms is used. Please refer to the Department's Commonwealth Coat of Arms and Government Branding web page <http://www.dpmc.gov.au/pmc/about-pmc/core-priorities/guidelines-and-procedures-other-agencies> and in particular, the *Commonwealth Coat of Arms Information and Guidelines* publication.

Contact us

This publication is available in PDF format. All other rights are reserved, including in relation to any Departmental logos or trade marks which may exist. For enquiries regarding the licence and any use of this publication, please contact:

Director - Publishing and Communications, Communications Branch
Department of Infrastructure and Regional Development
GPO Box 594, Canberra ACT 2601 Australia
Email: publishing@infrastructure.gov.au
Website: www.infrastructure.gov.au

Note

Governments in each jurisdiction will have their own individual approval processes for capital investment projects, as well as policies (e.g. probity) and legislation that will impact on all capital works delivery. These overarching jurisdictional requirements are precedent to the practices covered in this document.

Acknowledgement

This document has been prepared under the sponsorship of the Inter-jurisdictional Steering Committee for Alliancing & Traditional Contracting with membership from:

- Department of Treasury and Finance, Victoria (Chair)
- Treasury, New South Wales
- Treasury, Queensland
- Department of Treasury and Finance, Western Australia
- Department of Infrastructure and Regional Development, Commonwealth of Australia

The preparation of this document was led by the Victorian Department of Treasury and Finance with Evans & Peck Pty Ltd Level 2, 555 Coronation Drive Toowong, Queensland 4066.

Table of Contents

1	Introduction	6
1.1	Purpose of the Guide	6
1.2	Who should use the Guide	7
1.3	Structure of the document	7
1.4	How and when to use the document	8
1.5	Relationship with existing policies and guidelines	9
1.6	Updates to the document	9
2	Introduction to project governance and contract management	10
2.1	What is Governance and Contract Management?	10
2.2	Foundations for good contract management and governance	10
2.3	High impact activities in Construction Phase	13
3	Tender requirements for governance and contract management arrangements.....	14
3.1	Tender process	14
3.2	Tender documentation	14
4	Establishing an effective commercial relationship	16
4.1	Why an effective commercial relationship is important	16
4.2	Understanding and managing different commercial views	17
4.3	Early awareness of issues	17
4.4	Realistic reporting	17
4.5	Effective Contract Manager	18
5	Establishing a governance framework.....	19
5.1	Single point of accountability	20
5.2	Embracing hard decisions	21
5.3	Empowered decision making	21
5.4	Keeping it real	21
5.5	Focussing on the 'end-game'	22
5.6	Utilising experience	22
5.7	Adequate resourcing	22
5.8	Rapid resolution path	23
5.9	Conducting regular performance monitoring and assessments	23
6	Managing changes to the contract	24
6.1	Understanding the impact	24
6.2	Negotiations	25
6.3	Real Options	25
7	Managing risk and unplanned events.....	26
7.1	Risk management	27

List of Appendices

Appendix A Example Templates

Appendix B Dispute Avoidance Processes

1 Introduction

This Chapter outlines the purpose and structure of this Topic Specific Guide and describes the relationship of this document to other relevant government policy documents and guidelines.

1.1 Purpose of the Guide

Good governance and contract management practices are well defined in jurisdictional and agency specific guidance.

This document seeks to provide supplementary practical guidance on governance and contract management issues against the project's commercial environment. Its focus is on the Client/Supplier relationship, with a specific focus on the construction phase; it does not deal with client-side governance structures.

The Guide does not address issues related to the jurisdictional processes that apply to the execution of a traditional contract, there are other (overarching and general) government policies and guidelines that cover these matters.

The two areas for focus in this Framework are the reduction of the expectation gap between the Client and Supplier at contract award, and the introduction of the concept of the 'intelligent client' as a way to minimise that expectation gap and achieve excellent project outcomes¹.

Exemplar governance and contract management is critical to ensuring that a spirit of collaboration persists and that the natural tensions that exist between a Client and a Supplier do not 'open' the expectation gap once the Construction Phase begins. If this gap can not be kept to a minimum the result will be poor project outcomes and failure for both the Client and the Supplier.

An intelligent client² will minimise the gap in Construction Phase by:

- Ensuring that the Client and the Supplier share a deep understanding of the Client's service and project requirements, the successful Supplier's tender response and the agreed contract terms and conditions. The Client must understand any implicit or explicit caveats that the Supplier may have included in their bid which forms the Supplier's basis of their understanding of the contract obligations;
- Providing and expecting active leadership to and by the Client and Supplier teams;
- Assuming individual responsibility and accountability for the mutual success of the project for both the Client and the Supplier through identifying a single Senior Responsible Officer ('the buck stops here');
- Establishing a high-performance collaborative culture in traditional contracting by:

¹ Refer to the National Framework for Traditional Contracting of Infrastructure 'Guide' for discussion on this.

² An 'intelligent Client', a commonly used concept in the UK, understands the value of its unique market position as a blue-chip, large, repeat buyer to improve behaviours and performance outcomes; shapes thought leadership in how it procures infrastructure; conducts exemplary procurement processes; and captures and shares Supplier's past performance.

- Striving for a non-adversarial relationship between the Client and Supplier but not avoiding or deferring the unavoidable hard decisions where interests diverge;
- (Note: that there is a “balanced judgement” that needs to be applied where the Client on the one hand does not give away a “free kick” on the Supplier’s contractual obligations and tender offer; and on the other hand avoids being “bloody minded”);
- Employing a performance assessment framework (refer to Topic Specific Guide 4: Performance and Continuous Improvement);
 - Promoting peer-to-peer professional relationships that enable wherever possible appropriate decisions to be made/resolved at the ‘lower end’ of the organisational level;
 - Encouraging monthly face to face on-site meetings of the most senior forum for resolution of matters and pursuing opportunities;
 - Cultivating an atmosphere where the ‘objective’ of everyone is focussing on the ‘end-game’ – that is satisfying the service need through delivery of the asset at the lowest cost;
 - Avoiding over reliance on processes / rules at the expense of judgement and experience;
 - Ensuring sufficient and capable team members are available; and
 - Providing a resolution path that provides access as necessary to a senior executive one level above the Project Director and outside of the Contract management team.

This Topic Specific Guide provides guidance to help achieve good governance and contract management.

The principles and practices described in this Guide are written from the perspective of a standalone major infrastructure project (say \$50M or more) procured through traditional contracting models.

Nevertheless, many principles and practices also apply to infrastructure programs, and some will apply to other procurement models (ie non-traditional contracting and indeed to non-residential building projects).

Similarly, principles in the Guide will apply for less complex, lower value projects, however, the practices described may be sensibly scaled down to a level appropriate to the project.

1.2 Who should use the Guide

The Guide is intended to be used by public sector agencies who undertake the roles of Investor or Client in the provision of new infrastructure assets. It is intended to provide practical guidance with a specific focus on the construction phase of a project and complements the other Topic Specific Guides in the Framework.

It is also expected that this Guide will be of benefit to Suppliers who are involved in tendering for the Construction Phase of new assets and those firms that supply Contract Management services to Clients.

1.3 Structure of the document

The Guide addresses those aspects related to Governance and Contract Management that have the greatest impact on project outcomes. The document is structured as follows:

- **Chapter 2:** Introduction to Governance and Contract Management;
- **Chapter 3:** Tender requirements for Governance and Contract Management;
- **Chapter 4:** Establishing a Governance framework;
- **Chapter 5:** Managing changes;
- **Chapter 6:** Managing risk and unplanned events;
- **Appendix A:** Example Templates;
- **Appendix B:** Dispute Avoidance Processes.

Key points are highlighted by two types of text boxes:



Overview of chapter



Practice and commercial insights

1.4 How and when to use the document

This Guide has been written on the basis that Investors and Clients refer to other government policies and guidelines applying to procurement, planning, infrastructure delivery and government decision making.

The Guide addresses the post-contract award stage in a project which is principally focussed on construction and has been prepared on the basis that readers already have:

- a reasonable understanding of the project lifecycle which lead up to awarding the contract;
- experience and understanding of the post-contract award Construction Phase in traditional contracts;
- a good understanding of the terminology and general principles set out in the following chapters, familiarity with the relevant legislation and other jurisdictional policies and guidelines;
- an understanding of the practical challenges of prevailing market conditions that impact public sector infrastructure projects; and
- ability to call on specialist professional service providers (sourced internally or externally) to assist them deliver projects in accordance with this Guide.

In some circumstances it may be appropriate to depart from the principles set out in this Guide. Each Investor or Client always has the flexibility to determine and recommend processes which are efficient, 'fit for purpose' and best suited to achieving value for money for their specific project.

1.5 Relationship with existing policies and guidelines

This document forms part of the National Framework for Traditional Contracting of Infrastructure suite of documents. The National Framework is made up of the following documents:

- The Guide: Good Practice and Commercial Principles for Traditional Contracting.
- Topic Specific Guide 1: Project Definition and Tendering.
- Topic Specific Guide 2: Development of Project Budgets in Business Cases.
- Topic Specific Guide 3: Governance and Contract Management.
- Topic Specific Guide 4: Performance Assessment and Continuous Improvement.

The National Framework provides best practices (not policy) as a resource that individual Australian jurisdictions can use to inform their policy and guideline development for Traditional Contracting of infrastructure; or for project client agencies to reference as a benchmark for their practices where corresponding jurisdictional guidelines do not exist. Where there is a conflict in the material of this National Framework and jurisdictional policies and guidelines, the jurisdiction's position will take precedence.

1.6 Updates to the document

Updates to the Guide will be published from time to time on <http://www.infrastructure.gov.au/utilities/contact.aspx>.

2 Introduction to project governance and contract management

This Chapter introduces the subjects of project governance and contract management and the impact these have during the Construction Phase in achieving successful project outcomes.

2.1 What is Governance and Contract Management?

2.1.1 Governance

Project governance refers to the procedures and controls that are put in place to effectively manage and control a project. These procedures and controls provide a framework which ensures that the Client and Supplier have the processes, capacity and capability to correctly and effectively manage and implement the contract. Governance can be termed ‘the conduct of conduct’³.

Governance provides the environment within which the Client and Supplier can cooperate to deliver the project successfully. Governance is established and led from the top of each organisation.

2.1.2 Contract Management

The outcome of the Tender Phase is the agreement of a contract between the Client and the preferred Supplier to construct the asset. Infrastructure projects are by definition complex with a degree of associated uncertainty and unpredictability. Each contract will include different mechanisms for dealing with obligations in relation to challenging events or surprising discoveries and may be open to interpretation. Contract management for the Client, operating under the governance umbrella, is how it ensures that they meet their own obligations and manage the Supplier in providing their service.

Ensuring that each party meets their contract obligations and that the asset is constructed safely, on time and to the contracted performance metrics is significantly impacted by the Client’s contract management approach.

2.2 Foundations for good contract management and governance

It is generally thought that the most difficult task of delivering public infrastructure is the construction of it, however the foundation for successful construction - at the lowest cost for the required outcome - is established when appointing the Supplier. A Client is best positioned to select the right Supplier only when the early planning such as the Business Case and Project Definition have been conducted and documented to the appropriate level of quality and detail. It

³ Foucault, Michel (1982a) ‘The Subject and the Power’, in: Hubert Dreyfus and Paul Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics, Brighton: Harvester, pp. 208-26.

is this early planning that equally provides a foundation for good contract management and governance.

It is commonly observed that even with the best intentions, the greatest attention and the application of the highest skill and longest experience, contracts will from time to time fall short of adequately addressing all the eventualities and issues that arise in the delivery of infrastructure projects.

An effective governance and contract management framework will serve the interests of both the Client and the Supplier in dealing with these situations.

The foundations of good contract management and governance are:

(i) Business Case

The Business Case, which outlines the service need and proposed solution, should provide a clear Project Definition and rigorously developed Project Budget⁴⁴, given that it directly impacts the quality of the tender documentation, tender process and the subsequent negotiations leading to Contract award. If the Business Case is poorly developed the Client will have to undertake significant work to develop appropriate tender documentation. If this is not done, and poor quality tender documentation is issued to market, there is a high probability that:

- the Contract may not be awarded to the most suitable Supplier; and
- the common understanding between the Client and Supplier is low and the expectation gap is great at contract award.

This leads to a high probability of disputes and expensive variances as the project progresses.

(ii) Tender Process

It is in the Tender Phase that the Client establishes its expectations with the Suppliers. Good contract performance (with low impact contract management) is dependent on little or no expectation gap between the Client and the Supplier in their understanding of what the project objectives are and what each of them will do to deliver the project. The Client and the Supplier must share a deep understanding of the expected service requirements, the successful tender and the agreed contract terms and conditions. The Client must understand any implicit or explicit caveats that the Supplier may have included in their bid which forms the basis of their understanding of the contract obligations.

The tender process should be designed to allow communication and interaction between the Client and Tenderers to maximise the shared understanding between them of what is required and eliminate any areas of uncertainty. In traditional contracting this can take the form of an effective collaborative process as discussed in *'Towards Agreed Expectations – Tender strategies to improve D&C infrastructure outcomes'* (www.dtf.vic.gov.au/project-alliancing).

⁴⁴ Refer to Topic Specific Guides 2 and 3.

Spelling out good governance and contract management in the Tender

The tender requirements should set the Client's expectations for the structure and quality of governance (in a draft "governance framework") and contract management arrangements (in a draft "contract management framework"). In particular, the Clients' expectations should be highlighted in relation to:

- the communication and collaborative protocols between the Client and Supplier;
- the role of the Supplier's primary project manager and their continuity from Tender Phase to Construction Phase;
- the protocols for controlling changes (including variations) to the contractual deliverables, obligations and price; and
- the framework for performance monitoring and assessment.

The Supplier's tender response provides the opportunity to commit to and effectively embrace the Client's vision during the project delivery phase.

(iii) Planning the procurement to construction transition

The Client should consider and plan the transition from procurement to construction as part of the tender phase. This should include:

- having a sufficient understanding of the Supplier's approach to delivering the services and specific aspects of their bid;
- during the preparation of tender documentation and the tender process, having Client staff with a dedicated focus on how governance and contract management will be conducted;
- establishing a governance framework and contract management processes (in accordance with jurisdictional requirements) which are project specific and aligned to the contract needs; and
- communicating with Tenderers prior to contract award on transition and continuity of resources expectations.

(iv) Good performance is 'business as usual'

Government is a strategic, high value repeat Client and should expect, as normal or business-as-usual practice, that Suppliers will engage in governance and contract management activities with a positive attitude. It should be approached with an attitude that goes beyond the single project or program, but considers the possibility of future projects and relationships. If this attitude can be established in the repeat relationship between a Client and Supplier then the probability of establishing a very effective governance and contract management arrangement will be high. This doesn't mean that the relationship between the Client and Supplier is 'cozy' with the contract not being enforced; rather it establishes an outcomes approach to issue and change resolution with mutual success being the primary driver for both parties. The use of a performance assessment framework to support this objective is discussed in Topic Specific Guide 4: Performance and Continuous Improvement.

(v) Capability

Public officials cannot outsource their public accountability. They must have the capacity and capability to manage contracts and deliver projects successfully. They may engage

specialist advisers to support them in undertaking this duty, however, the accountability remains with the public official.

2.3 High impact activities in Construction Phase

There are four activities which have the greatest impact on the successful administration of the contract during construction:

- Establishing an effective commercial relationship [Chapter 4];
- Establishing a governance framework [Chapter 5];
- Managing changes to the Contract [Chapter 6];
- Managing risk [Chapter 7].

For these activities to be implemented effectively, it is advisable to include the required governance and contract management arrangements in the tender requirements [Chapter 3].

The establishment and implementation of exemplary governance and contract management models and practices is a common objective among capable Clients and Suppliers that have long term, repeat and strategic relationships. It does not rely on financial incentives or reward. Indeed, the offer and acceptance of incentives and reward for good governance and contract management can be a marker of relationship problems.

3 Tender requirements for governance and contract management arrangements

The purpose of this Chapter is to outline the structure and quality of the governance and contract management arrangements that should be specified in the tender process.

Governance and contract management must be addressed in the Tender Phase requirements to provide a solid foundation for the Construction Phase – setting expectations from the earliest stage. It is good practice to allow interaction between the Client and Tenderers to refine the proposed governance and contract management arrangements in the tender documentation and ultimately in the agreed contractual terms and conditions.

3.1 Tender process

There are a number of practices in the Tender Phase that will establish a good foundation for project success in the Construction Phase:

- Where possible, the involvement of the primary contract manager should be established from the beginning of the Tender Phase and involved in the tender process so that he/she takes that knowledge and shared understanding through to the Construction Phase.
- The Procurement Team (particularly the legal and commercial advisers) should assist in establishing contract management procedures and document these in the tender requirements. Those contract management procedures must be forward looking and implemented on a proactive basis throughout the life of the project.

3.2 Tender documentation

The Client should provide a clear statement of project governance and contract management requirements in the tender documentation as a foundation for project success in the Construction Phase.

The tender documentation should include a draft governance framework and contract management arrangements including:

- Governance structure;
- Client structure;
- Proposed Supplier 'interface'; and
- Committee structure(s) and membership.
- Key governance accountabilities:
 - Responsibilities;
 - Delegations;
 - Communications; and
 - Reporting and monitoring lines;
- Project documentation requirements for contract management:
 - Status reporting;
 - Record keeping requirements;
- Change control procedures;
- Risk, issue and conflict resolution;
- Project assurance and probity;
- Stakeholder management;
- Framework for performance monitoring and assessment (Refer to Topic Specific Guide 4, *Performance and Continuous Improvement*).

These requirements should be tailored for each project based on characteristics such as complexity and scale. Tenderers may propose alternative arrangements during the tender process which forms the basis for negotiating and agreeing the arrangements that will be in place for the duration of the project.

Each jurisdiction has specific requirements detailed in their policies and guides. Relevant generic templates are provided at Appendix A.

4 Establishing an effective commercial relationship

This Chapter describes the importance of establishing an effective commercial relationship between the Client and the Supplier and identifies the key tasks and actions that should be undertaken to achieve this.

A commercial relationship is the ‘apt’ description of the relationship between the Client and Supplier who are engaged in a commercial transaction. The contract provides the description of what the Client and Supplier have committed to do within this relationship. This relationship is effective when both the Client and Supplier can cooperate to achieve mutual success and deliver a successful project according to the intent of the contract.

The degree of effectiveness of the relationship between the Client and Supplier is partly driven by the governance and contract management arrangements, but equally important is the team culture and mind-set that the leadership (Client and Supplier) establishes, and understanding how this relationship effects not only the current project, but future opportunities to work together. An effective commercial relationship is not about “being nice” but focussing on problem solving whilst being mindful and respectful of the contractual agreements.

In addition to considering the Tenderer’s offer, the Client will consider the Tenderer’s past performance in the selection process (refer to Topic Specific Guide 4: Performance and Continuous Improvement). Both the Client and the Supplier will consider past experience with each other when they negotiate the terms of the contract.

Government is an attractive repeat Client and can expect that the Supplier will take a positive approach to Governance and Contract Management as a norm because its performance will, or should, impact its success in winning work in future projects.

4.1 Why an effective commercial relationship is important

Sometimes contracts are approached from the precept that ‘reasonable people will make reasonable decisions’ and that the contract should stay in the ‘bottom drawer’. Invariably this method of contract management creates significant stress if things do not always go according to plan (and they invariably don’t) and may result in the Client waiving contractual rights and remedies or there being prolonged disagreements. This can create enormous problems in a long-term contract for a complex infrastructure project. However, a Client can establish an effective commercial relationship in which the contract forms a constructive basis for timely and appropriate decision making without being ‘bloody-minded’ about it.

A contract will never be perfect as complex infrastructure projects will always present unanticipated events and outcomes that must be addressed to achieve project success. In addition, the Client and Supplier will have differing interpretations of the Contract and how those events should be treated based on their perspective.

An effective relationship between the Supplier and Client, established in the Tender Phase and built on as the project progresses, is the foundation to effective project outcomes as the shared understanding of intentions and commitments is clear to all, providing the platform for early identification of misunderstandings or areas for clarification. When there is a need for a variation and/or contract change, sound communication and effective relationships allows this to happen smoothly.

4.2 Understanding and managing different commercial views

A key aspect of an effective commercial relationship is establishing an environment where the objectives (particularly commercial) of the other contract party are considered and where the Client listens to the Supplier to understand their position and the merits of the difference in position. Taking time to understand the drivers behind a Suppliers' position or requests can often resolve issues resulting from differing interpretations of the contract. However, it is critical that in engaging in this dialogue the Client does not become a 'soft touch', rather it collects information so that it can make an informed and balanced judgement.

The focus should always be first on problem solving and issue resolution. Leading with 'who is to blame' is likely to deepen the problem and make its eventual resolution more difficult and costly.

4.3 Early awareness of issues

Frequent and open communication with Suppliers facilitates early warning of issues, both positive and negative, which may have an impact on the project. Gaining a wide understanding of the project and related influencing factors allows the Client to develop and implement improved mitigation strategies for managing project risks.

Achieving open, honest and transparent communication is not easily achieved, especially when people have an attitude that defaults to a 'blame' game. However, in the context of government Clients being strategic, high value repeat clients, it is expected that Suppliers will want to establish a positive and effective relationship with the Client.

Using performance assessment as an evaluation criteria for future contracts can assist in establishing this type of relationship (refer to Topic Specific Guide 4: Performance and continuous improvement).

4.4 Realistic reporting

Effective communication is dependent on both the Client and Supplier having a clear and shared understanding of project progress and any emerging or current issues.

To be effective, reporting must recount the actual situation and not 'what the Client/Investor wants to hear'. It must be frequent enough to provide updates and status to inform critical decision making but not be so often or so detailed that it requires significant time and effort and becomes too much information to easily process. The information must be verified through regular meetings and site supervision.

Issues to be reported on can include:

- Progress against contract program;
- Spend to date;
- Value of changes/amendments;
- Value of proposed changes/amendments;
- “Top 5” risks;
- Health and safety;
- Early warning of issues which may affect the next reporting period.

An example report template is provided at Appendix A.

4.5 Effective Contract Manager

The Contract Manager is a key role established by the Client, accountable for the overall management of the contract. This individual will have a significant influence on the nature of the relationship between the Client and the Supplier. Ideally the Contract Manager, if this role is not undertaken by the Project Director, should commence in the Tender Phase with involvement in the negotiations leading to contract award. The Contract Manager should have a high degree of understanding of the Supplier’s commercial offer and the contract terms and conditions.

The Contract Manager should be supported by specialist skills such as cost estimators and legal specialists as appropriate.

In Construct Only (CO) contracts a Design Manager on the Client team can assist the Contract Manager in recognising proposed design change impacts on the Supplier’s time and price. It would also ensure the Contract Manager can see the impact of proposed changes and confirm that it sees value in the change prior to requesting it of the Supplier.

5 Establishing a governance framework

This Chapter identifies the key tasks and actions that should be undertaken to develop and implement a successful project governance framework.

The governance framework provides the environment for the commercial relationship to be effective and to achieve project success. Clients will establish the governance framework, and document it as a requirement in the tender process, according to their specific jurisdictional requirements. However, outside of these specific requirements, there are a number of good practices that can be applied to any governance framework that will position the contract management team for success.

These practices include:

- **Clearly documented governance framework:** that describes elements such as roles, responsibilities, delegations and authority.
- **Single point of accountability:** establishing a single point of accountability on both the Client and Supplier teams ('the buck stops here').
- **Embracing hard decisions:** Striving for a non-adversarial relationship between the Client and Supplier but not avoiding or deferring the unavoidable hard decisions where interests diverge.
- **Empowered and timely decision making:** Promoting peer-to-peer personal relationships where decisions are made/resolved at the lowest possible organisational level in a timely manner.
- **Keeping it real:** Encouraging monthly face to face on-site meetings of the most senior forum for resolution of matters.
- **Focussing on the 'end-game':** Cultivating an atmosphere of 'objective' of everyone focussing on the 'end-game' – that is satisfying the service need through delivery of the asset⁵.
- **Utilising experience:** Avoiding over reliance on processes / rules at the expense of judgement and experience.
- **Adequate resourcing:** Ensuring sufficient and capable team members are available.
- **Rapid resolution path:** Providing a resolution path that gives access as necessary to a senior executive one level above the Project Director and outside of the Contract management team.
- **Conducting regular performance monitoring and assessments:** Capturing and using project performance, and in particular Supplier performance, assessments as a tender criterion for awarding future contracts, will help improve future project outcomes (Refer to Topic Specific Guide 4, *Performance and Continuous Improvement*).

The proposed governance framework should be clearly described in the tender documentation and the tenderers' should include any proposed changes in their tender documents. This provides

⁵ To ensure success in a project investment, it is critical to have a clear linkage from the Government's approved service need to the project definition, project budget, tender documentation, contract awarded and to project completion.

a mechanism for the Client to communicate its requirements, and for both the Client and Supplier to negotiate any changes to the arrangements prior to the contract commencing.

Preparing the way in the Legal Contract

In preparing the legal contract between the parties, that incorporates the governance framework, the Client should be mindful of the following:

- Any contract that cannot be understood without legal advice has already failed;
- Contracts are tools, not weapons;
- It is too late to start thinking about dispute avoidance and resolution when a dispute arises;
- ‘Partnering’ or similar words and sentiments have no legal effect and are very likely to confuse the commercial relationship. It is preferable to be explicit about how you will work together;
- Simple is good, and any contract that cannot be understood by an experienced practitioner without legal advice has already failed.

5.1 Single point of accountability

In any governance framework it is essential that there is a single point of accountability for the Project. In a complex project, there will be times where difficult decisions are required and these are most effectively dealt with through one appropriately skilled individual being held accountable for the project and those decisions. A single point of accountability provides clarity as to who is responsible and allows timely and consistent treatment of issues as they arise.

Typically this role is held by a Client ‘Project Director’ who is provided the authority to make all necessary decisions to ensure the timely progress of the project. The seniority of this individual should match the delegations that they will require to undertake this role and will be specific to the jurisdiction and the project. The ‘Project Director’ role usually becomes the ‘Contract Manager’ role through the Construction phase.

The contract should also require that the Supplier provides a single point of accountability on their side with whom the Project Director (and later the Contract Manager) liaises. This individual is responsible for the Supplier’s performance and should be appropriately senior with delegation to make timely decisions and commitments on behalf of the Supplier.

If these roles are not suitably senior, the project has a higher probability of not succeeding as too many decisions will be escalated outside the Contract management team causing timeliness and understanding issues.

These Project Director/Contract Manager roles should provide the continuity of understanding and relationship through the duration of the project. Of course there are always unforeseen circumstances that require individual changes to roles, however both the Client and Supplier should commit to ensuring continuity in these roles wherever possible.

The interaction of these key roles is critical to a sound relationship being established between the Supplier and the Client, and the interaction should be sufficient to enable this relationship building, and ensure timely decision making by all parties.

5.2 Embracing hard decisions

The Client and Supplier should strive for a non-adversarial relationship. However in doing this, they should not avoid or defer the unavoidable hard decisions where interests diverge. The combination of an effective commercial relationship and a simple and clear governance framework should provide an environment where issues are identified early, it is clear who should be involved in resolving those issues and where necessary how the issue should be escalated. The framework should not allow these decisions to be deferred or ignored.

Change control procedures should be established and agreed as these can be the source of much relation stress. Such procedures and processes (e.g. Who can request, assess, prioritise and authorise a change? How is implementation of the change controlled and tested?). Mechanisms such as 'dispute avoidance boards' are useful in ensuring that there is a productive way to deal with these issues (see Appendix B for more information on Dispute Avoidance Boards).

5.3 Empowered decision making

Good governance will allow decisions to be made/resolved at the most appropriate organisational level to ensure timely decision making and best use of appropriate experience and resources at all levels of the organisation. In particular, the governance framework should enable decisions to be taken at lower levels of the organisation (where it is appropriate) rather than only by senior executives. This is most effective if the Client and Supplier establish peer to peer relationships at appropriate management levels of the Client's team and the Supplier's team involved in contract management – taking the principles of an effective commercial relationship and cascading down to all levels of the organisation. Individuals should have appropriate delegations for their role.

5.4 Keeping it real

The governance framework will involve regular face to face meetings in the most senior 'forum' – generally made up of senior executives from Client, Supplier and key stakeholder organisations who play a part-time role in the Project. Generally this is a monthly meeting. This meeting will be most effective if it takes place on-site as it provides a very different environment and degree of focus compared to conducting a meeting in the 'head-office'. It also demonstrates to the Contract management team the importance of the project and the effective relationship established amongst the parties at the most senior levels.

5.5 Focussing on the ‘end-game’

The leadership of both Client and Supplier (and any influential stakeholder organisations) should cultivate a culture of focussing on the ‘end-game’. It is easy to focus exclusively on the asset to be built, however the governance framework should ensure that the service need described in the approved Business Case is front of mind when decisions are made. This gives a high probability that the project will be successful in meeting both Client and Investor expectations, and reduce any ‘gold-plating’ (intentional or not) that may occur.

This can be achieved by ensuring that the Service Need and Project Definition⁶ form part of the Governance Framework suite of documents, are understood at all levels of the Contract management team, and referred to appropriately.

5.6 Utilising experience

Whilst it is important to have a clear governance framework that enables timely and appropriate decision making, the ‘rules’ established through the framework should not be slavishly followed at the expense of judgement and experience. The framework should allow experienced team members to apply their valuable experience to ensure decisions are made appropriately and issues are resolved through the application of appropriate experience and expertise.

The Problem with an Excess of Process

Excessive process generally allows authority to be passed down to people who may have the ability to ensure compliance but may lack the ability to ensure that the outcome matches the required intent.

Leadership requires flexible creativity. Management requires compliance.

Quote (in jest) by UK major contractor in support of the above sentiment

“You (the Client) wanted a tender price and a tender program and you got one – Unfortunately you did not say it had to be buildable!”

5.7 Adequate resourcing

Any project is dependent on sufficient and capable team resources being available at appropriate times through the project life. The governance framework should ensure that both the Client’s and Supplier’s managers have access to the right resources at the right time, either through authority to draw on resources from within the organisations or authority to engage external specialists as required. This is particularly important when the asset is integrated with an existing network and the Contract management team requires significant input from ‘in-house’ experts to ensure the asset will integrate effectively. It is the leader’s role to ensure that the right resources are available to his/her team at the right time. It is the role of the Client’s and Supplier’s management to ensure that sufficient notice is provided regarding resources required. The governance framework should enable both of these activities.

⁶ Refer to Topic Specific Guide 1.

5.8 Rapid resolution path

In any complex infrastructure project there will be issues that cannot be resolved by the Contract Manager within the Contract management team. The governance framework should establish a rapid resolution path to ensure that these issues are resolved in a timely manner. This can include the inclusion of a Dispute Avoidance Board or similar mechanism. For some projects it may be appropriate to include a mechanism that provides access to a senior executive a level above the Contract Manager and outside of the Contract management team.

5.9 Conducting regular performance monitoring and assessments

The capture and use of project performance, and in particular Supplier performance is often lost when a project finishes. Retaining this knowledge, and using it as a tender criterion for awarding future contracts, will help improve project outcomes. Guidelines for considering the performance of the Supplier, in the context of the Client performance on that same project, is provided in Topic Specific Guide 4, *Performance and Continuous Improvement*.

6 Managing changes to the contract

This Chapter addresses the often inevitable fact that there will be changes to the position agreed at contract award as a result of site development work and changing Investor or Client requirements. Achieving successful project outcomes will be impacted by how well changes are managed.

In any complex infrastructure project there will be some changes to the contract required after contract award arising from any of the following:

- Change in expected site conditions;
- Change in availability of specified materials;
- Value engineering;
- Change in requirements from the Client/Investor; or
- External systemic events (not project risks) that impact on the project.

The governance framework will provide a process for properly approving and controlling these changes as they occur. If these changes aren't adequately controlled, there is a high probability of disputes occurring between the Client and the Supplier.

The governance framework should provide early warning of potential issues that could result in the need to make a change as the project progresses, allowing the change to be properly considered and managed from the start.

The change process should be carefully adhered to. In particular the Client should avoid deviating from the change protocol procedure at site meetings or in discussions as this may be construed by the Supplier as an instruction to change.

Changes have to be managed in the wider context of maintaining good commercial relationships. Clients making multiple changes at different times that aren't well thought through are wasteful of the Supplier's resources and are viewed poorly by the Suppliers. Similarly, Suppliers who try to 'value engineer' a large number of design features that reduce quality/performance but save themselves costs are not well regarded by clients (who interpret such changes as a reduction in quality for the same price).

While the Client and Supplier enter the contract with differing corporate objectives, establishing commercial alignment through the contract will ensure that these differing objectives will be satisfied through achieving a common outcome (i.e. delivering the contracted requirements at the lowest cost to the Client). This behaviour is enhanced when the Client and Supplier have a repeat, strategic relationship which extends (or has the potential to extend) beyond a single project.

6.1 Understanding the impact

The change process should assist the Client and Supplier in fully considering the impact of the proposed changes before making the decision to proceed. There should be a procedure in place to record identification, reason, impact (including whole of life), commercial consideration, risks etc. of the proposed change.

The project is approved by the Investor on the basis of a specific risk profile. Making changes during the project can change the risk profile and cost and result in a situation where the Investor would not have approved the project had it been presented pre-contract award (the “switch point”).

6.2 Negotiations

As part of the change process, both parties will negotiate how the proposed change is to be interpreted through the contract, and if any changes to the contract are required. This requirement for negotiation is inevitable. It may be for small items or for significant contract items and sums. This process should be set out in the tender documentation.

Such changes do not always result in a need to change the contract price or the risk allocation, although in some cases there can be an impact. The Client will have a position with the Investor on the point at which a change in contract price (and risk position) is deemed material and for which approval by the Investor is required. Contract price changes can have an impact on the original value proposition of undertaking that project.

If an effective commercial relationship is established, and the Client and Supplier understand the strategic nature of the government as a Client, the negotiation process should be a constructive and positive process that keeps front of mind the service need to be satisfied by the construction of the asset.

6.3 Real Options

As stated in section 3.6 of *Topic Specific Guide No 1, Project Definition and Tendering*, government normally enters into contracts for ‘full’ project delivery. However, in the use of ‘real options’ the investor retains flexibility to respond to systemic impacts outside the Client’s/Supplier’s control. Real options are exercised by government (as the Investor) as they will generally deliver a different outcome to that anticipated in the business case, but which in the circumstances provide for a greater value-for-money outcome.⁷

The use of real options, with well-defined trigger points, is planned in the business case and, if approved, the trigger points and the real options are documented in the project contract. If a trigger point(s) is reached, the government may wish to exercise the real option. The exercise of a real options should be seen as responsible and informed resource management, responding to external (systemic) factors and not necessarily to the performance or non-performance of the project delivery stage.

Where a contract does incorporate real options, contract management procedures should address the potential implementation of such options in the most cost effective manner.

⁷ Whilst the principles underlining the development of real options would apply for less complex, lower value projects (say, under \$50M), the application of real options as described may be sensibly scaled down to a level appropriate for such projects.

7 Managing risk and unplanned events

This Chapter outlines the aspects of risk management which have the greatest impact on governance and contract management.

As described in Topic Specific Guides 1 and 2, the Client and Supplier will have agreed to an allocation of project risks in the contract (and to a price for the Supplier managing those risks). Sometimes there will be unplanned events after contract award that were not addressed through the risk identification and allocation process. The governance framework should provide a process for tracking the realisation of a contracted risk, as well as the management of an unplanned event. This will include considering how these events affect the overall risk profile and the allocation and the pricing of that allocation.

The Client's preferred process for determining how the occurrence of an unplanned event is dealt with should be set out in the tender documentation.

The governance framework should also consider that not everything that can go wrong on a project is a project risk (see section 6.5). Project risks may eventuate, however, they are managed within the contractual agreement (and price) and the project budget envelope of the approved Business Case. However, 'ex-project events' are outside the control, management and planning of the contract management team. These are external systemic events that impact on the project, and are more commonly dealt with through 'real options' which require decisions by the Investor.

Risks arising from issues not resolved at contract execution

From time to time, there may be issues or risks that may have been identified during the tender process but were intentionally or unintentionally left unresolved. The fact that these issues are unresolved creates a risk that they may, in the construction phase, compromise the ability of the parties to achieve the project objectives. Clients need to avoid these situations, however if they do arise, the Client must appropriately manage these unresolved issues consistently with the contracted risk framework for the project generally in order to minimise their impact upon the project objectives.

7.1 Risk management

The risk management process is introduced in Topic Specific Guides 1 and 2. The governance framework will ensure that:

- the Project risks identified in the contract (ie the risks retained by the Client; and the risk transferred to the Supplier) should be front of mind;
- the risk register is a practical means of keeping project risks front of mind, enabling appropriate decision makers to consider the top risks regularly and doesn't include 'inherent risks' for constant review;
- the risk register includes the biggest project risks regardless of who bears responsibility for them;
- risks are identified early and mitigated with a 'no surprises' policy and culture;
- project leadership conduct a regular review of the overall project risk profile in light of variations/changes;
- all risks are viewed in the commercial context; and
- the contract management team considers the wider impact of the risk to the project and knock on effects rather than just direct impact and consequence.

Change Register

A Change Register should be used to track proposed and approved changes to the contract to understand the commercial impact (see Appendix A for an example template).

Appendix A

Example Templates

(Whilst the principles and intent underlining these templates would apply for less complex, lower value projects (say, under \$50M), the detail of the templates may be sensibly scaled down to a level appropriate for such projects.)

1 Governance Framework Template

This is an illustration of a governance framework between the Client and the Supplier.

1.1 Purpose of governance framework

[Client] will manage Project [Project Title] in accordance with this framework. This document describes how the governance arrangements agreed in the Contract will be enacted. In the event of any conflict, the Contract shall take precedence over this document.

1.2 Roles, responsibilities and reporting lines

The roles and responsibilities of all bodies or individuals undertaking a role in the Client/Supplier management and control of the project are described, including their responsibilities and accountabilities and reporting lines. This can also include the measures that each role is assessed against. The roles can include:

- Project Board
- Advisory Groups
- Working Groups
- Senior Responsible Officer (SRO)
- Project Director/Contract Manager
- Supplier Contract Manager
- Contract Management Team
- Specialist support functions etc.

1.3 Delegated authority

The governance framework will provide a delegation matrix showing the key legal and financial delegations that sit with each role.

1.4 Communication and collaborative protocols (Client and Supplier)

The communication and collaboration mechanisms and protocols between the Client and Supplier are described. This can include:

- Key liaison roles;
- Meeting objectives, agendas, ownership, secretariat, attendance and schedules;
- Record and documentation requirements.

1.5 Stakeholder consultation and communications

The protocols to be applied to stakeholder consultation and communications including:

- Key liaison roles;
- Meeting objectives, agendas, ownership, secretariat, attendance and schedules;

- Record and documentation requirements;
- Issue identification and management;
- External communications protocols.

1.6 Training

Training to be conducted or undertaken by team members to ensure appropriate understanding to implement the governance and contract management requirements:

- Training objectives;
- Training formats;
- Accountabilities;
- Record keeping and documentation;
- Assessment.

1.7 Succession

The plans to ensure that if key project team members either leave or are unable to undertake their role, that appropriate personnel will be available to take their place. This can include:

- Key roles requiring succession plans;
- Succession Plan for each role (updated on agreed frequency);
- Knowledge capture and transfer protocol;
- Succession protocol (e.g. selection and appointment process).

1.8 Contract compliance protocols

The protocols that govern the management and control of the compliance of the Client and Supplier to the contract. This gives empowers the Contract Management Framework.

1.9 Change control and management framework

The processes and procedures to manage and control any changes to the contract and associated frameworks and plans. This gives power to the Contract Management Framework in the context of change control and management.

1.10 Contract probity

The processes and procedures required to provide probity assurance.

1.11 Framework for performance assessment and continuous improvement

The processes and procedures that provide for the conduct and capture of performance assessment between the Client and the Supplier and the resulting plans to resolve emerging issues and improve performance. See Topic Specific Guide 4 for further detail.

2 Contract Management Template

This is an illustration of how the Client with the Supplier will manage the contract to deliver the Project.

2.1 Planning, information collection and analysis

The process and responsibilities for undertaking contract management planning, collecting information related to the contract and analysing the information collected.

2.2 Contract administration

The key activities, processes and responsibilities for administering the Contract.

2.3 Project monitoring, review and reporting

The key activities, processes and responsibilities for project control activities including monitoring and reporting. This may include information system and data requirements.

2.4 Relationship management, dispute resolution and issue management

The approach to relationship management between the parties to the contract, typically the Client and Supplier. This may include major sub-contractors. This will include:

- Schedule of regular, structured meetings for relevant discussions on project progress and any issues arising;
- Escalation process for disputes (issues that cannot be resolved in the normal day to day project meetings or internal resolution process);
- Documentation.

2.5 Governance, probity and compliance

Provides a specific link back to the Governance Framework.

2.6 Knowledge and information management

The approach, processes and responsibilities for knowledge and information management including systems, controls, dissemination, and updates.

2.7 Change control and management

The approach to identifying, recording, and communicating changes to the contract.

2.8 Contingency planning

The approach to risk identification and management including the identification of management contingencies to address the risks. Outlines the processes and responsibilities involved in these activities including establishment and management of a risk register.

2.9 Supplier and Client performance assessments and reports

As outlined in Topic Specific Guide 4, approach to undertaking regular structured meetings to assess Supplier and Client performance, record the outcomes of discussions and relationship with dispute resolution and continuous improvement processes.

3 Various topic specific templates

This is an illustration various templates that assist with specific aspects of the contract management phrase of the project.

3.1 Decision and issue escalation procedure

Initial consideration of decision or issue⁸

Relevant personnel	Supplier's site personnel Client's contract management personnel
Triggers for escalation to Escalation Level 1⁹	Either party may escalate issues that may significantly impact on delivery as required by the contract at any time. Other issues and decisions may be escalated: <ul style="list-style-type: none">▪ by agreement of both parties at any time; or▪ by either party if the issue is not resolved or the decision made within [X] days.

Escalation Level 1

Relevant personnel	Supplier's Project Manager Client's Contract Manager (or Project Director)
Triggers for escalation to Escalation Level 2¹⁰	Issues and decisions may be escalated to Escalation Level 2: <ul style="list-style-type: none">▪ by agreement of the Project Manager and Contract Manager at any time; or▪ by either of the Project Manager or Contract Manager if the issue is not resolved or the decision is not made within [Y] days.

Escalation Level 2

Relevant personnel	Project Coordination Group
---------------------------	----------------------------

⁸ This escalation procedure is intended for the resolution of operational decisions and issues requiring some form of agreement or cooperation between the parties. A separate dispute resolution procedure should be developed for disputes.

⁹ Different triggers may apply for different categories of issues or decisions. The triggers and the categories of issues or decisions to which they apply should be agreed and documented.

¹⁰ Further escalation levels may be agreed and documented.

3.2 Sample delegations register

Contract clause	Function	Delegated to	Source of delegation
[XX (Modifications)]	[The State may request modifications by notice to the Contractor.]	[Secretary]	Contract clause ZZ.1; Schedule A
[YY (Audit)]	[The State may require the Contractor to provide an audit report.]	[Contract administrator]	Contract clause ZZ.2; Schedule B
Etc.			

3.3 Sample dispute resolution procedure

Initial consideration of dispute¹¹

Relevant personnel Supplier's Project Manager
Client's Contract Manager

Triggers for escalation to Escalation Level 1¹² Either party may escalate the dispute to Escalation Level 1 if it is not resolved within [X] days.

Escalation Level 1

Relevant personnel Supplier's relationship manager
Client's relationship manager

Triggers for escalation to Escalation Level 2 Either relationship manager may, by written notice, escalate the dispute to Escalation Level 2 if it is not resolved within [Y] days.

Escalation Level 2

Relevant personnel Dispute Resolution Board

Triggers for escalation to Escalation Level 3 If the Board does not meet, resolve the dispute or reach a unanimous decision within [Z] days, the dispute shall be referred to:

- expert determination if [list circumstances in which expert determination is appropriate]; or
- arbitration if [list circumstances in which arbitration is appropriate.]

In referring disputes to expert determination or arbitration, the parties shall comply with clause XX (Dispute resolution) of the project agreement.¹³

¹¹ This escalation procedure is intended for the resolution of disputes between the parties. The 'relationship manager' is a senior role 1 level above the Client Project Director or Supplier Project Manager and outside of the Project's contract management team.

¹² Different triggers may apply for different categories of disputes. The triggers and the categories of disputes to which they apply should be agreed and documented.

3.4 Contract change register

Heading	Sub-heading	Notes
Change number	Owner's change number	
	Contractor's change number	
Notification and Compliance	Date of Notification of claim	
	Letter reference	
	Alleged cause of claim	Variation, delay, other
Claim details	Assessment date of commencement of event	Owner's team assessment
	Nature of Change and Relevant Clause No's	The claim should be identified as resulting from a breach, direction/approval, negligence, under statute, quantum merit, unjust enrichment, etc.
	Total Change Amount	\$ value of claim
	Separable portions effected	List out the impacted portions and the amount of impact
	Full details provided by contractor?	Yes / No
	Acknowledgement	Date and reference of acknowledgement
	Program impact	The effect which the Contractor anticipates that the variation may have on the Contractor's program and time for Practical Completion
	Other impacts	other effects that the claim might have i.e. delay or disruption costs, and the cost or effect on any applicable warranty and whether the approval is conditional and details around those conditions
Assessment	Owner's assessment	\$ value of owners assessment
	Response to Contractor	Date and reference
	Advice to Principal	Date and reference
	Change Status	Agreed by Contractor/ Disputed/ No reply/ Principal disagrees
Dispute provisions	Date notice issued	Date
	Contractually required resolution date	Date
	Dispute notice received?	Yes / No, reference

¹³ The dispute resolution procedure should be consistent with the contract, but may include procedures that apply prior to the contractual dispute resolution procedure being invoked, or that add to the contractual dispute resolution procedure.

Heading	Sub-heading	Notes
Comments		e.g. related claims / changes, notes

3.5 Risk issues and related contract management tools and processes

Risk issue	Tool or process
Risk	<ul style="list-style-type: none"> Information collection and analysis Contract administration protocols Knowledge and information management
Has the risk/risk allocation altered since the signing of the contract?	<ul style="list-style-type: none"> Governance of change management process Ongoing review
What is the likelihood of the risk occurring?	<ul style="list-style-type: none"> Risk analysis
Who is responsible for averting the risk?	<ul style="list-style-type: none"> Contract administration protocols
What needs to be done to avert the risk?	<ul style="list-style-type: none"> Contract administration protocols
How will it be done?	<ul style="list-style-type: none"> Contract administration protocols Audit of Supplier's quality management system
When must it be done?	<ul style="list-style-type: none"> Project timetable/ milestones
What do we need to do?	<ul style="list-style-type: none"> Contract administration protocols
Do we need to monitor compliance?	<ul style="list-style-type: none"> Risk analysis Governance, probity and compliance
How do we know if the private party has complied?	<ul style="list-style-type: none"> Performance monitoring Reporting mechanisms
What do we need to do to avert the risk?	<ul style="list-style-type: none"> Contract administration protocols
Do we have the authority, power, resources and expertise?	<ul style="list-style-type: none"> Budget Delegations register Succession planning Allocation of roles and responsibilities to contract administration staff
What are the consequences if the risk eventuates?	<ul style="list-style-type: none"> Contract administration protocols Risk analysis Default plan
What is the magnitude of the consequences if the risk occurs?	<ul style="list-style-type: none"> Risk analysis
How do we mitigate the consequences?	<ul style="list-style-type: none"> Issue management procedures Contingency plan
Who else is affected by the risk eventuating	<ul style="list-style-type: none"> Stakeholder communication and consultation plan
What should we do if the risk eventuates?	<ul style="list-style-type: none"> Contract administration protocols Contingency plan Business continuity plan Disaster recovery plan

Risk issue	Tool or process
	<ul style="list-style-type: none"> Step-in plan
What sanctions, remedies are available?	<ul style="list-style-type: none"> Contract administration protocols
Who do we tell?	<ul style="list-style-type: none"> Escalation procedures Internal reporting mechanisms

3.6 Sample issues register template

Issue ID	Description	Reported by	Date/Time reported	Severity	Cause	Proposed resolution	Person responsible for resolution	Date/Time resolved

Appendix B

Dispute Avoidance Processes

Purpose

Good governance approaches in Australia have included the use of dispute avoidance processes through the establishment of Dispute Avoidance Boards (DAB's) or Dispute Resolution Boards (DRB's).

These bodies are established to seek to manage and resolve conflicts and prevent them from escalating into disputes.

Importantly, acts of the DAB do not automatically create an entitlement under the Contract for a claim.

Tender Phase

The proposed DAB process, roles, functions, responsibilities and qualifications should be clearly documented in the tender documents. The Tenderer is usually required to nominate 2 – 3 alternative members in their Tender response. The selection of the Tenderer's nominated member is not subject to scoring.

Establishment

A DAB is constituted by each member executing a DAB Agreement which also forms an agreement under the main D&C Contract (generally this is a Schedule or Exhibit to the Contract).

The DAB performs the functions and activities identified in the DAB Agreement and which includes making decisions on matters that are expressly identified in the Contract.

Membership

The DAB is made up of a panel of three independent third-party experts appointed by the Client and Supplier after contract award and prior to the commencement of the Construction Phase. These individuals should have technical knowledge relevant to the project and be highly experienced in resolving contractual disputes.

The Client chooses one of the Tenderer's nominated alternative members as part of the evaluation process and nominates its own member. The two nominated members then usually jointly nominate a third and independent member.

The DAB members are obliged to act neutrally and impartially so as not to be an advocate of the Client, the Supplier or its subcontractors and are generally required to sign a conflict of interest statement to support this position of neutrality.

Activities

The DAB members are provided with regular updates which may include site visits and meetings with relevant project personnel. This up-to-date knowledge of the project is critical to the ability of the DAB to provide timely recommendations as disputes arise and are heard.

Process

If a dispute occurs, the DAB conducts a hearing as soon as possible to give the best chance of negotiation and resolution. The DAB draws on its knowledge of the project and experience to provide a recommendation to settle the dispute. Key to the success of the DAB is the speed with which it convenes and recommends a solution as generally the earlier a dispute is addressed the better chance of resolution, and the less impact on project progress.

The DAB together with a senior executive and key project representative or Project Director of each of the Client and the Supplier are sometimes required to form a Management Review Group (MRG) for the governance of a project. The MRG, which acts in a similar way to a Board, may direct the DRB to undertake further reviews of matters in order to provide a recommendation. The Project Control Group can refer matters to the DAB or MRG for resolution or direction.

Documentation

The DRB Agreement should identify the functions and responsibilities, the process for replacement of a DRB member, process for termination of the DRB and interfaces with other governance or project control group for implementation of decisions.

