

You and Your Contractor

A manual of best practice in contract
and relationship management

Second Edition, 2011



Foreword

This is the second edition of the best practice manual for practitioners of contract and relationship management in local government. The first edition proved to be very popular with local authorities, both in London and nationally, with thousands of copies being either downloaded and/or distributed.

Since the publication of the first edition much has changed in local government. There is now an even greater requirement to reduce costs and generate greater value from the delivery of services across the local government organisation. The need for strong and effective management of contracts and contractual relationships has even greater importance for every council, in this financial climate and continuing for years to come.

The reasons are clear. In 2009/10, for example, London boroughs spent £8.9 billion with third party suppliers and providers, much of which is under contracts lasting several years. Many of these contracts have been let to deliver significant benefits in cost reduction, improved quality or efficiency - yet there is growing evidence that it remains a challenge for many boroughs to fulfil this aim. There will be many reasons for this but in part a contribution is the need to improve the elements of effective contract and supplier relationship management to ensure maximum value.

Moreover, within the council supply chain, most costs are incurred after the contract is awarded. The need to properly manage contracts and relationships can ensure that the benefits negotiated by an authority are genuinely realised and reduce the need for reductions in other service areas.

The new edition of this manual has been now been updated to include the latest developments, policy and case law. It is also cross referenced to the new Supplier Relationship Development (SRD) toolkit which provides a multi-authority, common supplier approach, to contract management at an individual authority level.

The valuable information contained in this manual is relevant to everyone who is concerned about the quality and cost of public services. It will benefit all those within councils who are responsible for letting and managing contracts as well as commissioning providers.

I commend to you the important contribution this manual will make in providing greater value in an area of significant costs for all councils.



Edward Lord, OBE
Chair, Capital Ambition Board

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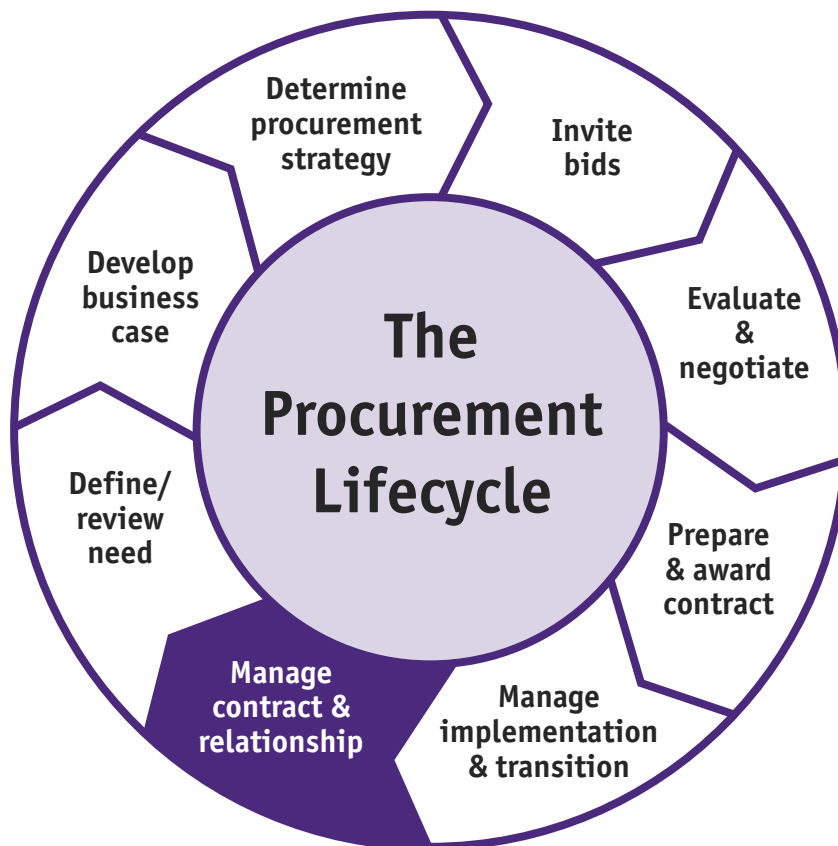
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About This Manual

What is Contract and Relationship Management?

Figure 1: Contract and Relationship Management as part of the Procurement Lifecycle



Contract and relationship management (CRMGT) is a vital part of the procurement lifecycle. It can be defined as:

- the management of the interfaces between client and contractor to ensure that the relationship and contract performance are optimised to deliver best value;

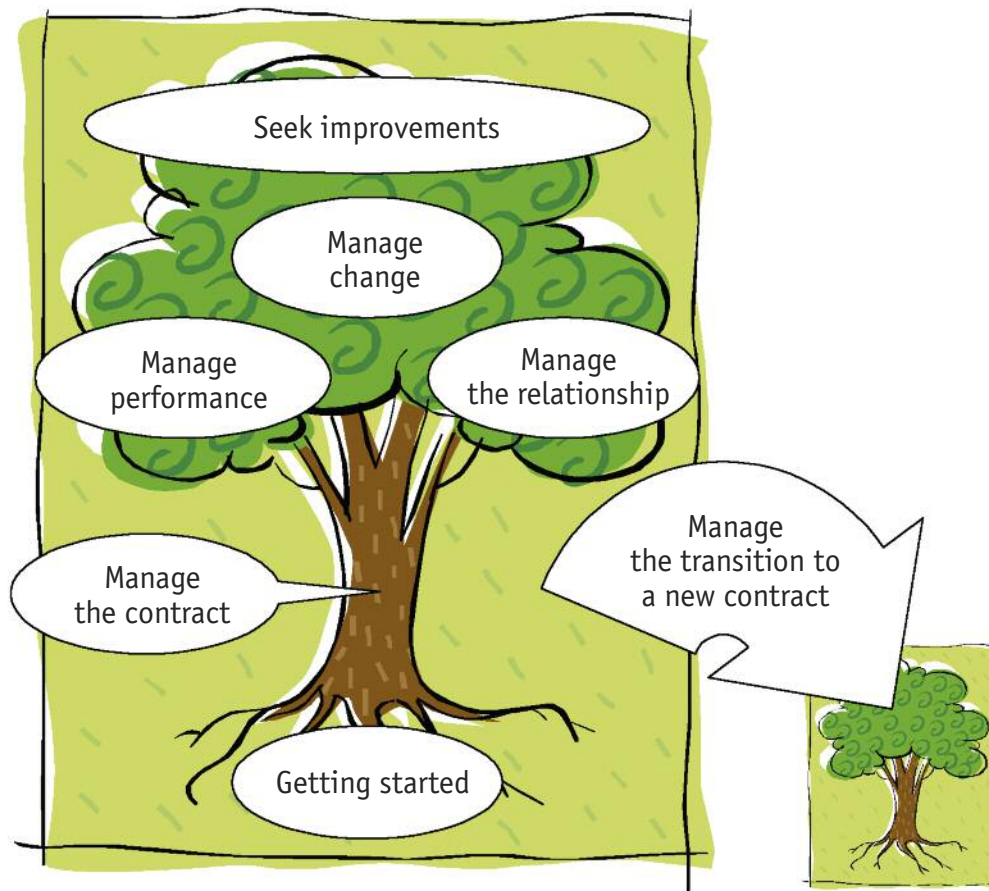
or as:

- a number of related activities that together form a structured and planned system which enables the proactive management of all aspects of contractual relationships and their desired outcomes;

or, put simply, as:

- the pursuit of contractual performance.

What's in this manual?



This manual of best practice in contract and relationship management guidance covers the whole engagement process between customer and contractor and will help you ensure that all of your contracts continue to deliver and optimise:

- ongoing value for money;
- continuous improvement;
- realisation of intended benefits;
- sustainable service delivery;
- performance compliance; and
- fulfilment of ongoing demand.

This manual covers:

- **Getting started:** including how to lay the foundations for effective contract and relationship management during the procurement process and how to prepare and organise resources for this activity.
- **How to manage performance:** including options for the design of performance management frameworks and how to best to incentivise continuous improvement
- **How to manage your relationship:** including how to establish formal and informal communication channels, build trust and openness and establish problem-solving and governance structures
- **How to manage your contract:** including measuring and recording performance, managing payments and controlling and recording changes to the contract

- **How to seek improvements**
- **How to manage change.**

This manual will not provide you with guidance for managing the pre-contract, or procurement process. However, it will show you the vitally important matters that need to be planned for before and during the procurement process.

The manual is designed to:

- offer practical, step-by-step instructions, supported and illustrated by short case studies, describing how to set up and carry out contract and relationship management activities;
- be accessible to non-specialists without a background or experience in the commercial, financial or legal disciplines; and
- be written in plain English and without jargon.

The case studies are real, but all identifying details have been removed.

A list of resources for further reading on the topics discussed in the guidance is also given.

What's this manual for?

This guidance is specifically aimed at practitioners, that is, the people actually doing the job.

This manual is intended to support all local authority practitioners working with external providers of goods and services and in all forms of contract, apart from construction contracts that require specific processes not covered by this guidance.

The mix of formal and informal behavioural techniques described in this manual will help you get the best results from your contract and from your relationship with your contractor. It will help you in any contractual relationship in which local authorities and other public bodies act as a customer.

The panel below describes different types of contract likely to be encountered in a local government environment and which this manual is intended to support.

Types of Contract

Simple Contracts

Purchase Orders and Spot Contracts

Purchase Orders are simple contracts for a defined quantity of goods or services, supplied in return for (usually) an agreed fixed price, often under an agreed set of terms and conditions. Spot contracts are simple contracts for goods or services purchased in a defined quantity and at the prevailing price. In social care provision, spot contracts can account for a large proportion of spend as service users are 'matched,' often at short notice, with service providers who are deemed able to meet their assessed needs.

Framework Agreements and "Call-off" Arrangements

These are arrangements under which a supplier agrees to supply an undefined quantity of goods or services at an agreed price for a limited period, often to avoid the need for repetitive administration and usually allowing the customer to leverage their buying power. Technically, a contract is not formed until the purchaser "calls off" a quantity of goods or services as and when they are required.

Complex Contracts

Most local authorities will have a number of **more complex contracts**. These might include important outsourced arrangements for front-line services (such as care services, waste management services, or highway maintenance) or corporate or ‘back office’ services (such as IT, revenue collection or benefits processing).

Outsourced Service Contracts

Put simply, outsourcing is “an active decision to give up doing something in-house in favour of paying someone else to do it” (Barrat and Whitehead, 2004). In a local government context, outsourced contracts may be for services provided directly to the public, e.g., in social care, waste management, transport, education and highways maintenance, or ‘managed service’ contracts for back-office and corporate functions such as IT.

Public-Private Partnerships (PPP) and Contracts awarded under the Private Finance Initiative (PFI)

These contracts are complex, long-term agreements (e.g., for 30 years’ duration) for the provision of services, centred (in the case of PFI) on the construction and management of an infrastructure or significant capital asset (such as a hospital, school, prison, motorway, waste plant or railway). The private sector provider invests in the assets and provides the service associated with it, taking on a range of financial, employment and other risks, in return for a regular payment from which it will meet all running costs, service and repay the debt and collect a profit. Some PPPs will provide public services through a joint venture arrangement.

These **more complex contracts** tend to be higher value and are often of significant strategic importance or criticality to the authority.

How to use this manual

This manual is designed to help you at any point in the CRMGT process, be it at the start (in the procurement process) or in the middle of the contract term.

There is a common misconception that once a contract is agreed, it is somehow ‘set in stone’ such that improvements can’t be made. While it is true that it is much easier to build in your requirements from the start, it is often not too late to make improvements to the way you measure performance or the way you manage the relationship. It’s just that, once a contract is signed, you will need to get both parties to agree formally any change you wish to make and also obtain legal advice to ensure compliance with the law.

This manual can be used in one of three ways:

- **If you are beginning the procurement process for a new contract**, then start by following the Step-by-Step guide in Table 1 below.
- **If you are managing a contract in mid-term** and want to know how you can improve performance, try following our Top Ten Tips in Table 2 below.
- **If you need the answer to a specific question**, try our Frequently Asked Questions in Table 3 below, where you may find the answer more quickly.

Whichever way you use it, you will also benefit from reading the manual from cover to cover. It’s written in an accessible, readable style to help people get the best from it.

There is also a useful Glossary of Terms at the back of the manual that is cross-referenced to the text, together with recommendations for further reading.

A word about terminology

We've tried as far as possible to avoid the use of technical jargon in this guidance and have tried to provide a ready definition where we have found it overly cumbersome to do otherwise.

Throughout this text we refer to the "contractor." Of course, for the purposes of this guidance, we mean to include in that term supplier, seller, vendor, provider, service provider, partner, constructor or other group that relates to a party contracted by an authority to provide goods or services in return for payment.

If you are beginning the procurement process

Good contract and relationship management needs to be built into the contracting process right from the start. While good practice can be implemented during the term of a contract, the procurement process (i.e. during the tender stage) is by far the best opportunity to embed both the performance and the relationship management framework with your contractor.

The table below sets out the six major steps required to implement good contract and relationship management in a more complex contract, with references to the relevant passages in the text.

Table 1: Six steps to implementing good contract and relationship management

| | Section |
|--|---------|
| Step 1 Define your requirements | |
| Lay the right foundations | 1.2 |
| Make sure the contract includes everything you need | 1.3 |
| Choose the right type of specification | 1.4 |
| Manage responsible procurement into the supply chain | 1.5 |
| Step 2 Develop your performance management framework | |
| Establish the level of service required and ensure that it is maintained | 2.2 |
| Design your performance management framework | 2.3 |
| Incentivise your contractor to perform | 2.4 |
| Record the benefits as they are realised | 2.5 |
| Step 3 Develop your relationship management framework | |
| Manage the relationship, as well as the formal aspects of the contract | 3.3 |
| Manage your stakeholders | 3.9 |
| Define your information reporting requirements | 4.4 |
| Step 4 Develop your risk management framework | |
| Audit the contract | 4.6 |
| Manage the risks | 4.7 |
| Insure against risks | 4.9 |
| Step 5 Enable continuous improvement | |
| Give contractors reasons to improve | 5.2 |
| Stay compliant with the law | 6.6 |
| Step 6 Decide what resources you need to manage the contract | |
| Be prepared to manage all aspects of the contract | 1.8 |
| Assign adequate resources to manage the contract | 1.7 |
| Put the right people in place to manage the contract | 1.8 |
| Consider continuity of personnel | 1.10 |

If you need to improve the performance of your contract mid-term

If you are looking to improve the performance of your contract mid-term, you may be interested in the Top Ten Tips for Success in good contract and relationship management. These are listed below with references to relevant passages in the text.

Table 2: *Contract and Relationship Management*

| | | Section |
|-------------------------------------|--|---------|
| The Top Ten Tips for Success | | |
| 1 | Manage the relationship, as well as the more formal aspects of the contract | 3.3 |
| 2 | Recognize that culture, attitude and behaviour are as important as the terms of the contract | 3.6 |
| 3 | Create the environment for good communication | 3.4 |
| 4 | Incentivise your contractor to perform | 2.4 |
| 5 | Put the right people in place to manage the contract | 1.8 |
| 6 | Control all changes to the contract | 6.3 |
| 7 | Record the benefits as they are realised | 2.7 |
| 8 | Consider co-locating with your contractor | 1.12 |
| 9 | Build good structures for liaising with your contractor | 3.7 |
| 10 | Consider continuity of personnel | 1.10 |

If you need the answer to a specific question

If you have a specific question on contract and relationship management, you may find this list of Frequently Asked Questions helpful. You'll see where to find the answers in the text. There's also a useful Glossary of Terms at the back.

Table 3: *Contract and Relationship Management: Frequently Asked Questions*

| | Section |
|--|-------------------|
| Is mine a simpler or a more complex contract? | About this manual |
| How do we write a performance specification? | 1.4 |
| What about sustainability issues? | 1.5 |
| What resources will we need to manage the contract and the relationship? | 1.7 |
| How will we manage the implementation phase? | 1.9 |
| How should we agree milestone dates for the contract? | 1.11 |
| Should we co-locate with the contractor? | 1.12 |
| How can we get people to understand how the contract will work? | 1.13 |
| At what level in the organisation should we manage this relationship? | 1.15 |
| How do we decide what level of service we need? | 2.2 |
| How do we design a performance management framework? | 2.3 |
| Should we link payment to performance? How? | 2.4 |
| How should we benchmark prices and service? | 2.6 |
| How can we record benefits as they are realised? | 2.7 |
| How should we report on performance? | 4.4 |
| How should we manage risk? | 4.7 |
| How will we ensure continuity if things go wrong? | 4.8 |
| What about insurance? | 4.9 |
| How will we achieve continuous improvement? | 5.2 |
| How will we control costs and changes to the contract? | 6.3 |
| What will happen at the end of the contract? | 6.9 |

1 Getting Started

1.1 What's in this section?

This section deals with laying the right foundations before the contract is let. It's absolutely essential that you prepare for good contract and relationship management well before contract award. The procurement process is the best opportunity both to embed the performance and relationship management framework into the contract documentation and to begin building relationships with the bidders.

First of all, you should ensure that the contract itself includes all the necessary provisions for managing the contract and the relationship. You need to make sure that you have the right resources, the right people and the right procedures in place to manage the contract and the relationship in good time before the commencement of the contract.

1.2 Lay the right foundations

When you are in the middle of what may be a very busy procurement process, it's tempting to leave these matters until later. Often managers find themselves so wrapped up in the process that making arrangements for managing the contract appears less important. In all the excitement of doing the deal, managers sometimes neglect to plan carefully and prepare to manage the contract once it's been let. So many contracts fail to deliver their planned benefits because they are not properly managed throughout the term.

The contract should be actively managed not least ensuring the right people are in place to manage all aspects of the contract. Case Study 1 shows what can happen if you don't set up your arrangements for contract and relationship management properly.

CASE STUDY 1 Fail to plan? Plan to Fail!

An authority entered into a long-term contract to outsource the refurbishment, management and operation of a number of care homes for older people. The contract had been very carefully negotiated by a team of experts (some external) in procurement, finance, HR and law.

Once negotiations were completed, the commissioning function in the authority's Social Services department was tasked with the job of managing the contract and the relationship with the provider. No member of the commissioning team had been directly involved in the procurement process.

The team was experienced in commissioning social services, but had very little knowledge of the contract in terms of: how it was constructed, how risk had been apportioned between the parties, how the payment mechanism was supposed to work and how payment was linked to performance. They did not know who to turn to as the procurement team had been disbanded.

Worse still, it took eight months for the team to get a copy of the contract they were supposed to be managing.

The team was not sufficiently resourced to undertake the onerous performance monitoring regime that the contract required. When standards began to slip, they were unsure how to deal with the problem.

Happily, these issues are now being addressed. But the authority had clearly failed to establish the resources, people and procedures necessary to manage this contract effectively from the start. As a result, the performance management framework that had been so carefully negotiated, failed to deliver good performance during its first few years.

1.3 Make sure the contract includes everything you need

The foundations for contract management must be laid well in advance of contract award, some during the procurement process and some even before that.

A solid, formal, performance-based contract will provide the framework within which a good relationship can grow. If the contract is poorly constructed, it will be much more difficult to make the relationship a success. Your contract is not just a legal document; it needs to be practical, effective and workable. Therefore, a good contract not only clearly identifies both the contractor's obligations and yours, but also forms the foundation for a productive relationship built on communication and trust. The contract is your best opportunity to establish the performance you require from your contractor, how risk will be managed and the necessary arrangements for liaison and reporting. The contract should therefore cement these requirements in a legally-binding contractual relationship.

Your contract should clearly set out the arrangements that are binding on both you and your contractor, clearly showing how the contract and the relationship will be managed in a manner supporting good performance and fostering sound commercial relations. These provisions should include the performance framework, the arrangements for liaison between the parties, access rights and reporting requirements.

All contracts should include:

- a clear definition of what is to be provided and requirements to be met (usually called the “specification”);
- an agreed level of service or performance standard;
- means to measure performance against the agreed standard;
- pricing mechanisms including where appropriate milestone payments, incentivisation/rewards, retentions, and, if appropriate, how prices will vary in reaction to inflation;
- an acceptance strategy or test plan;
- clarity about ownership of assets and intellectual property;
- invoicing arrangements;
- agreed break options;
- premises or locations (where the goods/services will be delivered);
- arrangements governing health and safety, sustainability, equalities and diversity, environmental management, economic regeneration and community engagement;
- arrangements governing sub-contractors.

Additionally, **more complex contracts** will include:

- a mechanism for managing under-performance;
- a clear allocation of risk between the parties;
- a plan to cover implementation, transition and rollout;
- escalation and dispute resolution procedures;
- communication routes, typically at three levels:
 - operational (end users/technical support staff),
 - business (contract manager and relationship manager on both sides),
 - strategic (senior management/board of directors); and
- a clear statement about the contract manager's responsibilities; with
- an agreed exit strategy.

1.4 Choose the right type of specification

At the start of the procurement process, you should give careful consideration to the best type of specification to be used in the contract. This is a very important part of the contract document because it sets out precisely what the contractor is to provide and the requirements to be met.

Input specifications

Some specifications set out the precise method that the contractor needs to employ to deliver a service (sometimes known as ‘input’ or ‘conformance’ specifications). These prescribe, in some detail, such things as materials, staffing levels and processes. Occasionally, specifying some or all inputs may be appropriate to the goods or services to be provided, but this places the risk firmly with you to get this absolutely right. It can be much more difficult to hold your contractor to account for service quality if you have told them exactly how to do their job and they have followed these instructions to the letter. You can see how prescribing the service this way can also stifle innovation. Input specifications like these are longer documents demanding a greater attention to detail.

Output specifications

In the main, service quality will benefit if the accent is on specifying outputs, or, better still, outcomes from the service. By determining only the desired end result, the contractor is then given the flexibility to decide how those outcomes should be achieved, using their own expertise to determine how best to supply the goods or provide the service. The contractor then carries the greater share of risk in this regard. After all, the chances are you have chosen your contractor because you believe that they know what they are doing and are more likely to have experience and ideas on how to do things more efficiently and more effectively.

Output or outcome specifications (sometimes called ‘performance’ specifications) tend to be shorter, more succinct documents because you are only setting out what you want to get from a product or service, rather than prescribing in detail how the contractor should go about delivering it.

The key to successful contract and relationship management is to specify desired outputs or outcomes in ways that allow the contract manager to measure performance and the quality of the goods or services provided. Then the contractor can carry additional risk by linking some or all of their payment to the achievement (or betterment) of the required standard.

See *How to Measure Performance* in Section 2 below.

1.5 Manage responsible procurement into the supply chain

You will want to be sure that when your contractor employs people to serve your citizens and acquires goods and services for use on your contract, they do so in a manner that reflects and demonstrates your authority’s corporate values.

This means you will need to embed, where relevant, your authority’s policies relevant to sustainability, equality and diversity, economic regeneration, environmental management and community engagement into the supply chain, as is required to meet the authority’s community objectives. It’s often best to do this when the contractor’s interest (or openness to suggestion) is heightened, usually during the procurement process.

Case Study 2 describes how a group of strategic authorities are working together to use their collective buying power and responsible procurement practices to bring benefits to the community, businesses and the local environment.

CASE STUDY 2 Using procurement to make a positive difference

The Greater London Authority (GLA) group has developed a vision, action plan and a range of tools and resources under the banner of Responsible Procurement that are accessible to all.

For the GLA group, responsible procurement means pioneering socially, environmentally and economically responsible procurement to deliver improved quality of life and better value for money for London's people, businesses and local environment. It involves working in partnership across London to provide sustained employment opportunities and improve standards of living for all Londoners.

This requires:

- providing sustained employment opportunities and improving standards of living;
- opening up access to contract opportunities for London's businesses and encouraging improved practices with suppliers; and
- promoting greater environmental sustainability to make London a better place to live and work.

Training has been a key tool in embedding responsible procurement across the GLA group. More than 200 procurement staff had been trained by 2011, giving them a greater knowledge and confidence to include responsible procurement

provisions into contracts. Working with the National Sustainable Commissioning and Procurement Programme and the Department for Environment, Food and Rural Affairs (Defra) and its partners, the GLA Group Responsible Procurement team is now coordinating the delivery of the National Sustainable Public Procurement training programme for GLA group functional bodies and London boroughs.

To support the roll out of training and to ensure everyone has access to information about responsible procurement, the team launched a free, easy-to-use online responsible procurement e-learning tool. This included an overview of the Responsible Procurement programme and key themes; case studies from the GLA group; and myth-busting and information on key responsible procurement support programmes.

The GLA group has been verified as achieving Level 5 of the Government's Sustainable Procurement Flexible Framework by independent audit. This framework provides a benchmark for measuring an organisation's approach to Responsible Procurement. Level 5 is the highest rating and has only been achieved by very few public sector authorities so far.

For a link to the *Responsible Procurement* website and access to all the resources, see *Further Reading*.

1.6 Be prepared to manage all aspects of the contract

Having awarded a commercially sound contract following best procurement practice, it is then essential that you manage both the contract and the relationship with the contractor so that the objectives of the contract and value for money are achieved and sustained on an ongoing basis.

Contract management activities can be divided into three main areas:

- performance management;
- relationship management; and
- contract administration.

Both you and your contractor must manage all three areas proactively if the best results are to be achieved. This document examines each of these areas in detail. For **more complex contracts**, you might assign an individual or a group to each area, or a single individual may cover two or more areas. Different areas will require different skills and knowledge.

1.7 Assign adequate resources to manage the contract

Good contract management takes time and effort so adequate resources must therefore be assigned to it. There will be an 'overhead' of in-house resource necessary to manage the contract. All well-managed contracts have robust and appropriately skilled and resourced contract and relationship management arrangements in place.

Again, the relative scale, complexity and criticality of a contract will determine the required level of resource for managing it. The financial resource required to manage a major contract has been estimated at 2 percent of the contract value, but this can increase to as high as 10 percent for **more complex contracts**.

Generally speaking, **simpler contracts** for the supply of goods such as stationery, where the market is highly competitive, the costs associated with switching suppliers in the market are low and where the contract is of a relatively low strategic importance, will not require the level of investment, skill and stewardship as for, say, a complete outsourcing of a strategically critical activity.

1.8 Put the right people in place to manage the contract

Best practice requires that appropriate contract and relationship management arrangements are in place and relative to the complexity and strategic importance of the contract. This includes appropriately skilled resources.

Well-managed contracts have people dedicated to the task that possess the level of knowledge and skills that are appropriate to the task and can understand both sides of the arrangement. Their responsibilities are clearly defined, including financial, technical, risk, performance and relationship management with the involvement and support of senior management where appropriate. Appendix A lists the key facets of CRMGT that should be included in a job description for a contract manager.

For **more complex contracts**, contract managers and/or their teams should have a commercial acumen and well-developed competences in performance management, quality management, financial management, risk management, contingency planning, project management, supplier development and communication.

You should seriously consider whether training is required for contract management staff. The skills and experience required to manage the relationship may differ significantly from those required to manage service delivery alone.

Where contract management expertise is not available in-house, it may be appropriate to recruit a professional contract manager. For **more complex contracts**, this is essential.

A contract manager should be appointed as soon as possible in the life cycle of the project. They should be part of the procurement team and be as involved in negotiations as soon as is possible. This will also help with continuity.

See *Consider continuity of personnel* at 1.10 below.

1.9 Manage the transition to the operational phase

For **more complex contracts** you may need to secure professional project management expertise for the implementation or mobilisation phase of the contract, to oversee and manage the relationship with the contractor and all stakeholders during the transition to the operational phase. This is essential where the construction of a new building or new capital asset is fundamental to the contract. Professional HR, financial and legal support and assistance will be required where the transfer of a large number of employees to the contractor is involved.

Ideally, the person managing the transition could be the same person who goes on to manage the contract, but you should understand what skills are required during the construction or implementation phase of the contract and whether these are different from the operational phase. A professional project manager may be required to

represent the interests of the customer in all matters pertaining to the construction or refurbishment of an asset, testing and commissioning, the provision of a parallel or temporary replacement service during transition and the transfer of staff, premises and assets to the contractor. While the contract manager will be responsible for managing ongoing performance and the relationship with the contractor, this particular role requires a professional understanding and application of project management, including specialist skills in planning, scheduling, critical path analysis, cost, risk and stakeholder management. Certainly for **more complex contracts**, it is likely to be too important a role to be left to inexperienced or non-specialist staff and would be well worth the additional investment.

1.10 Consider continuity of personnel

Evidence shows that higher levels of trust, openness and honesty contribute to better services. Oftentimes, the most overlooked aspects of business relationships are these personal elements. Business relationships are not merely organisational. Continuity of personnel at the interface between customer and contractor is also important, and will help. However, where this can't be maintained it is essential that effective transfer of knowledge and understanding of the relationship are achieved so this openness and honesty can be facilitated. This will help you to establish and develop the essential levels of trust and confidence between contract manager and contractor.

For **more complex contracts**, research has shown that a measure of continuity of personnel is needed between the procurement and operational phases of the contract in order to foster, sustain and develop positive working relationships as well as ensuring knowledge continuity. In other words, one or more members of the procurement project team should be retained to join the contract and relationship management resource, even if this is only for the 'bedding-in' period. Doing this helps you to retain the original scope, focus and intent of the contract.

It also helps prevent contractual 'scope creep' where a new contract manager, who is less familiar with the contract terms and their intent, may over time unwittingly allow a gradual degradation of the authority's commercial position. They may agree changes to the contract or service which, although seemingly innocuous when taken in isolation, may have a materially negative impact when considered in aggregation.

Some contracts suffer from 'Team A/Team B Syndrome' where either of the customer's procurement team or the contractor's bid team walk away after contract award, only to be replaced by an entirely new contract management or operational management team respectively. They are then charged with building a positive, working relationship from scratch, without the benefit of the "sense-making" that their predecessors have nurtured during the procurement phase. Sometimes this will mean that the new relationships do not benefit from a shared understanding of the contract and its original intent, often leading to problems.

This is entirely understandable. The procurement team's job was to do the deal and in many cases its members will either have moved on to do the next deal elsewhere in the authority or (likely as not for **more complex contracts**) the team will have been at least partially composed of external specialist consultants whose services have been brought to an end. For the contractor, their bid team's job was to win the business. It will have been well trained in doing precisely what is necessary to win the contract and secure the best possible deal for the contractor. Once secured, the team will have been expected to move on and win more business elsewhere. Some might argue that the essential skills needed to win new contracts and operate them successfully are, in fact, quite different and that a change of personnel is therefore necessary.

Case Study 3 shows why at least *some* continuity should be preserved.

CASE STUDY 3 'Team A/Team B Syndrome'

An authority had awarded a large corporate services contract to a company of recognised specialists in outsourced 'back office' services.

The authority's contract manager was dismayed to find, however, that the contractor's bid team, with whom he had built good relationship and who he felt had a good understanding of what they were trying to achieve, was to be replaced wholesale with an operational management team.

"I found myself having to explain to the new team what the contract said. Sometimes the new

operational team could not believe what the bid team had promised. It meant I was getting my copy of the contract down off the shelf far more often than I would have liked."

It was a habit that the contract manager never really got out of. From then on, the contract was a well-thumbed document perched permanently on his desk. Though a whole range of factors could be said to blame for its demise, the contract failed to achieve its objective and was terminated by mutual consent halfway through its planned term.

If continuity of personnel isn't possible

If it is really not possible to have continuity of personnel, you should ensure that you have a proper, structured transfer of the knowledge necessary to manage the contract and the relationship effectively. Here, you will be aiming for both the contractor's operational management team and your own contract management team to come to know not only the terms of the contract and its key performance requirements, but also the intended ethos and style of the relationship, the risks transferred, roles and responsibilities and the intended benefits of the contract.

To do this most effectively you should do this jointly with your contractor – as they will need to do this too – and the handover process can be part of the relationship building that needs to take place between the two teams.

What's important is to make sure that both teams understand what the contract is really about and what the authority is trying to achieve. It can be useful to prepare a written contract guide explaining why the contract was developed, how it will operate and how risks have been allocated between the parties. See Prepare a management manual specific to the contract at 1.13 below.

1.11 Develop a business plan with your contractor

All contracts should include pre-determined dates, or milestones, which the contractor is contractually obliged to meet. It's important that everyone knows when these dates are, and what needs to be achieved by when.

Prior to commencing a **more complex contract**, it may be worth developing a business plan jointly with your contractor; particularly if the contract involves the construction, refurbishment or provision of assets, operating a concession or an activity that attracts a revenue from the public, such as a leisure centre. Your business plan should include detailed arrangements for the 'parallel' operation of the service during a construction or refurbishment and commissioning phase and cash-flow projections for the business showing the working capital requirements for the business during the period up to and beyond the commencement of the new service. It could also show, in detail, your investment, cashflow and profit and loss forecasts for the duration of the contract or concession.

1.12 Consider co-locating with your contractor

For **more complex contracts**, both you and your contractor should carefully consider the merits of co-locating.

Many contracting parties believe that their working relationships (and, consequently, contract performance) are better where the contract manager and their team are located either on the same premises or in close proximity to the contractor. It allows good personal relationships to be properly established, which in turn engender trust, openness and confidence between people. It also supports better communication, particularly for messages that are best given and received on an informal basis, and also promotes teamwork.

Both you and your contractor will be more inclined to discuss and resolve minor issues using face-to-face communication than you would be if you were located some distance apart. The experience of joint problem solving that is so gained can also be of immense value to the relationship and helps to prepare both parties for more critical issues when they arise.

Co-location is not essential, and co-location alone will not engender good relations, but evidence suggests that it helps. Some contract managers believe that just the ability to ‘pop down the corridor’ to quickly and informally discuss and resolve issues as they arise helps the whole operation of the contract run more smoothly. Indeed they describe these exchanges as at least as important as the more formal governance structures and processes required under the terms of the contract for managing the contract and the relationship.

1.13 Prepare a management manual specific to the contract

More complex contracts will benefit from the preparation and distribution of a bespoke management manual following the completion of contractual negotiations. Both you and your contractor will benefit from a shared understanding of your respective obligations under the contract - something that can then be readily communicated to stakeholders and newcomers.

A written management manual can also be used to help new staff to familiarise themselves quickly with a contract, perhaps as part of an induction process for new employees both in the contractor’s organisation and yours.

The manual should interpret the key obligations of both parties and set out clear arrangements for contract and relationship management, including performance reporting and management. It can be used to provide a simple and straightforward commentary of the more complex parts of the agreement, such as the transfer of risk, the payment mechanism and the performance management framework.

The document will support “sense-making” between the parties. In the event of a dispute, what matters is what the contract says. However, as this so often requires a lawyer to interpret the finer points of the contract document, it’s important that everyone can understand what the authority wants to achieve and that everyone shares that understanding.

1.14 Ensure that there is a mechanism for feedback on the customer’s performance

Both you and your contractor should ensure that a mechanism exists that will enable the contractor to provide feedback to you on your performance in managing the contract, the relationship and in creating the appropriate environment in which the contractor can best perform.

It’s best to provide both formal and informal ways of communicating this message. Contract managers say that informal channels of communication are at least as important as the formal ones.

Feedback from the contractor’s perspective increases the likelihood of any problems or issues being identified promptly and resourced appropriately.

1.15 Manage more complex contractual relationships at the highest level

Authorities should maintain an overview of the performance of all its **more complex contracts** or strategically important contracts so that decision-makers can see them in the context of the authority's community priorities and take steps to address issues accordingly. Authorities need to understand where their risks lie in these relationships and have sound, detailed and well-understood plans in place to ensure continuity of service if anything goes wrong. They should ensure that the key risks are managed through their over-arching strategy for risk management and have generic contract management procedures in place to supplement those governing the procurement process, setting out the minimum requirements for actively managing and reporting on the performance of their critical contractors.

See also *Build good structures for liaising with your contractor* at 3.7 below.

2. How to Manage Performance

2.1 What's in this section?

This section deals with establishing the service levels required and ensuring they are maintained. Generally this involves striking a balance between quality and cost to ensure a value for money outcome.

During the operational phase of the contract you will need to ensure that your contractor is delivering outputs as defined in the contract and that your arrangements for managing any under-performance are working.

2.2 Establish the levels of service required, and ensure that they are maintained

Performance management is the process of making sure that the contractor performs to the standards of service as specified in the contract.

Your contract should clearly set out the agreed service levels and thus the quality of service to be delivered. To provide optimum value for money, you should aim to strike a balance between cost and quality of service. You need to design performance measures, establish a baseline of performance and set standards of service before the procurement phase, so that bidders can understand the required quality of service and costs associated with it, enabling them to propose a contract price. You will also need to decide who will be responsible for capturing and reporting performance data (see Define your information reporting requirements at 4.4 below).

Performance should be measured and reported at agreed intervals, using performance indicators that are relevant to the essence of the contract. Make sure your performance management arrangements are focused on the desired outcomes. Service quality standards should be established by setting targets that are testing, but also realistic and achievable. Setting performance targets at fanciful levels means setting up your contractor to fail which, in the end, helps no-one. In addition, you also run the risk of unnecessarily inflating the cost of the contract by paying over the odds for a level of service that you don't really need!

Remember that all targets should be **SMART**, i.e.:

- **Specific** (leaving no room for ambiguity);
- **Measurable**;
- **Achievable**;
- **Realistic**; and
- **Timely** (i.e., incorporating some point in time by which a standard or milestone is to be reached).

You should also remember that, the contractor will focus their resources on meeting these standards as measured; particularly where payment is linked to performance (see 2.4 below). However, you should also be aware that focussing resources in this way can sometimes prove detrimental to other aspects of the service that do not feature in the performance regime. You may find that your contractor expends less effort than you would like on tasks that are important to you but appear to the contractor to be ancillary to the main focus of the contract. It is quite natural for your contractor to concentrate on the areas of performance that pose most risk to them, so it's important to choose your performance measures carefully.

Case Study 4 below describes how one authority dealt with this problem successfully.

CASE STUDY 4 Those other tasks that matter, too

An authority had awarded a contract for the provision and maintenance of vital front-line assets.

A few years into the contract, the contractor was doing well against operationally critical performance measures, but on occasions the contract manager required the contractor to perform tasks that, though ancillary to the principal purpose of the contract, were nevertheless important to the governance of the authority. The contractor appeared less concerned with completing these additional tasks in a timely manner, as they did not feature in the performance regime.

The contract manager developed a solution to the problem. He needed the contractor to know which

ancillary tasks were more important and to incentivise the contractor to complete them on time. He devised a yellow and red card system by which he could alert the contractor to the relative priority of a task. To be workable, the contractor needed to be able to exercise some control over his risk, which meant that a completion period needed to be agreed for each task separately. Default points were imposed for tasks that were not completed by the agreed deadline, which in turn helped determine the contractor's service payment for a given period.

For all new complex contracts, the authority now employs a 'catch-all KPI' that enables the contractor's performance of ancillary tasks to be measured and incentivised effectively.

Establish a performance baseline

It's vital that you establish the current level of performance, or baseline, before setting targets. This will show bidders how much improvement is required to attain your target standard (and also help you set a target level that is testing but achievable). It's also good practice to ask your contractor to confirm your baseline as part of their due diligence exercise, when they will satisfy themselves that the information you gave them during the tender process is correct. This will prevent re-negotiation once the contract has been signed.

Performance 'holiday'

Where there are formal agreements on service levels, there is often a need for some flexibility, particularly in the early stages of implementing a contract, where the expectation is that performance standards will rise from the baseline. Your contractor will need some time – sometimes called a performance 'holiday' – to get up to the new standard. You should agree how long it should take to do this, and communicate it clearly to all stakeholders. During this period, performance data should be recorded for information purposes but should not entail payment deductions. It is also a good idea to agree a few key indicators just for the transition phase, so that you can monitor your contractor's progress during this period.

Compare performance regularly with a range of relevant benchmarks in other authorities or other relevant comparators is also beneficial so the results can be used to inform a process of continuous improvement.

See *Compare prices and learn from others* at 2.7 below.

2.3 Design your performance management framework**Complexity and scale**

You can make the process of designing a performance management framework as simple or as elaborate as you wish. Again, the scale, complexity and criticality of a contract are likely to determine nature of the performance framework. You would not wish your contractor to channel their energies (and costs) into a needlessly burdensome performance regime, nor to meeting targets that are only vaguely relevant to what you are trying to achieve.

Measuring availability of service

For **more complex contracts**, you may wish to start by establishing whether it is important to your contract to measure the availability of service. This is particularly important in ‘managed service’ contracts such as in IT, where a period of non-availability or ‘down-time’ will disrupt your operations. You may decide that some unavailability is inherent in a service (to allow for routine or planned maintenance, for example) and pay 100 percent of the service payment for (say) 99.5 percent availability, or, alternatively, you may decide to set the standard at 100 percent availability and make a deduction, or abatement, for each (say) 0.1 percent of availability that is lost. You need to decide which party will carry the risk of that inherent unavailability. See also Incentivise Your Contractor to Perform at 2.4 below.

Deciding what to measure

Next, you should set out to determine what qualities of the service are the most important and which measures capture what really makes a good service for you and your service users. Of course, this could be anything from volume of throughput, ‘time to respond’ or ‘time to repair’ to the number of complaints received. It is unlikely that one person can do this effectively alone, so it’s advisable to get a group of people or a panel together to ‘brainstorm’ a list of possible candidates for measures of performance. Ideally, these people will be knowledgeable stakeholders to your contract and include service users or their representatives.

From this field of possibilities, you should select a suitable number, probably not more than two dozen or so (depending on the contract), to take it forward to the next stage of development. You now need to determine which of these are more important so you can give them an appropriate weighting in your contract.

Try ranking them in order first before asking each member of your panel to pick the most important measures by allocating, say, 100 points across the measures. Encourage the panel to do this freely, reflecting their strength of feeling about their choices by allocating as many, or as few, of their 100 points to each measure. By aggregating the scores for each measure, you’ll now have a fairly robust view of the relative importance of each measure to your stakeholders and can use this to apply a weighting to each measure and, if appropriate a performance deduction, or abatement.

Appendix B shows how this process has been employed to develop performance standards in a contract for the supply and maintenance of personal protective equipment.

Be careful that you measure quality as well as quantity. Quality measures might assess such aspects as completeness, capacity, reliability, flexibility and timeliness, among others. Some aspects of a service may be measurable by numerical means; others may require subjective assessment. For example, you should consider incorporating end-user surveys in performance data, as this will offer a direct link between reward and the experience of the service user. You could then establish a process for measuring and reporting both complaints and compliments about the service. This is particularly valuable where the service is used by members of the public. However, the more subjective this measure is, the more the contractor will resist it if it represents a major revenue risk to them.

2.4 Incentivise your contractor to perform

Linking payment to performance

All well-managed contracts establish clear performance standards. Many link the required level of service contractually to the payment mechanism, thereby transferring performance risk at least partially to the contractor, rewarding performance compliance, excellence and incentivising improvement as appropriate. Payment for the availability of the service provided can also be abated where availability levels drop. An example of this is given at Appendix C.

You should consider giving your contractor a rectification period, or an initial period of time to fix the problem before payment deductions kick in. In the example in Appendix C, payment deductions apply only after the first two hours of non-availability.

You need to decide, before the procurement phase, whether you will be linking payment to performance in some way. You must ensure that the contract is absolutely clear about exactly what would happen if performance does not come up to the required standard and how this will affect contract payments.

This means that the contract needs to spell out, so that all parties understand:

- who is responsible for capturing and reporting availability and performance data;
- who is responsible for keeping detailed performance records;
- who is responsible for making payment deductions;
- the **precise** method of calculating and presenting payment deductions; and
- whether the deduction is discretionary or automatic, and the method and timing of deductions (i.e., whether they will be made from the next following invoice).

Where you are identified as responsible for calculating and making payment deductions, you should always be ready to show your calculations. If your contractor disputes a deduction and you have insufficient evidence to support it, your claim will be difficult to sustain.

Do always remember that linking payment to performance is a means to an end, not an end in itself. Your priority should be to incentivise good performance, not reduce your payments!

Bonus payments

Of course, you may also wish to consider paying financial bonuses for exceeding your expectations for performance. You should make this decision during the procurement process. Financial bonuses will certainly be popular with bidders, but you should take great care that bonuses over and above the contracted payment are available only for exceptional performance, rather than simply for meeting the high standard of performance and value for money you would normally expect. In the event that the contractor was to perform better than you expected, it is vital that you ensure you will have funds to meet bonus payments for the full term of the contract and/or consider whether bonuses should be capped. If they aren't structured properly, bonus payments can back-fire: you would not wish to find yourself spending vast amounts of time and effort looking for performance failures to avoid having to pay them. You could end up seriously damaging the very relationship you intended to promote!

Some contracts only permit bonus payments if they can be funded from a 'pot' of accumulated performance deductions. This does mean that bonus payments are only available if there are sufficient funds in the 'pot', but it can be quite effective, as the contractor knows that they can aim to win back any previous deductions that have been made for sub-standard performance. You should, however, guard against making a mockery of the process by rewarding your contractor for exceptional performance in one area of the service whilst simultaneously making deductions for sub-standard performance in another (perhaps more important) area. You should also ensure that the financial value of bonus payments reflects the true value to your organisation of the increased level of performance. You will want to avoid simply paying for levels of performance that are not required or add no value to your organisation or end users.

Be mindful of your reputation for managing performance

Be aware that, as a customer, you can find yourself establishing a reputation for being 'hard' or 'soft' on applying default payments or bonuses. This could mean, for example, that bidders will build a premium into their prices to reflect the risk posed by a 'hard' reputation.

Some contract managers find it difficult to take remedial action such as making performance deductions when standards fall. They may be worried that it will damage their working relationship with the contractor, or that the contractor is having financial difficulties and that the service will suffer further if deductions are made.

Case Studies 5 and 6 illustrate these points.

CASE STUDY 5 “I’m worried that making performance deductions will damage my working relationship with my contractor.”

An authority had a contract with a catering company to provide a meals service for schools in the borough. Standards had been falling and there was a groundswell of dissatisfaction with quality. The issue was becoming politically charged owing to a widely publicised intervention by a television chef in a nearby borough.

The contract manager had remedies at his disposal. The contract allowed the authority to make payment deductions where it could be shown that standards were falling below the required levels. However, he was unwilling to invoke these remedies as he did not wish to “damage his working relationship” with the contractor. He could not see that relationships were being damaged with the stakeholders to the contract: school pupils, parents, head teachers and governors.

His answer was to allow the contract to expire naturally and put the contract out to tender. A new company that was garnering a good reputation elsewhere won the contract and expectations were high. However, the new contract contained exactly the same remedies for under-performance as before, because, according to the contract manager, “the Members wanted it.”

It’s unclear whether the contract manager will use the remedies this time if standards should slip, or whether he is just hoping they wouldn’t. What is clear is that he needs a performance management framework that works for him. He may already have missed the best opportunity he had to change it.

CASE STUDY 6 “I’m worried that making performance deductions will only make the service even worse.”

An authority had a long-term contract to outsource the refurbishment, management and operation of a number of care homes for older people. A few years into the contract, it became clear that the provider was failing to meet some of its obligations under the contract. The contract manager believed the provider was arranging fewer activities for the residents in order to cut its costs.

The contract required the provider to arrange activities to maintain a high quality of life for service users. It allowed the authority to make payment deductions where it could be shown that the provider was failing to meet this obligation. However, he was unwilling to invoke this remedy as he feared that the contractor was experiencing financial difficulty and that making a deduction from the provider’s payment would only make matters worse for the residents.

The provider is a multi-million pound public limited company, generating a healthy return for its investors. Both the authority and the provider had entered into a carefully negotiated contract in good faith. Risks were allocated between the parties following the principle that each risk should lie with the party best placed to manage it. The provider was being paid not only for the services provided, but also on the basis of the risk it had agreed to bear. They were also entitled to look for efficiency savings, but not if this impacted on the quality of service required under the contract. The contract manager’s job was to make sure that the contractor understood that any such degradation in service was unacceptable.

The contract manager has since reviewed his approach to performance management and has taken steps to address under-performance using the remedies available to him.

Automatic versus discretionary payment deductions

One solution is to set up your performance management framework that invokes the contractor to make performance deductions from their invoice automatically, thus relieving the contract manager from having to impose them on a more discretionary basis. Under this arrangement, the contractor undertakes self-monitoring of performance, with occasional spot checks carried out by the contract manager to ensure that monitoring continues to be effective. The invoice is supported with statistical information that clearly explains what is going on. Case Study 6 shows how this mechanism allows the parties to concentrate on problem solving, rather than dwelling on deductions made for past performance.

For **more complex contracts** involving complex payment calculations, it is prudent for you and your contractor to agree the details of each invoice before it is presented. This helps to keep account records 'clean' and more transparent for auditing purposes.

CASE STUDY 7 Contractor-imposed availability and performance deductions

An authority has a contract for parking enforcement in the borough. The contract manager has no qualms about making performance deductions, yet his working relationship with his contractor demonstrated very positive characteristics and he has a very positive attitude to working with the contractor to resolve issues.

The secret may lie in the fact that the contractor sees performance deductions as an automatic, rather than a discretionary action imposed by the contract manager. The contractor measures his own performance, makes the deductions and then pleads any mitigating circumstances retrospectively. This requires clear and robust performance standards, but

it means that the two parties can expend their energies on resolving problems together rather than debating individual, historical service incidents.

"We manage under-performance by getting the contractor to take responsibility. The secret is to engage with the contractor – to set out your expectations and aspirations and then find out why the contractor is not delivering by asking them, by sitting down and talking to them and finding out what you can do to help, then producing a Service Delivery Plan with agreed milestones to put things right. This way you will probably find that 50 percent of the contractor's problems are fixable by the contract manager."

Payment deductions and the law

Legally, deductions you make from payment should be a genuine pre-estimate of the loss your authority will incur from the failure. You should be careful not to set deductions at a level that could be interpreted as punishing the contractor. In the United Kingdom, penalty clauses are unenforceable in law, so don't refer to your remedy as such. It's better to call them 'performance deductions,' 'default payments' or 'liquidated damages.' In case of dispute (if it comes to that), a court is more likely to find in your favour if you can show that the deductions were set by making a genuine pre-estimate of the loss incurred by the failure. Test cases have shown that courts take a dim view of customers who set deductions significantly above that level, awarding them no damages at all.

Linking payment to performance is not the only way to manage a contract. It can be very effective in incentivising contractors, particularly when customer and contractor are unfamiliar with each other (a situation that often arises in public procurement). However, there are those who argue that, for mature relationships based on well-embedded partnership behaviours, the process of linking payment to performance will feel 'out-of-step' with what the partners are trying to achieve. Case Study 8 describes just such a relationship. But these do take a long time, the right cultural environment and a lot of commitment at a senior level to make it work. In the main, linking payment to performance will offer you the best opportunity for success, provided you exercise care in designing and implementing an effective performance management framework.

CASE STUDY 8 When linking payment to performance becomes redundant

An authority has an integrated contract for refuse collection and street cleansing in the borough.

The contract manager, who also managed the procurement process, chose not to link payment to performance in his contract. He had become disillusioned after seeing bidders put a line of cost in their budgets to meet performance deductions. He wanted a partner who truly shared the authority's objectives for the street environment.

The two parties have a Partnership Charter that fosters joint decision-making and there is even a fund

for innovation. The kind of relationship and culture they enjoy (they are co-located) makes linking payment to performance, in this case, somewhat redundant.

"My way of managing under-performance is immediate rectification. It's in our contractor's culture and it's the expectation of the citizens in this borough – a perfectionist, obsessive culture. I don't want to get bogged down with performance statistics. If there's a problem with a missed collection or a sub-standard condition I say 'Don't report it to me, speak to the cleaner and get it sorted!'"

Terminating for poor performance

Your contract should set out the provisions for terminating the contract if levels of performance, non-availability or non-delivery fall to an unacceptable level. You should however, always seek legal advice before starting this course of action.

This is because contract managers often face a dilemma in this situation. If a client terminates a contract, the contractor may decide to sue for unjustified termination. There is a risk that a court may find that performance was poor but not poor enough to justify termination, in which case the client may be liable for the contractor's losses including lost profits. On the other hand, by ignoring poor performance the client not only risks the effectiveness and reputation of the authority. However this could be adjudged to have accepted the contractor's performance, which could then mean that the client is seen to have waived the right to terminate and seek compensation!

For **more complex contracts**, it's likely that your contract will contain step-in rights or other provisions to allow you to assume control of some or all aspects of the service in a controlled manner. In contracts where the contractor is funded by a bank or other financial institution, you will need to discuss and agree with them detailed arrangements for the ongoing provision of the service.

2.5 Ensure value for money over time

As time progresses, it may be appropriate for you and your contractor to re-visit the payment mechanism to fine-tune or re-calibrate its effect, to ensure that it remains relevant and conducive to a value for money service. You should, however, take careful account of the business case and the inherent sharing of risk to protect against undue advantage to either party or a beneficial commercial position being surrendered unwittingly. Seek professional advice in such cases, particularly when dealing with **more complex contracts**. See How to Manage Change in Section 6 below.

2.6 Compare prices and learn from others

Benchmarking is the practice of making comparisons between organisations with the aim of ensuring continuing value for money, getting better performance and improving business practices.

You should regularly compare performance with a range of relevant benchmarks in other authorities or other relevant comparators. Discuss the results with your contractor and how they might help you achieve continuous improvement of the service.

Case Study 9 shows how Best Practice Sharing Groups have helped local authorities to help themselves.

CASE STUDY 9 Best Practice Sharing Groups

A group of local authorities jointly established Best Practice Sharing Groups to promote the development and dissemination of best practice in contract and relationship management.

For the first time, contract managers who managed contracts with the same contractor for very similar services, came together and found that they also shared many issues of concern over service improvement. They exchanged ideas on how these could be best addressed.

The group was also able to realise cost savings. The contractor had made separate approaches to them requesting price increases over and above those permitted under the inflationary clauses in their contracts. One borough had taken advice on the matter and had successfully challenged the claim. Details were shared between the four and the others were able to respond in a similar vein, saving over £500,000 in net present value terms over the remaining period of their contracts.

Price comparisons offer a quick way to gauge whether you are getting value for money but sharing and comparing performance measures and actual performance data adds greater validity and credibility to the benchmarking process. Comparing the way you manage your contract with the way other organisations manage theirs can also be very useful.

You can also include in your contract a requirement for your contractor to benchmark their own costs and performance levels, for example, through 'soft market testing' exercises. In these circumstances you should be watchful, as contractors have been known to use these as a way to justify price increases over and above those permitted under the price indexation formula in the contract. Many also consider these to be a wasteful use of resources, imposing an unnecessary burden on the public services market.

Sample guidelines for a benchmarking procedure, for inclusion in a contract, are given at Appendix D.

2.7 Record the benefits as they are realised

In the eyes of both parties and of stakeholders to the contract, benefits management is a key driver to ensure the success of a contractual relationship.

For **more complex contracts**, a detailed business case comprised of a cost/benefit and risk analysis and showing the profile of planned investment over the life of the contract should be prepared in support of the decision to award.

During the procurement process, it is prudent to prepare a benefits realisation plan, showing anticipated benefits and how they will be realised or achieved. Some contracts offer excellent opportunities to improve availability and performance levels. You should seek to identify these opportunities and document the intended benefits from the contract, so that you can monitor and record the achievement of the benefits during the operational phase.

The benefits realisation plan is developed to enable the achievement of benefits to be tracked and reported during the operational phase. Your plan should clearly show what will happen, where and when the benefits will occur and who will be responsible for their delivery. You should also have a process for monitoring the achievement of benefits against expectations and targets, which you must be capable of tracking in terms of 'hard' (e.g. cost, headcount) and 'soft' (e.g. image) benefits. Ideally you should link this tracking to the established performance framework, rather than duplicate it.

Maintaining and updating the benefits realisation plan together with the contractor will enable both parties to track the delivery of benefits and report such delivery to stakeholders at any point during the life of the contract. You should consider appointing a nominated officer to be responsible for benefits realisation, who will report to senior management any serious barriers to benefits realisation, whether external or internal.

3 How to Manage Your Relationship

3.1 What's in this section?

Just like any other relationship, your relationship with your contractor won't become a good one by default. You have to work at it and it takes time, perhaps more time than many people realise. Be realistic – it won't always be chocolates and roses – you will disagree occasionally.

This section deals with the “soft-issues” involved in building up mutual trust and understanding so that there is openness in communication and a joint approach to managing delivery.

You need to deal with any problems that arise promptly and with the aim of delivering genuine “win/win” outcomes. This requires good channels of communication.

The objective of relationship management is to ensure that the relationship is managed to mutual advantage, i.e., making sure the required availability and performance levels are being achieved in accordance with the contract. While a well-drafted and effectively managed contract is essential, it is not in itself a substitute for effective relationship management. Effectively managing your relationship with your contractor will breathe life and vitality into the contract.

3.2 Manage the relationship according to the complexity of the contract

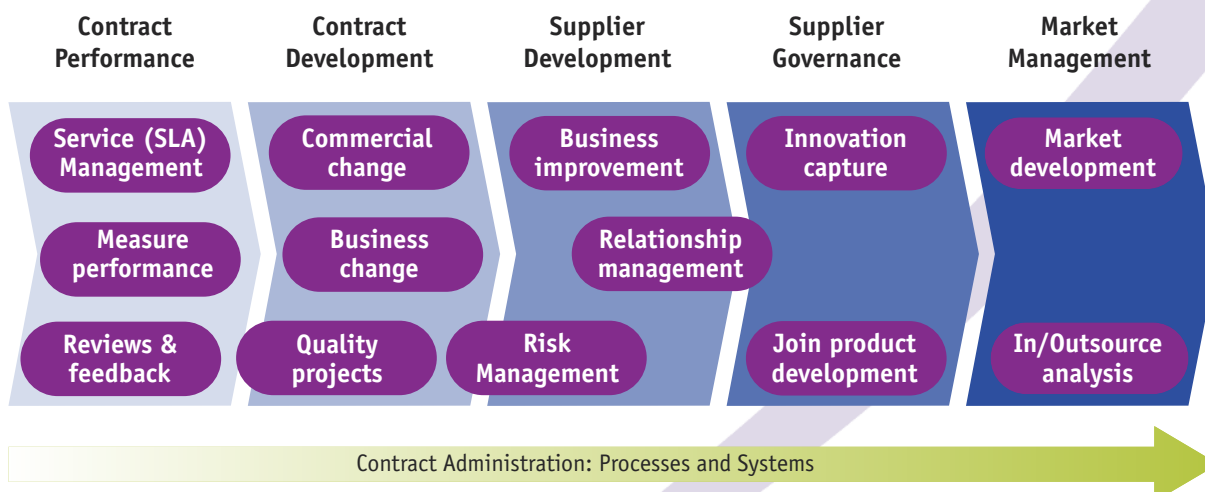
For **simpler contracts**, such as goods supply contracts, you should be chiefly concerned with measuring performance and managing service levels by using Service Level Agreements (SLA), conducting regular reviews and giving and receiving feedback. For **more complex contracts**, you will need to move your relationship to a different level.

At their most complex, supplier relationships move beyond joint innovation and product development to be concerned with managing and developing markets to meet the need for continuous improvement in public services.

The diagram below illustrates the growing sophistication of technique appropriate to **more complex contracts** and relationships. Along the continuum, the complexity of relationship management techniques increases as the relative complexity and criticality of the contract increases.

Figure 2: Strategic Contracts and Relationships Complexity Continuum. Source: Peter Smith/OGC

Complexity grows for more Strategic Contracts and Relationships



3.3 Manage the relationship, as well as the more formal aspects of the contract

It is both in your contractor's interests and yours to make the relationship work.

In a well-managed contract, the aim for both parties should be for the relationship to grow to mutual benefit in terms of:

- the achievement of the required levels of availability, performance and service quality required by the contract;
- value for money for end users through continuous improvement; and
- sustained business growth and profitability for the contractor.

A well-drafted contract is essential in that it provides both a legal 'safety net' for the relationship that protects both parties in case things go wrong and a firm foundation upon which you can build a good working relationship with your contractor. Nevertheless, it should be less prominent than good relations. It's essential to know your contract and what it says, but you shouldn't try managing the contract without managing the relationship.

Contract managers who have a well-thumbed copy of the contract kept perpetually on their desks are more than likely having problems. If the relationship is so short on trust that they are constantly checking for the wording in the contract, it's unlikely that the relationship is a good one and the chances are it's equally unlikely that the service is as good as it could be.

Equally unsuccessful, will be the manager who has no clear idea of what the obligations of the parties are or what the contract is really about. Stories abound about managers who not only don't know what the contract document says; they also don't know where to find a copy of it!

Clearly, the secret is to strike a balance somewhere in between. Aim for both parties to have a happy working knowledge of the contract and what their respective obligations are, but recognise that at least as much (if not more) time and effort needs to be invested in making the relationship work, and be aware of the danger signs. Contracts need to be viewed holistically, not just to the letter.

You can't develop a good, mature relationship overnight. The characteristics of the public procurement process aren't really conducive to positive relationship building, but there have been exceptions. Certainly a procurement process run on an adversarial basis will make it hard to build positive relationships post-award. However, you might need to start with a more formal approach to the relationship, building more informal channels of communication and decision-making structures as time goes on. Don't expect to be able to rely on trust and openness from Day 1.

Both you and your contractor should aim to use both formal and informal channels of communication. Many issues tend to be resolved swiftly and successfully using the less formal structures, strengthening the relationship as a result.

The key factors for success are:

- mutual trust and understanding;
- integrity, honesty, openness and good communication; and
- a joint approach to managing delivery.

A successful relationship means engendering trust and goodwill, backed by a positive, demonstrable track record of service quality, value for money improvement for the customer and sustainable business benefit for the contractor.

3.4 Create the environment for good communication

Good communication is often the make-or-break in managing a relationship.

It allows problems to be identified and resolved early, and supports an atmosphere of mutual trust and an appreciation of each other's priorities.

You should agree with your contractor what channels of communication you will use before the contract commences. If you are co-located or in close proximity, it would be better if you could get together with your counterpart on a regular basis, formally and informally, rather than over-use 'disembodied' media such as e-mail. Alternatively, you might prefer to talk regularly by telephone or by video-conferencing. You could agree to review your arrangements for communicating at intervals throughout the contract.

Ideally, communication through inter-personal means, i.e., face to face, or by telephone, should be used where possible and confirmed in writing or by e-mail where necessary. Relationships that are managed solely by passive, disembodied means such as e-mail tend not to benefit from the 'personal touch,' as Case Study 10 demonstrates.

CASE STUDY 10 Communication, communication, communication

An authority entered into a contract to outsource its refuse collection and street cleansing service.

Care was taken to co-locate the authority's contract manager with the contractor at the depot. But this wasn't enough to build a good relationship, as the parties had not thought carefully enough about effective communication, as the following conversation demonstrates. When asked to identify the principal mode of communication used in the relationship, the contract manager said:

"Oh, it'll be by e-mail. Yes, even though we are co-located, we communicate more through e-mail than by any other means. I'm just so busy, I'm away in meetings most of the time."

And would you say the relationship is managed more formally, or more informally?

"About 60:40 formally, I would say. I'd prefer it to be more like 50:50, but the contractor's contract manager complains about lack of communication, whereas I always attend the monthly liaison meeting, he doesn't."

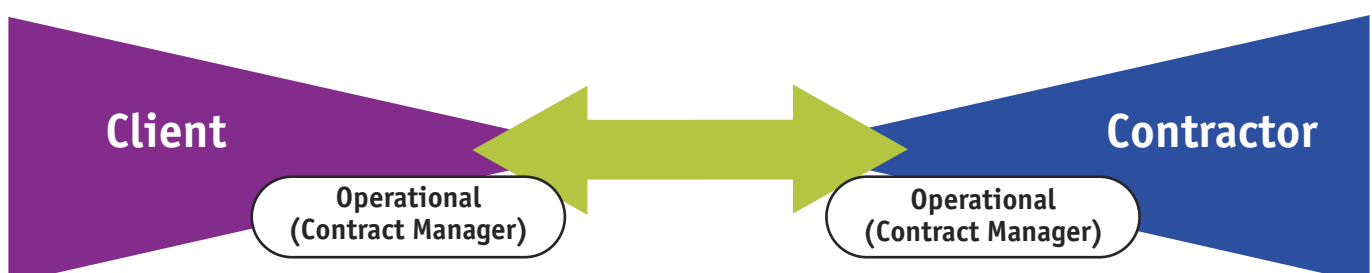
And why is that? *"Oh, I don't know, we haven't talked about it."*

The contract manager went on to say that about 60-70 percent of the contractor's targets are currently being met. It may be no coincidence that communication between the parties urgently needs to be improved.

You will need to decide who will communicate with whom to get the best from your contract and your relationship.

For **simpler contracts**, it may be appropriate to channel all communications through you, the contract manager, and your counterpart in the contractor's organisation. This model, which offers the simplicity of a single point of contact, is illustrated in Figure 3 below.

Figure 3: Single point of contact relationship model for **simpler contracts**



For **more complex contracts**, you need to establish a range of informal and formal communication channels to promote effective communication and liaison at both operational and at senior levels, as appropriate to the matter at hand. Wherever possible, you should make communication between client and contractor peer-to-peer so that is operational problems can be raised, discussed, resolved and documented by staff at the operational level, without involving business managers.

In this relationship model, there are three levels of communication:

- strategic (senior management/board of directors);
- business (contract managers on both sides); and
- operational (technical and ‘frontline’ staff).

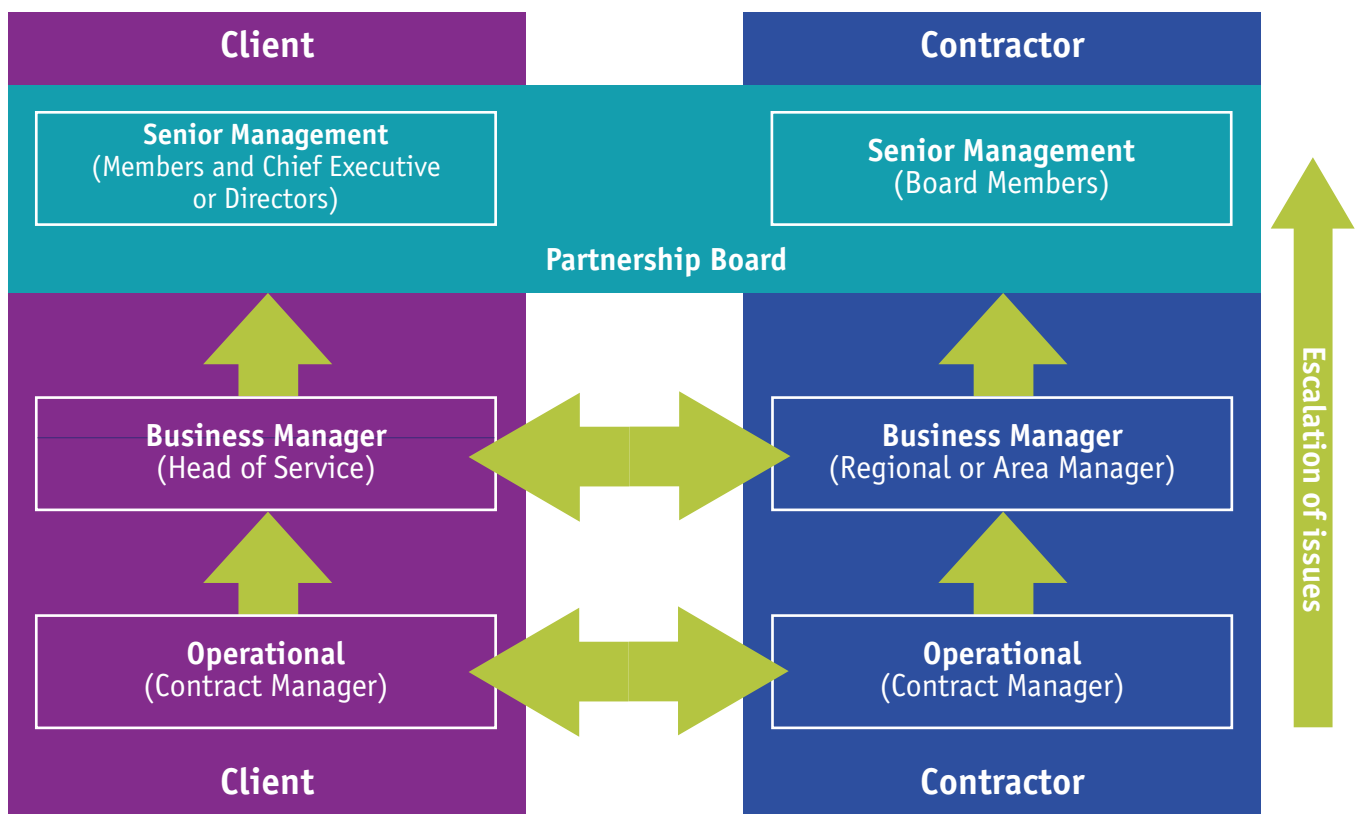


Figure 4: Peer-to-peer relationship model for **more complex contracts**, showing escalation of issues

You may, of course, decide that some combination of these models works best for your contract and your relationship with your contractor.

Your contract should include formal escalation procedures that provide a structure for sorting out the more serious problems that can't be resolved at the operational level. Effective dispute resolution means allowing local resolution for the great majority of issues, but efficiently escalating more serious differences as appropriate.

3.5 Deal with problems promptly

Good though the relationship between you and your contractor may be, problems are bound to arise from time to time and you should try to resolve these informally at first - if you judge it to be appropriate.

For **more complex contracts**, you will need to ensure that you and your contractor have problem management procedures in place, including escalation procedures in both your organisations, and that these are used when needed. These procedures should seek to prevent problems as well as resolve them.

The contract must define the procedures for undertaking corrective action if, for example, target performance levels are not being achieved.

If a dispute cannot be resolved at the level where it arises, it will be necessary to involve a higher level of authority. This escalation process needs to be managed by agreeing procedures providing a structure for dispute resolution allowing local resolution but escalating as appropriate to the issue.

Figure 4 above shows how, in **more complex contracts**, issues should be first discussed peer-to-peer and then, if unresolved, escalated upward as appropriate. Partnership Boards are discussed at 3.7 below.

3.6 Recognise that culture, attitude and behaviour are as important as the terms of the contract

It is likely that there will always be some tension between the different perspectives of client and contractor.

As contract manager, your principal concern will be to secure the best possible service at the lowest overall cost. Your contractor's principal concern, assuming they behave like a rational private sector firm, will be to secure sustained profitability and business growth to maximise shareholder value.

These drivers could be seen as diametrically opposed but firms cannot achieve sustained business growth unless they have happy customers. Relationship management is about finding common ground and building on it. If your contractor harbours ambitions to grow in your market they will want you to be satisfied with the service in the long term and recommend them to your peers. This is the basis on which you should look to build a genuine 'win/win' outcome. Have an open and honest conversation with them about it. If you can show that you are prepared to spend time considering your contractor's aspirations, then they are much more likely to spend time helping you to achieve yours.

It's often said that trust and goodwill take a long time to build but are all too quickly destroyed. They are not easy to engender although they can be established over time through the development of a culture of joint problem solving and shared objectives, risk and reward. Before you can do this you need to think carefully about managing your own behaviour, first impressions and your reputation for integrity are key and you should also act quickly to 'nip problems in the bud'.

Arino et al (2001) had the following advice for managing 'relational quality.' Most of this, of course, is common sense, although it's helpful to capture it and think about it:

Table 4: *Managing Relational Quality. Adapted from Arino et al (2001)*

| | |
|---|--|
| Remember that nothing is set in stone | Although all collaborations start with a set of givens such as their prior experiences of each other, these are not immutable. The relationship is a living entity that will be shaped by the partners' behaviour. |
| Negotiate with a broad bandwidth in mind | Beginning in guarded ways, partners begin to strengthen their mutual perceptions in the course of sensemaking during their deal making. Learning, understanding and sensemaking are all critical processes that management must develop and hone sharply. |
| Make first impressions matter | Tenor and openness with which management approaches the negotiation process will set the stage for how partner interactions take off. Low levels of initial trust are difficult to overcome. |
| Monitor your own behaviour and not just your partner's | Relational quality can improve significantly with each stage if reinforced by positive behaviours and interactions. Opportunistic actions will be more damaging to relational quality than sins of omission. |
| Provide advanced warning of your intentions | Nobody likes surprises: ample warning and reasonable explanations can mitigate serious failures in the delivery of promised contributions. |
| Manage your own expectations carefully | All alliances run into rough patches, particularly in early days. Exaggerated expectations can often lead to demise of the alliance. Management must transmit the purpose and complexity of the alliance and "walk the talk" internally. |
| Learn from experience | Firms experienced in alliance management should facilitate processes of collaboration by transferring relational capabilities to its partner. Inexperienced firms should view negotiation processes as opportunities to test reliance on trust as a complement to – and then later as a substitute for – more formal safeguards. |
| Manage cultural conflicts from the start | Frequent and transparent exchanges are essential ingredients to enriching relational quality. Employees at all levels should meet often and under diverse circumstances. Avoid the "us and them" syndrome at all costs. |
| Recognise the importance of national differences | Negotiation processes should encourage active and profound sensemaking on issues of demographic, institutional and reputational characteristics, without losing sight of the terms of the agreement. |
| Manage your firm's reputation for integrity | Behaviours of partners are subject to constant monitoring by others with whom they have business relationships. A breach of trust with third parties may be brought to the partner's attention. Reputations transcend any business relationship and need managing accordingly. |
| Decide whether to invest in relational quality | All this requires time, effort and investment and is only worthwhile if the returns obtained – quicker action and smoother collaboration – warrant it. |
| Decide when to substitute trust for more formal governance and controls. | Experienced managers should resort to the more formalised controls – first as complements and then as substitutes – to reliance on trust before considering the more radical step of dissolving the alliance. |

The right attitudes will engender the right behaviours. You and your contractor both need to share and understand each other's objectives and ensure that your relationship is directed towards achieving them.

Adversarial approaches will only increase the distance between you and your contractor. If these are characteristic of your contractor's organisation, of your own, or of both, then a special investment of time and effort will be required to help build trust and establish goodwill.

To get your relationship off to a good start, you could try jointly planning a programme of training events, focussing your combined effort on user satisfaction and supplementing it with team-building and problem-solving exercises.

However, throughout the contract term, you will need ongoing formal and informal governance structures for the relationship, providing frameworks for liaison at operational, business and senior levels. Regular review meetings should be scheduled at a frequency commensurate with the complexity or criticality of the contract.

See *Hold regular review meetings* at 3.8 below.

3.7 Build good structures for liaising with your contractor

Both you and your contractor should actively seek the right mix of formal and informal structures that best achieves positive outcomes.

By using both formal and informal structures appropriately, you should be able to resolve problems swiftly and successfully and strengthen your relationship as a result. That said, good relations need to be supported by 'good housekeeping', i.e., well-maintained records of change management and issue resolution.

See *How to manage change* in Section 6 below.

For **more complex contracts**, the creation of a Partnership Board, made up of senior representatives from both customer and contractor (usually at Board and/or Member level), can support positive working relationships. The term is used here in a generic sense, i.e., your contract does not have to constitute a formal partnership for this technique to offer benefits.

The Partnership Board should meet regularly (perhaps 2 or 3 times a year) to discuss matters of strategic importance to the relationship, making joint decisions as appropriate to provide a high-level 'steer' to both the contract and the relationship. A key responsibility of the Partnership Board is to ensure that both parties are aligned in delivering the contract effectively and are not pulling in opposing directions.

Partnership Boards allow senior management to lead by example, by demonstrating the ability to work together to mutual benefit and by showing people from both organisations that the success of the contract and the relationship is valued at the highest level. The Board also grants stakeholder representatives, such as Members or representatives of service users, participation in the management of the relationship. Appendix E gives a sample Partnership Charter, a document that can be used to govern this kind of contractual relationship.

Case Study 11 describes how one Partnership Board is working to improve the service to end-users.

CASE STUDY 11 What 'partnership' really means for one authority

An authority has an integrated contract for refuse collection and street cleansing in the borough. The contract manager wanted a partner who truly shared the Council's objectives for the street environment.

The two parties have a legally binding Partnership Charter, which governs the relationship and fosters joint decision-making. A Partnership Board, with top-level representatives from both customer and contractor, meets quarterly to give the contract and the relationship a strategic 'steer.'

Under the Charter, each partner accepts a duty to:

- make an effort to understand the other's obligations;
- be just and faithful in all dealings;
- work in the spirit of co-operation;
- resolve differences by discussion and negotiation;
- communicate clearly and effectively;
- seek to achieve savings to the benefit of both partners; and
- give early warnings to the other about mistakes or problems.

To do this, the partners have committed to:

- work alongside each other and not in separate rooms;
- sharing communication and information systems;

- encouraging secondments and joint training and induction of staff; and
- jointly monitoring costs through 'open-book' accounting.

Four 'innovation forums,' composed of people from both partners, develop proposals for service improvement and greater cost-effectiveness and anticipate proposals for any change in the service that may be required. An innovation fund is in place and available to support the development of ideas and get them put into practice.

"Our style is geared toward solving problems - not monitoring by statistics," says the contract manager. "Problems are shared - we don't punish contractors financially. Issuing defaults is not our style. There are arrangements in the contract but in seeking partnership, we do more. We aspire to act justly to each other.

"I am not doing this service on the cheap, it's expensive - but I have the capacity to respond to problems rapidly and fix them, and open-book accounting gives me full disclosure and the profits are capped. They need to please us because there's a break clause after Year 8."

The contractor can also use the contract as a reference site. They want to showcase the service to help win business from other authorities. "I believe we have maturity to acknowledge the legitimacy of profit, but with a relationship like a direct labour organisation. We feel that the contractor is part of the family."

3.8 Hold regular review meetings

You will need to hold regular liaison or review meetings at the business and operational levels of the relationship in order to jointly monitor and manage performance standards and deal with tactical or operational problems or issues as they arise. This will provide you both with a regular, formal channel of communication. Of course, the required frequency and duration of these meetings should be appropriate to the relative complexity or criticality of the contract. **Simpler contracts** will require an annual review meeting at the very least, while **more complex contracts** may require a review meeting as often as once a month.

You should agree standing agenda items with your contractor, covering performance, progress against milestones, issue resolution, stakeholder management, staff issues, sustainability and risk management. It's also important that you record all decisions and actions from your review meetings formally and agree the record with your contractor. Suggested sample agenda items are given at Appendix F.

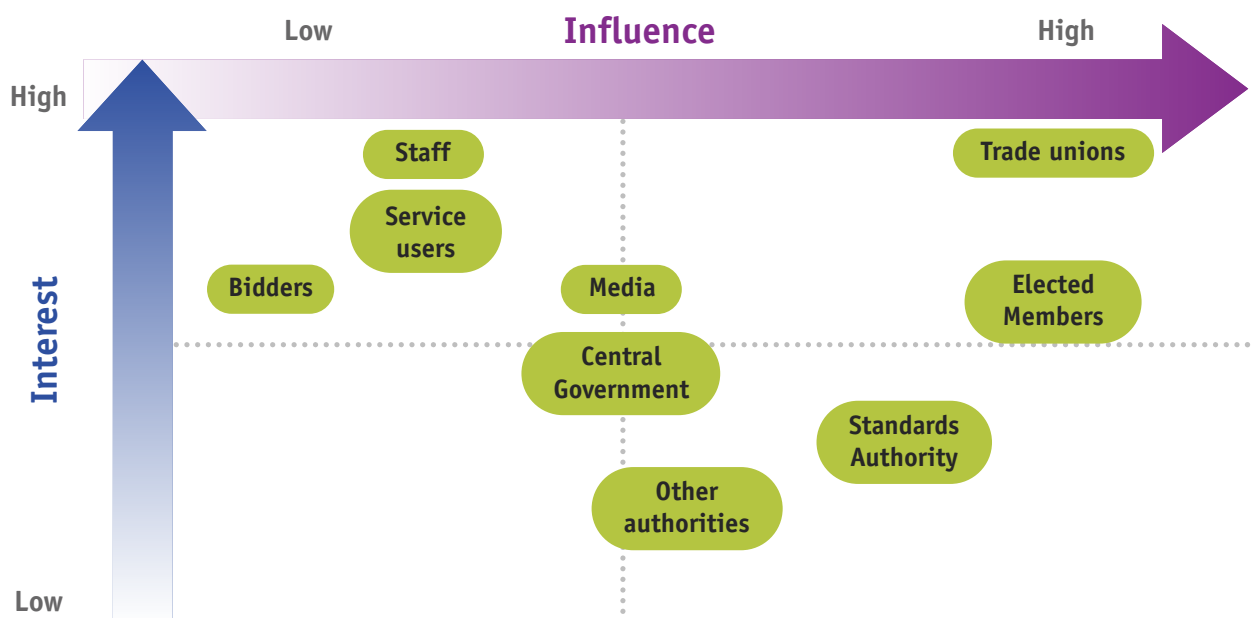
3.9 Manage your stakeholders

Managing expectations

Managing expectations, particularly those of service users, elected members, employees and other key stakeholder groups, can be critical in achieving success in the service, the contract and in the relationship. If you fail to manage expectations there is a danger you will fail to meet them; and a failure to meet expectations, even if they prove to be unrealistic, can mean a failure for the service, the contract and for the relationship.

Procurement processes for **more complex contracts** should include an active and planned approach to stakeholder management, both internal and external, such that communication and expectations can be carefully managed. A sample stakeholder analysis is shown in Figure 5 below, showing how stakeholder groups can be plotted on a simple four-box model according to their respective levels of interest in and influence over the contract and the relationship. Once stakeholders are classified in this way, the most appropriate communication and stakeholder management approach can be devised for each group.

Figure 5: Sample stakeholder analysis plotting stakeholder groups according to their relative levels of interest in and influence over the contract



Throughout the procurement and transition phases, the management of industrial relations requires a pro-active input of specialist expertise. Accountability for its effective management should rest with the project manager. Your aim during the operational phase of the contract should be to manage end-user and other stakeholder expectations, especially during the early transition period.

Communicating with stakeholders

There should be clear procedures for the ongoing involvement of and communication with service users, elected members and other stakeholder groups throughout the operational phase - both formal and informal. It is useful to develop and agree with your contractor a protocol for managing communications with stakeholders and with the press and general public. A template for a communications plan and a sample press and PR protocol are given at Appendices G and H respectively.

You should also establish a process for handling and recording complaints and compliments. Ideally this should be integrated into your authority's wider, established public procedure for complaints, in order to avoid unnecessary duplication and/or fragmentation of performance data.

3.10 Know your contractor

When managing **more complex contracts**, you should take prudent steps to maintain a working knowledge of your contractor's business and their position in the market, particularly if commercial and operational risk is to be effectively managed to protect long-term service continuity.

This will mean collecting strategic intelligence about the contractor, concerning a number of factors such as their ongoing financial strength, security and capability, their competitiveness in, and aspirations for, the developing marketplace and their behaviour (such as business strategy, growth, new contracts, liabilities, mergers, acquisitions, disposals, product development, market share, divergence into new markets or withdrawal from existing markets, industrial and investor relations). This will include information in the public domain, such as annual reports, financial statements and press articles, but also intelligence gleaned from other sources, such as bulletins prepared for investors by City analysts.

3.11 Work with other authorities to manage key relationships

For some key goods and services, a number of authorities will often be managing relationships with the same contractors. Opportunities will often exist for both public authorities and contractors to realise benefits from working together.

Supplier Relationship Development (SRD) can be defined as a strategy that aims to improve the contractual relationship for client and contractor alike through targeted collaborative working and the sharing of information, issues and ideas.

The SRD method, developed by Capital Ambition, is a way of doing SRD in a public sector setting which involves collaboration between authorities, as well as with contractors. The combination of increased bargaining power and collective influence (through buyer collaboration), together with the dynamic efficiency of partnership working (through sharing ideas and joint problem solving), serves to open the door to an ocean of opportunities for improvement and efficiency.

Capital Ambition defines SRD as “the process of finding savings, efficiencies and improvements on existing contracts, for the mutual benefit of buyers (public sector bodies) and their suppliers.”

SRD brings the perspective (i.e., issues and ideas) of the contractor and the perspective of the client together. SRD goes further than mainstream contract and relationship management practices and requires a greater level of collaboration and co-ordination in order to deliver strategic and mutually agreed goals.

This enhanced level of co-operation seeks to provide benefits to both sides, resulting in advantages such as economic efficiencies and increased productivity. Both sides are able to share information, issues and ideas, and this increased transparency provides opportunities to jointly strategise with each side being able to offer a different perspective.

Capital Ambition's SRD approach has taken these principles and applied them to the world of EU public procurement, where strict regulations limit the more fluid and flexible approaches to contract and relationship management which are enjoyed in the private sector. In addition to the need for co-operation with suppliers, the method of SRD prescribes collaboration with other (public) customers; the principle being that organisations collaborating together are able to realise joint objectives which may be too difficult and/or costly to achieve alone.

A Supplier Relationship Development toolkit has been developed to support public authorities through this process. Called “Supplier Relationship Development: Implementation Toolkit for the Public Sector” (see Further Reading). The toolkit is intended to be a practical, application-focused guide - designed to assist contract managers and supplier relationship managers to carry out cost-effective SRD initiatives in their own organisations.

Sharing Contracts

Contracts shared by authorities are becoming increasingly common and will become the norm in the future as public services seek benefits from greater economies of scale and reductions in duplicative back office support.

Authorities that wish to enter into a joint contract for service provision will need extra time to agree how work is to be shared; and establish how best to maximise the benefits of joint working.

For example, participating authorities will need to:

- gain an early commitment to joint working before approaching the market;
- nominate a lead authority to be responsible for contract and relationship management;
- identify opportunities for reducing costs by eliminating duplication and standardising processes (for example, sharing mechanisms for obtaining user input);
- establish common performance standards and expectations and methods for measuring performance; and
- establish a common escalation and dispute resolution procedure.

Authorities should also consider how they can leave the door open for further authorities to join at future dates, thereby extending benefits still further.

Again, the SRD Toolkit (see above) provides useful support to joint working in this manner.

4 How to Manage Your Contract

4.1 What's in this section?

Your contract provides a formal 'safety net' for your working relationship with your contractor and good housekeeping provides the foundation for good relations. This means you will need to administer your contract properly. This section deals with the mechanics of administering your contract.

Your contract documentation should be constantly maintained, especially where any changes to services, requirements, prices or procedures are concerned. Senior management and stakeholders should be kept informed through a clear reporting mechanism.

You will also need to manage risk and put plans into place to ensure continuity of service in case something should go wrong.

4.2 Recognise that administration of the contract is important

Don't underestimate the importance of administering your contract. With clear administrative procedures you can ensure that all parties to the contract understand who does what, when, and how.

Well-managed contracts include arrangements for contract administration that are clearly set out in the contract. They are binding on both you and your contractor, in a manner that supports rather than hinders good performance.

The elements that may require most careful administration include:

- contract maintenance and change control;
- charges and cost monitoring;
- ordering procedures;
- payment procedures;
- budget procedures;
- resource management and planning;
- management reporting;
- maintaining availability and performance records; and
- asset management.

4.3 Maintain the contract documentation

The contract will need to evolve to reflect changes in the arrangement. It is highly likely that there will be changes, or *variations* to the contract, especially if the duration of the contract is longer than a year or two. It is also vital that you have a process for keeping the contract documentation up to date and relevant to what is happening 'on the ground,' so that all documents relating to the contract are consistent and that all parties have the correct version.

You will need to allocate resources to this important activity and establish a clear accountability for it in your contract management team.

The management of change is an important area of contract administration.

See *How to Manage Change* in Section 6 below

4.4 Define your information and reporting requirements

Making sure management and other stakeholders understand what is happening

For **more complex contracts**, your senior management will need to know how your contractor is performing and whether any issues are arising that will require their intervention. As contract manager, your responsibility is to establish efficient and effective management reporting procedures, so that information about performance and possible problems with a contract reaches those with power to act as soon as practicable.

It is best to define your requirements for service performance reports and management information before and during the procurement process; and then confirm them with your contractor during the transition period of the contract.

During the procurement process, you will need to decide who will undertake the capture and reporting of performance data. You could do this yourself, or appoint a representative to do it for you. Alternatively, you could allocate this responsibility to the contractor. Some contract managers prefer to carry out performance monitoring themselves, particularly early on in the relationship or where stakeholders may harbour issues of trust. However, there is a cost involved, that you will either bear yourself or will be included in the contract price in some way. Either way, you will need to consider cost-effectiveness as part of your decision.

For the sake of simplicity, reliability and to keep costs down, you should consider using the contractor's own management information and performance measurement systems. After all, your contractor needs to know what's going on, too, and it might also help you to benchmark the contractor's performance on your contract with their performance on their contracts with other customers.

4.5 Understand contract costs

Understanding the costs underlying the contract is essential for achieving ongoing value for money, especially when evaluating the cost of changes to the contract.

Some contractors unfortunately see public sector contracts as a means of recouping costs. Indeed many authorities pay invoices without even checking the contract! This is not always the fault of the contractor; managers often change requirements mid-contract without having regard to the impact this will have on the financial model or the balance of risk and reward. All changes to the contract or to the respective obligations of both client and contractor need to be evaluated in terms of their effect on costs and on the contract price. Without this discipline, contract price inflation can be allowed to continue unabated and can lead ultimately to questions about value for money. If you are in doubt, you should seek specialist legal or financial advice, as appropriate. See also *How to Manage Change* in Section 6 below.

'Open-book' accounting

For **more complex contracts**, it is essential that both you and your contractor to enjoy a shared understanding of profile of investment, inflationary pressures and revenue and cashflow forecasts. Sharing this knowledge can support positive working relationships and joint working between the parties. It can also prevent misunderstandings and reduce the instance of disputes relating to costs.

One way that this can be achieved is by using the 'open-book' accounting method. This is the complete and unimpeded sharing of detailed, up-to-date financial information pertaining to the contract and its operation, where every item of planned income and expenditure is shown as a line item at the bid stage and continues to be shared openly throughout the term of the contract. If the Board is to be effective in governing the contract and the relationship, contracts that have a Partnership Board, (see 3.7 above) should use open-book accounting.

Be aware that there are differing degrees of 'open'-ness to 'open-book' accounting. You need to ensure that the information is shared to a high degree of detail (with each cost area shown as a separate 'line item') and that a joint review of this information is undertaken at each of your regular review meetings. You should also make it clear that your contractor should not perceive sharing this information as absolving them of their responsibility to manage these costs effectively and/or taking the appropriate mitigating steps to minimise the risk of rising costs.

Understanding the make-up of costs and analysing trends will allow you to better judge the validity of any claims your contractor might make for compensation in extraneous circumstances, or in respect of costs arising from risks that were shared or retained by the customer.

4.6 Audit the contract

It is your responsibility as contract manager to make arrangements for the audit of the contract, particularly if it is of a **more complex** nature. During the procurement phase, you should determine and clearly document the process for auditing the contract.

You will need to decide whether your authority's auditors will audit the contract, whether your contractor will do it, or whether you will appoint a third party to carry out the task. Where the terms of the contract require the selection and appointment of independent auditors, you should aim to retain the right to approve or otherwise the selection of the auditor and you will need to allow plenty of time for this task.

You will also need to decide (or, if your contract is in mid-term and the contract is silent on the matter, agree with your contractor):

- the frequency of audits;
- whether you have the right to commission ad hoc audits at any time or only under certain circumstances;
- how the cost of audits will be met;
- the process for proposing and agreeing the terms of reference prior to each audit (a template for audit terms of reference is given at Appendix J);
- the maximum time allowed for the submission and approval of draft reports, final reports and management action plans;
- arrangements for liaison to discuss significant findings at a senior level or by the Partnership Board, as appropriate;
- arrangements for monitoring the implementation of action plans; and
- whether final reports and action plans should be available to stakeholders.

Always make sure that each audit report requires the drafting and agreement of action plans by which you and your contractor will implement the agreed recommendations of the auditors, including an agreed timetable for their implementation.

4.7 Manage the risks

Risk is defined as uncertainty of outcome, whether this is positive (i.e., an opportunity) or negative (i.e., a threat).

In contract management, managing risk means identifying and controlling the factors that may have an impact on the fulfilment of a contract. Risks can relate to any aspect of the contract and include fluctuations in demand, lack of contractor capacity, changes to your requirements, industry standards or to legislation and the transfer of staff.

Classes of risk

Risks may be classified as:

- operating risks that you and your contractor may encounter during the operational phase of the contract. These may be further categorised as environmental risks, health and safety risks, financial and investment risks, demand risks, employment risks and performance risks;
- emerging risks that are unknown during the procurement process but which will come to light and require management during the life of the contract; and
- project risks that will need to be managed during the procurement process; and, if appropriate, the construction or implementation phase of the project. These need to be managed separately.

The text that follows explains how you should manage each class of risk.

In longer-term **more complex contracts**, you will also need to prepare for the risk of potential changes in law or changes in the political landscape that might not be immediately foreseeable, for example, a merging of local authorities or the transfer of responsibilities and powers between local, regional and central government.

You need to identify, understand and have a plan for managing all risks before you can finalise the tender documentation, in particular the conditions of contract, the specification and the performance management framework.

Run a risk workshop

During the procurement process for a **more complex contract**, you may need to compile and maintain up to two risk registers to capture the likelihood, impact and mitigation of all identified risks, one for operating and emerging risks you will allocate between the you and your contractor and one for project risks.

To do this, you should run a risk workshop for all members of the project team and your key stakeholders. The first step is to brainstorm all possible risks – get the workshop members to list as many as they can think of - then classify them as operating risks and project risks.

Each participant should then independently score (a) the potential impact and (b) the likelihood of each risk occurring, perhaps on a scale of 1 to 5. By multiplying together the average scores for each risk, you can rank the risks in order of magnitude and importance.

A template for a risk register can be found at Appendix K.

Operating risks

These are the risks that you will need to allocate between your authority and your contractor. You should follow the general principle that risks should be placed with the party best placed to manage them, remembering that wherever risk is transferred to or shared with the contractor, they will very likely require a commensurate compensation or reward.

You, as contract manager, will need to compile and maintain a risk register for these risks. Once you have done that, you will need to determine how best to allocate these risks, i.e., which risks are best transferred to your contractor, which are best retained by your authority and which are best shared by the parties and to what degree.

Remember that you cannot hope to transfer all risks to the contractor. Not only would it be impractical, it would also be too expensive.

Again, your project team members and key stakeholders need to come to a view on this allocation prior to issuing the contract tender documents in the procurement process, perhaps as part of the same workshop. This is because the allocation of risks needs to be clearly captured and dealt with in the terms and conditions of contract and should inform both the development of the specification and the performance management framework.

Emerging risks

The problem with unforeseeable risks is that you just don't know what they are going to be until they occur. Nevertheless, you and your contractor will need to agree a process by which you will evaluate and allocate new risks as they emerge during the operational phase of the contract.

The best way to handle an emerging risk, as it comes to light, is to try to align it with a similar risk that is already clearly treated in your contract. If the risk shows characteristics that are similar with other risks you have already agreed upon, then it would seem sensible to treat it in the same way. Clearly, there is a chance that an emerging risk will be totally new and different and you will just have to negotiate and agree with your contractor who will bear responsibility for it, or whether and in what proportions it will be shared.

Project risks

Your project manager will need to compile a separate register for project risks, i.e., those risks that may be foreseeable during the procurement process and, if appropriate, construction or implementation phase of the project. It will be the project manager's responsibility to oversee the management of these risks. Your workshop participants can help determine:

- possible mitigating steps your project team can take to minimise each risk; and
- the estimated time and cost of each mitigating step.

Maintain your risk register

For a **more complex contract**, you, as contract manager, should continue to maintain and update the risk register throughout the operational phase of the contract, retiring operating risks that have been fully mitigated and adding emerging risks as time goes on.

Share your risk register with your contractor and encourage them to use it, too. You can then jointly operate your process for identifying emerging risks, developing and implementing mitigating actions and subsequently retiring them as appropriate.

Together, you should make a point of reviewing all high- and medium-level risks routinely at your regular review meetings. If you can do this well, you will be much less likely to get nasty surprises along the way.

4.8 Ensure service continuity

A major part of contract management is considering what will happen if the service fails or is interrupted. As contract manager, this is your responsibility.

What would you do if your contractor was unable to continue its business? In **more complex contracts**, even disruptions of a temporary nature can have dramatic impacts both on public services and on the lives of those that depend upon them. Effective business continuity management of the supply chain is ever increasing in its importance; particularly in times of a challenging economic climate.

You and your contractor need to prepare a written business continuity plan in response to these operational and business risks. It's tempting to leave this to a later date, but common sense dictates that it's better to get this done and signed off as soon as you can.

Your business continuity plan should set out clearly what will happen and what steps will be taken to keep the service running day-by-day and hour-by-hour, including the procedure for the recovery of IT systems and essential data and arrangements and for the payment of operational staff in case the contractor should become insolvent.

Your plan should help prepare you for:

- failure of equipment or buildings;
- industrial action or other non-availability of staff;
- shortage or non-availability of supplies or fuel;
- interruptions to transport, water, power, IT or communications;
- natural or man-made disasters and other force majeure events (i.e., events generally considered to be outside the control of either party, usually defined in the conditions of contract); and
- insolvency or bankruptcy of your contractor.

Your risk register (see Manage the risks at 4.7 above) should tell you all the events that you need to prepare for. Some of these risks will have been transferred to the contractor, but that does not mean you shouldn't plan for them.

Once in place, your business continuity plan should be tested. This can be done regularly as a 'desktop' scenario, but may require the occasional 'live' exercise involving a potentially large number of people acting just as they would in a real-life emergency. In both cases, the exercises themselves require planning and joint review, working with your contractor.

You should also incorporate your plan into your authority's wider business continuity and emergency plans and agree them with the appropriate manager in your authority.

The London Fire Brigade has developed a multifaceted flexible toolkit for this purpose. The approach addresses the requirements of different supply scenarios ranging from the most simple to the most complex supplier relationships including those in specialist or niche markets, and where there are few alternative suppliers.

Called *Increasing Resilience Through Suppliers* (see Further Reading), the toolkit offers practical guidance and instruction on how to assess risk and develop a relevant business continuity approach that is specifically tailored to build assurance and resilience within the varying areas of the supply chain. The toolkit includes demonstration of the tools and techniques used by the London Fire Brigade, many of which you will be able to use with your contractor.

Preparing an exit strategy

Your contract should also include a detailed *exit strategy* by which you will end the relationship in certain circumstances with, if necessary, access or step-in rights to allow you to assume control of such assets, materials or personnel that are necessary to maintain service continuity. Make sure you understand these clauses and incorporate these provisions into your strategy.

See also *Manage the end of your contract and the start of a new one* at section 6.9 below.

4.9 Insure against risks

During the procurement process, you or your procurement team will have taken note of the contractor's need to take out suitable cover to protect both parties from insurable risks arising in the course of the performance of the contract.

Usually this will mean that your contractor, as a minimum, will need to obtain public liability, professional indemnity and employment insurance cover as a condition of the contract. You will need to ask for evidence that this cover has been obtained prior to commencement of the contract.

Your authority may have its own rules regarding the minimum levels of cover contractors are required to obtain.

These should to be set in proportion to the risk and not so much as to render the cost of cover prohibitive. They are therefore, open to challenge in some cases. It is up to you to make sure the levels of cover obtained by your contractor are adequate.

4.10 Understand Intellectual Property Rights

Managers often under-estimate the value of intellectual property rights (IPR). These are the legal rights to use, for commercial gain, 'soft' property such as ideas, drawings, designs, specifications, documents, training materials, marketing campaigns or software which have an intrinsic value to the organisation, either for its own use or, more likely, as a potential source of revenue. Clearly, IPR tend to offer the greatest commercial value to contractors, but that does not mean that customers should let go of their rights too cheaply.

Sometimes customers are ready to accept developmental services, such as writing new software, at a reduced or zero cost in return for the transfer of intellectual property rights to the contractor. However, this often vastly under-values the IPR and can lead to public sector as a whole having to pay several times over for the development of the material in question.

Retaining, or at least sharing, IPR with the contractor can lead to a healthy income and a better deal for the public sector, if alternative customers or even new markets can be found. Alternatively, you can treat IPR as a tradeable item during negotiations, having value that can be exchanged either for cash or improvements to the contractor's offering. The trick is to make sure you don't under-value it.

As contract manager, you should be particularly watchful of IPR clauses in contracts for consultancy, training, software or design services and take appropriate steps to protect, or if possible, exploit the value of your IPR for your authority.

4.11 Remember your obligations under Data Protection and Freedom of Information legislation

As contract manager, you should make yourself aware of your contractor's and your own responsibilities under all relevant legislation, including the Data Protection Act 1998 and the Freedom of Information Act 2000. Your legal services department should be able to help you in this regard.

5 How to Seek Improvements

5.1 What's in this section?

All public authorities have the responsibility to seek improvement in the services they provide to the public. Outsourced services and other services provided by third parties are not exempt from this requirement.

This section deals with seeking to make improvements, principally through providing incentives to the contractor. The aim is to achieve a continuous improvement in the performance and value for money of services.

5.2 Give contractors reasons to improve

Most contractors understand that sustained business growth and profitability require satisfied customers in the long term. Generally speaking, however, contractors will also respond to additional incentives provided by you to improve performance.

The aim of incentives is to motivate your contractor to improve by offering increased profit, or some other desirable benefit as a reward for improved performance or added value.

Types of contractor incentive include guaranteed levels of growth, revenue sharing, and access to new commercial opportunities. Although it's best to have these incentives to improve written into the contract during the procurement phase, it may be possible to negotiate these subsequently as part of a review of potential improvement. You should seek legal and financial advice however, before making these changes mid-term.

It is important to make sure that the incentives you are offering are balanced. They should not emphasise one aspect of performance to the detriment of other, perhaps less visible or less tangible aspects. Financial incentives should offer rewards that reflect fairly any investment either party is required to make to achieve the saving in the first place. Under a "gainshare" agreement, both your authority and your contractor can be incentivised to share in the profits of increased efficiency or revenues.

As a general rule, you should seek to bring down costs, not margins. This will allow your contractor a reasonable return to cover necessary investment on items such as new equipment or training and development.

Case Study 12 shows how an authority has a number of contractors providing similar services. It rewards better performance by awarding a greater share of its business.

CASE STUDY 12 Perform well, and you'll get more business

An authority outsourced the provision of domiciliary care (care services to people in their own homes) to six local service providers.

A contracts team set up framework agreements with the providers so that care managers could commission services to meet the assessed needs of individual service users in the borough.

The contracts team had tried a system of default payments to manage poor service. "We would impose

a £50 penalty here and there, but it wasn't working," says the team leader. *"We wanted performance to improve and the Commission for Social Care Inspection wanted authorities to tighten up on the performance of providers, so we needed something else."*

The team realised that all providers wanted a greater share of the business, so they could get the providers to compete for it on performance. With new contracts they introduced a system of default points, allocated each time a provider missed a visit or provided a poor

quality service. Points accumulated would lead to reductions in, or a complete cessation of, client referrals by care managers (i.e., new business).

It's early days, but performance is already improving. *"We gave them a couple of months before new system was invoked. Points are automatic but follow a rectification period - I think it's only fair that providers get the chance to put it right."*

An electronic monitoring system that requires care workers to clock-on and clock-off to evidence timely visits saves worry for service users. "Some feel they are grassing on their care worker by complaining about a missed visit. This will mean they won't be put in that position, and it's more efficient, too."

5.3 Improve continuously

Public sector managers are under constant pressure to improve. As contract managers, this translates into a need for continuous improvement in the performance of your contractor and/or the value for money offered by their service.

You can build an explicit mechanism for ensuring continuous improvement into your contract from the start. For example, your contract might simply require the price to decrease, in real terms, year-on-year. This is known as the 'cost-down' technique and is predicated on the assumption that your contractor will find and implement efficiencies and reduce the input of management and other resources over time. The benefit of this is shared with you by gradually reducing the contract price, usually by pre-determined annual increments. Inflation clauses, by which prices are automatically inflated, usually each year, by linking them to an agreed index such as the Retail Prices Index (RPI) are now seen by progressive thinkers as a 'throw-back' to the inflationary era of the 1970s and as a disincentive to improving efficiency.

It is important that both you and your contractor see continuous improvement as being desirable and beneficial for both of you, rather than as simply a means to drive down prices. One way of generating ideas and achieving joint ownership of continuous improvement is to hold an annual workshop attended by teams from both your authority and your contractor. The workshop can focus on availability and performance data and on lessons learned to be discussed at review meetings held during the year. Actions from the workshop can be captured in a continuous improvement workplan that can be used to monitor progress during the coming year, perhaps as a standing agenda item at your regular review meetings.

An example of a continuous improvement clause is given at Appendix L.

Sharing efficiency gains

If your contract is silent on the issue of efficiency gains, and who should benefit from them, your contractor will probably assume that they will benefit wholly from any they can make. They may well price their bid accordingly, thinking they can bolster their margin with any efficiency they can find.

You will want to incentivise your contractor to find efficiencies, so you might want to grant them a suitable share of the proceeds, but you will also wish to protect your authority from embarrassment in case the contractor should be seen to make 'windfall' profits, particularly in the early part of the contract. Make sure these points are negotiated and agreed prior to contract award. An example clause dealing with sharing efficiency gains is given at Appendix M.

Benefits to the customer can be either recoverable through a cash payment, through discounts in the annual price indexation formula or be re-invested in the service to the benefit of service users in a way that is fully transparent and auditable.

6 How to Manage Change

6.1 What's in this section?

This section deals with why changes (or *variations* to contract) become necessary, whether they are internally or externally driven. As contract manager, you need to understand the implications and consequences of any change - both from your authority's and your contractor's perspectives. You will need to know how to manage them effectively and legally. More often than not, planned changes are much easier to manage than unplanned, reactive changes.

It's vital that you establish a single, effective control process for requesting, processing, evaluating, agreeing and recording all changes to the contract.

6.2 Understand why change happens

Drivers for change are factors that suggest, or make necessary, changes during the term of a contract and can originate either internally or externally.

Internal drivers for change could include evolving business or service requirements, organisational or political restructuring or revisions to corporate strategy or business objectives.

External drivers could include developments in technology, economic or demographic trends that affect the profitability or value for money of a contract, or the growing need for the electronic delivery or accessibility of services.

6.3 Control all changes to the contract

Changes to services, standards, processes or procedures are likely to have an effect on service delivery, on performance, on costs and on whether the contract continues to represent value for money for you or profitability for your contractor. The specification and management of change control is an important area of contract administration and so it's vital that you get it right.

Every contract should incorporate a clear and agreed change control process or mechanism, with a clear treatment of changes that will impact on costs and how these are handled under the contract terms. You'll need to understand the whole-life cost of every change, and account for all costs such as the cost of capital, lifespan, planned and unplanned maintenance, risks and warranties. All changes to the contract must be fully recorded in accordance with the change control process, demanding 'good housekeeping' from both you and your contractor to demonstrate compliance with the change control mechanism. You may need to follow an approval process internally for significant variations to contract.

When things are going well, performance is good and you are enjoying a good working relationship with your contractor, it is tempting to rely on trust rather than take proper account of changes to the contract. After all, it can appear a waste of scarce resources when things are going so well and there's so much else to do. However, it is important to remember that in a long contract, circumstances are subject to change. Your requirements or your contractor's performance might change, as might the ownership of the contractor (and, therefore, their attitude to your contract) and, likely as not, you personally will move on to pastures new sooner or later. When something like this happens, you (or your successor) will be glad that you had taken the time and trouble to keep accurate records of changes and of precisely what was agreed between you and your contractor and when. Case Study 13 demonstrates what can happen if you don't.

CASE STUDY 13 When you'll wish you'd kept better records

An authority entered into a long-term contract to outsource the operation and management of a vital front-line service and invest in new assets.

The contract manager enjoyed a very good personal and professional working relationship with his contractor. What he lacked in his eye for detail, he made up for with sound technical knowledge and an ability to use informal structures and channels of communication to get what he wanted from his contractor. A good level of trust, openness and goodwill was built up and things were going well.

Over time, the contractor developed ideas for solving problems at some of the sites he operated for the authority. He would discuss these informally with the contract manager and some changes were agreed to the way things were done. In some cases this involved additional cost, while in others the contractor would be relieved of some of his obligations because the contract manager could see that it would be better if the Council resumed responsibility for some parts of the service. Most of these agreements were informal. The contract manager believed that, since he trusted his contractor so highly, he wouldn't need to spend his valuable time on the paperwork. He was happy that he could keep track of costs and, anyway, the auditors hadn't been in for years.

But then circumstances changed. There was a major problem with gaining the relevant consents for the new assets, and Members pressed for the matter to be resolved. The contractor dug in his heels and it seemed to the contract manager that the parties were heading for a serious dispute and there was little he could do about it.

In time, lawyers got involved and that was when questions started to be asked about why the invoiced amounts were so different to the payments determined in the contract. They also asked why certain responsibilities and risks seemed to have reverted to the authority without a commensurate change in the price. Eventually, the contract manager left the authority, somewhat under a cloud.

Matters took a turn for the worse. The dispute went to court and though the authority believed it had a strong case; its major weakness was a complete lack of recorded evidence to back its claims. The contractor won damages and the authority was also required to meet costs.

It could all have been so different, if only the contract manager had a proper change control process and had kept a proper record of all changes to the contract.

6.4 Understand what change means

It's vital that you understand the implications of change from the both your authority's and your contractor's perspectives.

Changes to a contract may affect the scope, the transfer of risk and even the financial viability of the deal, for either you or your contractor. For example:

- if a change reduces the scope of the deal, economies of scale may be affected; or
- if a change increases the scope of the deal significantly, it may be taken outside the scope of the original specification or OJEU notice, which may be unlawful.

If you are in doubt, you should seek specialist legal or financial advice, as appropriate.

6.5 Plan for change

More often than not, changes are easier to manage when they are planned.

- It's probably not a good idea to make incremental changes to a service that is running smoothly. It's usually better to accumulate change requirements and make them all together.
- You should involve your contractor closely in planning the changes, or make them accountable for them.

6.6 Stay compliant with the law

Some changes may be necessary in order to be compliant with changes in law. Over a long-term contract, it's quite likely that a change to the law or to industry standards will affect your contract, so it's best to provide for this during the procurement process. Depending on the terms of your contract, it may be your responsibility to make these changes.

If your contractor's costs change as a result of the change in law, you'll need to know whether compensation is due to your contractor to meet them. Check the terms of your contract. Quite often in **more complex contracts**, the issue of changes in law is dealt with specifically, allocating the risk of increased costs arising from a change in law either to you or to your contractor, or sharing it between you. If you are in any doubt, then you should seek legal advice.

6.7 Develop a value for money model

When you plan for significant changes to a contract, you will want to examine every aspect, just as you did when you evaluated the bids, to make sure that the contract still represents good value for money and that the change does not erode it.

In well-managed **more complex contracts**, the costs of changes to the contract are calculated using a Value-for-Money Model. This model takes account of the whole-life cost of every change, and accounts for all costs such as the cost of capital, lifespan, operating costs, planned and unplanned maintenance, risks and warranties. Its main function is that the impact of the change to the contract is rendered 'neutral,' both in terms of the contractor's margin and value-for-money for the customer. The principle is that neither party should be able to exploit the change for commercial gain. In other words, the overall contract should not be made significantly better or worse for just one party, in commercial terms, as a result of the change.

6.8 Agree only one change control process

Your contract should set out how variations to contract should be proposed, processed and either agreed or rejected. You and your contractor need to agree how this will happen in practice and who will be involved in this process. It is a good idea to set up a register of proposed changes so that you and your contractor can monitor the progress of each change request, perhaps at your regular review meeting. You will need a formal authorisation process to ensure that only those new requirements that can be justified in business terms are added to the service contract and recorded accordingly. Make sure that you have only one change control process that applies to all proposed changes to the contract.

Appendix N shows a typical change control process flowchart.

6.9 Manage the end of your contract and the start of a new one

Ideally, your contract should detail any special responsibilities and arrangements that are needed to ensure a smooth handover process and the end of your contract, either to your new contractor or back to your authority.

You shouldn't assume that your contractor is willing to carry out additional work over and above what they have already priced for, especially as their interest is likely to be low if your relationship is about to end and they do not stand a significant chance of winning further business from you in the near future.

Legally, your contractor is obliged to maintain records regarding personnel who may transfer from your contractor under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE 2006) and to hand these over to you two weeks prior to the end of the contract. However, this won't be of much help to you if you need to invite tenders from the market for a new contract – you will need this information far sooner than that as it is likely that your bidders will need key data about these employees to price their bids.

You will also need to pay close attention to your arrangements for the service in case the contract is terminated early for whatever reason. You may need details of, for example (and in addition to personnel records), assets, premises, equipment, data, information, leases, materials and software licences.

Remember to prepare for the possibility that your contractor will go out of business. See *Ensure Service Continuity* at 4.8 above.

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About the SRD project

The Supplier Relationship Development (SRD) Project is a multi-stakeholder pathfinder project sponsored by Capital Ambition, London's Regional Improvement and Efficiency Partnership.

The project aims to support London local authorities in achieving best value outcomes by developing strategies and solutions that improve the way contractual relationships are managed. In particular, this involves collaborative working to achieve improvements in performance and deliver efficiencies.

For more information on the SRD project, or to provide feedback on the manual, please email the Project Director Mark Atkinson at London Fire Brigade mark.atkinson@london-fire.gov.uk.

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Mark Atkinson has worked in Procurement for over 30 years and specialises in the management of contractual and commercial relationships. His career includes working in the private sector in the construction industry before joining the public sector in 1992 as Procurement Manager for Haringey Council. Mark joined the London Fire Brigade (LFB) as Head of Contracts Management Group in 2002 and is responsible for the management of LFB's major contracts such as the PFI contract for fire vehicles and equipment. He has led a number of Regional Improvement and Efficiency Partnership projects since 2007 and is also the Project Director for the Supplier Relationship Development project. Mark's work has also been recognised with a number of awards including the SOPO Award for Outstanding Achievement in Procurement (2009). He is keenly interested in the development of best practice regarding contractual relationship management, and has led many developments in this field including business continuity in the supply chain and the production of the 'Supplier Relationship Development Toolkit'.

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Glossary of Terms

| | | See section |
|------------------------------------|--|--------------------------|
| abatement | A payment deduction made in respect of sub-standard performance or non-availability of service. See also <i>automatic payment deduction</i> and <i>discretionary payment deduction</i> . | 2.3 and 2.4 |
| access rights | Rights for the customer granted under the terms of a <i>contract</i> to gain access and control of premises, assets, staff and information in certain circumstances in order to safeguard <i>service continuity</i> . Also called <i>step-in rights</i> . | 4.8 |
| audit | The process of seeking effective assurance through verification as to whether business processes and controls are robust in that they protect value for money, probity, integrity and compliance. | 4.6 |
| automatic payment deduction | A payment deduction made automatically by the <i>contractor</i> in respect of sub-standard performance or non-availability of service. | 2.4 |
| benchmarking | The practice of making comparisons between organisations with the aim of ensuring continuing value for money, getting better performance and improving business practices. | 2.6 |
| benefits realisation plan | A plan to implement processes that enable the achievement of benefits to be tracked and reported during the operational phase of a <i>contract</i> , showing clearly where and when the benefits will occur and who will be responsible for their delivery. | 2.7 |
| best value | The desired result of an authority “making arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness” (Local Government Act 1999). | About this manual |
| break option | An option to either terminate or continue a contract at a given point in time, by mutual agreement or at one party’s sole discretion or in a given set of circumstances. | 1.3 |
| business case | A document prepared in support of a decision to make an investment or award a <i>contract</i> , showing an analysis of the costs, benefits and risks associated with each option open to the authority. | 2.7 |
| business continuity plan | A document setting out clearly what steps will be taken to keep the service running in the event of a threatened or actual major interruption, e.g. contractor insolvency. It should detail what will happen day-by-day and hour-by-hour, including the procedure for the recovery of IT systems and essential data and arrangements for the supervision and payment of operational staff. | 4.8 |

| | | |
|---|---|--------------------------------|
| business plan | A document agreed between both parties to a contract showing pre-determined milestones (or what needs to be achieved by when) that the <i>contractor</i> is contractually obliged to meet. Also called a <i>contractual obligations timetable</i> . | 1.11 |
| change control process | A process for proposing, agreeing and controlling changes to a contract that will impact on costs and how these are handled under the contract terms. | 6.3 |
| change in law clause | A clause in a <i>contract</i> setting out how increased costs arising from a change in law are dealt with, specifically allocating the <i>risk</i> to either party, or sharing it between them. | 6.6 |
| co-location | The process of locating both the contract management team and the contractor's operational management team together in the same premises or in close proximity in order to support better working relationships. | 1.12 |
| communication plan | A protocol for managing both formal and informal communication with service users, Members, the press and the general public throughout the operational phase of a <i>contract</i> . | 3.9 |
| concession | A service <i>contract</i> granted by an authority to a contractor for the provision of a service to the general public usually under the arm's length control of the authority, e.g. a catering kiosk at a hospital or leisure centre. | 1.11 |
| conformance specification | See <i>input specification</i> . | |
| continuous improvement workplan | Plan of actions prepared by a <i>contractor</i> or jointly between the parties to a <i>contract</i> showing what will be done when in the coming year to achieve and sustain continuous improvement in the service provided, often as an output from a workshop. | 5.3 |
| contract | Any lawful agreement between two parties where goods, services or works are provided in exchange for a consideration. | What's this manual for? |
| contract and relationship management | <p>A vital part of the procurement lifecycle, definable as:</p> <ul style="list-style-type: none"> the management of the interfaces between client and <i>contractor</i> to ensure that the relationship and <i>contract</i> performance are optimised to deliver best value, or as: a number of related activities that together form a structured and planned system which enables the proactive management of all aspects of contractual relationships and their desired outcomes <p>or, put simply, as:</p> <ul style="list-style-type: none"> the pursuit of contractual performance. | About this manual |
| contract management | See <i>contract and relationship management</i> . | |

| | | |
|--|---|--------------|
| contractor | For the purposes of this manual, a supplier, seller, vendor, provider, service provider, partner, constructor or other nomenclature meaning a party contracted by an authority to provide goods or services in return for payment. | |
| contractual obligations timetable | See <i>business plan</i> . | 5.3 |
| 'cost-down' technique | A way of sharing continuous efficiency gains with the client by reducing the <i>contract</i> price year-on-year in real terms, usually in pre-determined annual increments. It is predicated on the assumption that the contractor will find and implement efficiencies and reduce the input of management and other resources over time. | |
| 'creep' | The gradual and, for the client at least, unwitting degradation of the authority's commercial position with regard to cost, risk and quality of service. Often arises from making ill-advised changes to the <i>contract</i> or service that, although seemingly innocuous when taken in isolation, may have a materially negative impact when considered in aggregation. | 1.10 and 2.7 |
| discretionary payment deduction | A payment deduction made only at the <i>contract manager's</i> discretion in respect of sub-standard performance or non-availability of service. Problematical for those <i>contract</i> managers who feel that making deductions will damage their working relationship with the contractor or have a negative impact on service quality. | 2.4 |
| dispute resolution procedure | The process set out in the <i>contract</i> for raising, escalating and resolving matters of dispute between client and <i>contractor</i> . See also <i>escalation procedure</i> . | 3.5 |
| emerging risk | A <i>risk</i> which are unknown during the procurement process but which will come to light and require management during the life of the <i>contract</i> . | 4.7 |
| escalation procedure | The process set out in the <i>contract</i> for escalating matters of dispute between client and <i>contractor</i> . Its principle is that serious efforts should be made by both parties to resolve issues at the lowest level of the organisational hierarchy before escalating them. See also <i>dispute resolution procedure</i> . | 3.4 |
| exit strategy | A strategy by which a party will terminate a <i>contract</i> and end the relationship in certain circumstances with, if necessary, access or <i>step-in rights</i> that will allow the client to assume control of such assets, materials, personnel and information that are necessary to maintain <i>service continuity</i> . | 4.8 |
| force majeure event | An event generally considered to be outside the control of either party, usually defined in the conditions of <i>contract</i> . | 4.8 |

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| gain-share | The process by which both parties to a <i>contract</i> may be incentivised to make efficiency improvements or generate third-party revenues and share the benefits of them. | 5.2 |
| implementation or mobilisation phase | The phase of a <i>contract</i> after award but prior to the commencement of service. | 1.9 |
| incentivisation | The process by which a contractor is encouraged to perform well by avoiding payment deductions or gaining additional financial reward by achieving or exceeding a pre-determined performance standard. | 5.2 |
| input specification | A specification that sets out the precise method that the contractor needs to employ to deliver a product or service (sometimes known as a <i>conformance specification</i>). Places the onus and the risk firmly with the client to prescribe correctly, in some detail, such things as materials, staffing levels and processes. Consequently seen to stifle innovation. Input specifications tend to be longer documents demanding a greater attention to detail. See also <i>output specifications</i> . | 1.4 |
| intellectual property rights | The legal rights to use, for commercial gain, 'soft' property such as ideas, drawings, designs, specifications, documents, training materials, marketing campaigns or software which have an intrinsic value to an organisation, either for its own use or, more likely, as a potential source of revenue. | 4.10 |
| key performance indicator (KPI) | One of a small number of the most important measures of a contractor's performance. | 2.2 and 2.3 |
| lessons learned log | A document used by both parties to a <i>contract</i> for recording lessons learned during the operational phase, as part of an effort to achieve and monitor continuous improvement. | 5.3 |
| management manual | A document used to help newcomers to familiarise themselves quickly with a <i>contract</i> . It should interpret the key obligations of both parties and set out clear arrangements for <i>contract and relationship management</i> , including <i>performance reporting</i> and management. It can be used to provide a simple and straightforward commentary of the more complex parts of the <i>contract</i> , such as <i>risk transfer</i> , the payment mechanism and the <i>performance management framework</i> . | 1.13 |
| milestone payments | Part payments made to the contractor on satisfactory completion and confirmed acceptance by the client of a pre-defined stage of delivery. Since they improve cashflow for the contractor during a protracted project, they offer a more cost-effective method of financing a project than borrowing. Also called <i>stage payments</i> . | 1.3 |
| more complex contracts | For the purposes of this manual, those contracts that tend to be higher value and are often of significant strategic importance or criticality to the authority. The category may include outsourced service contracts, <i>Public-Private</i> | What's this manual for? |

Partnerships (PPP) and contracts awarded under the *Private Finance Initiative* (PFI).

| | | |
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| OJEU Notice | A notice inviting bids for a <i>contract</i> published in the Official Journal of the European Union by an authority under EU procurement directives. | 6.4 |
| open-book accounting | The complete and unimpeded sharing of detailed, up-to-date financial information pertaining to the <i>contract</i> and its operation, where every item of planned income and expenditure is shown as a line item at the bid stage and continues to be shared openly throughout the term of the <i>contract</i> . | 4.5 |
| operating risk | A risk that may be encountered during the operational phase of the <i>contract</i> and which may be further categorised as environmental risks, health and safety risks, financial and investment risks, demand risks, employment risks and performance risks. | 4.7 |
| output specification | A specification that determines only the desired end product or result (sometimes called a <i>performance specification</i>). The contractor is given the flexibility to decide for themselves exactly how those outcomes should be achieved, using their own specialist expertise and competence to determine how best to manufacture and supply the goods or provide the service. Consequently the contractor bears the greater share of <i>risk</i> in this regard. Tend to be shorter, more succinct documents, because they only set out what is required from a product or service, rather than prescribing in detail how the contractor should go about delivering it. | 1.4 |
| Partnership Board | A group of people made up of senior representatives from both customer and contractor (usually at Board and/or Member level) with the aim of supporting positive working relationships. It allows senior management to lead by example, by demonstrating the ability to work together to mutual benefit and by showing people from both organisations that the success of the <i>contract</i> and the relationship is valued at the highest level. The Board also grants stakeholder representatives participation in the management of the relationship. It should meet regularly (perhaps 2 or 3 times a year) to discuss matters of strategic importance to the relationship, making joint decisions as appropriate to provide a high-level 'steer' to both the <i>contract</i> and the relationship. | 3.7 |
| payment mechanism | A mechanism set out in the <i>contract</i> showing precisely how payments to the contractor will be calculated and timed, taking into account any <i>milestone payments</i> and any performance or availability data that may trigger <i>payment deductions</i> or bonuses. | 2.4 |

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| performance baseline | For outsourced service <i>contracts</i> , the level of service prevailing at the time of the <i>procurement process</i> against which performance of the contractor may be compared once the <i>contract</i> commences. | 2.2 |
| performance holiday | Time given to a new contractor in the early stages of a new <i>contract</i> to get performance levels up to a higher standard as required under the terms of the <i>contract</i> during which no payment deductions are made. | 2.2 |
| performance management framework | A set of requirements in a <i>contract</i> that sets out the expected performance and quality of service to be delivered, together with the methods by which performance will be monitored, measured, reported and managed. | 2.3 |
| performance monitoring | The process of gathering data pertaining to a contractor's performance by an agreed set of measures set out in the <i>contract</i> . | 2.2 |
| performance reporting | The process of compiling and analysing data pertaining to a contractor's performance by an agreed set of measures set out in the <i>contract</i> and presenting it as management information in a format as set out in the <i>contract</i> . | 2.2 |
| performance specification | See <i>output specification</i> . | |
| Press & PR Protocol | A document setting out an agreement between both parties to the <i>contract</i> setting out precisely how press enquiries and public relations matters will be handled, describing the process and indicating circumstances where consents and involvement will be need to be sought from the other party. | 3.9 |
| price indexation formula | A mathematical formula in the <i>payment mechanism</i> by which prices are automatically inflated, usually each year, by linking them to an agreed index such as the Retail Prices Index (RPI) and by drawing data from pre-determined sources such as national statistics. Now seen by progressive thinkers as a 'throw-back' to the inflationary era of the 1970s and as a disincentive to improving efficiency. | 5.3 |
| Private Finance Initiative (PFI) | A programme launched by the UK Government in 1992 by which new assets could be provided to the public sector (such as hospitals, schools and roads) through more complex, long-term service <i>contracts</i> , under which staff and operations would transfer, along with operational, investment and employment risks, to the contractor, who would also bear the value of the capital asset on their balance sheet, thus relieving the public sector borrowing requirement. | What's this manual for? |
| procurement process | The process by which competitive tenders are invited, received and evaluated against a specification and conditions of <i>contract</i> . Subject to a supportive business case, the process ends with the negotiation (if appropriate) and award of the <i>contract</i> . | How to use this manual |

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| professional indemnity insurance | Insurance cover purchased by the contractor at a level usually set by the client, to protect both parties from insurable risks arising from the application of the contractor's professional skill, knowledge and practice in the course of the performance of the <i>contract</i> . | 4.9 |
| project risk | A <i>risk</i> that will need to be managed during the procurement and, if appropriate, construction phases of the project. | 4.7 |
| public liability insurance | Insurance cover purchased by the contractor at a level usually set by the client, to protect both parties from claims arising from the general public and third parties in the course of the performance of the <i>contract</i> . | 4.9 |
| public-private partnership (PPP) | A more complex, long-term <i>contract</i> , joint venture or similar partnership between public and private sector bodies to deliver a public service. Includes contracts awarded under the <i>Private Finance Initiative</i> (PFI). | What's this manual for? |
| rectification period | An initial period of time for the contractor to fix a problem with performance or availability of service before payment deductions are applied. | 2.4 |
| relationship management | See <i>contract and relationship management</i> . | |
| retention | A proportion of payment (usually 5-10% of the total <i>contract</i> price) withheld by the client until satisfactory completion of a warranty period or initial period of operation. Usually associated with contracts for the purchase of capital equipment. | 1.3 |
| risk | Uncertainty of outcome, whether this is positive (i.e. an opportunity) or negative (i.e. a threat). | 4.7 |
| risk management | Identifying and controlling the factors that may have an impact on the fulfilment of a <i>contract</i> . | 4.7 |
| risk register | A document designed to aid the recording and monitoring of the likelihood, impact and mitigation of all identified <i>risks</i> . | 4.7 |
| risk transfer | The process of allocating operating and emerging risks to the contractor under the terms of a <i>contract</i> . By valuing each <i>risk</i> or group of <i>risks</i> , this transfer can form an important part of a business case supporting the project and the decision to award a <i>contract</i> . | 4.7 |
| service continuity | The practice of considering what will happen if the service fails or is interrupted and what steps can be taken to prevent or minimise the disruption to service. See also <i>business continuity plan</i> . | 4.8 |
| simpler contracts | Simpler agreements for the supply of goods or services including purchase orders, 'spot' <i>contracts</i> and framework agreements or term <i>contracts</i> . Generally shorter term. | What's this manual for? |

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| specification | A document contained within a <i>contract</i> setting out clearly the client's specific requirements for the goods, services or works in question. See also <i>input specification and output specification</i> . | 1.4 |
| stage payments | See <i>milestone payments</i> . | |
| stakeholder | Any individual or group of people, either internal or external to the authority, who can be identifying as having either an interest in, or an influence over a <i>contract</i> or relationship. The client, contractor, service users, Members and standards authorities are all stakeholders. | 3.9 |
| stakeholder management | The process of managing the involvement of and communication with all stakeholders to the <i>contract</i> . See also <i>communication plan</i> . | 3.9 |
| step-in rights | See <i>access rights</i> . | |
| supplier relationship management strategy | A strategy designed to help both client and contractor share information regarding their respective organisations' corporate aspirations to mutual benefit. Can bring the relationship into a useful focus for senior management or for a Partnership Board, providing data about the parties' respective financial strength, security and capability, their competitiveness in, and aspirations for, the developing marketplace and their business behaviour (such as business strategy, growth, new contracts, liabilities, mergers, acquisitions, disposals, product development, market share, divergence into new markets or withdrawal from existing markets, industrial and investor relations). | 3.10 |
| 'Team A/Team B' Syndrome | A common situation brought about when either the customer's procurement team or the contractor's bid team walk away after <i>contract</i> award, to be replaced by an entirely new <i>contract management</i> or operational management team respectively. They are then charged with building a positive, working relationship from scratch, without the benefit of the "sense-making" that their predecessors have nurtured during the <i>procurement process</i> . Sometimes this will mean that the new people do not have a completely shared idea of what has been agreed in the <i>contract</i> and this often leads to unnecessary problems. | 1.10 |
| value-for-money model | A device for calculating the <i>whole-life cost</i> of every proposed change to the <i>contract</i> , taking account of the cost of capital, lifespan, operating costs, planned and unplanned maintenance, risks and warranties. Its main function is that the impact of the change to the <i>contract</i> is rendered 'neutral', both in terms of the contractor's margin and value-for-money for the customer. The principle is that neither party should be able to exploit the change for commercial gain. | 6.7 |

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| variation | A change to the <i>contract</i> agreed by both parties and implemented under the <i>change control process</i> as set out in the <i>contract</i> . | 6.3 and 6.8 |
| warranty | An assurance by a party to a <i>contract</i> that the information provided in the course of the procurement process (such as information about assets, premises or employees) is complete and accurate such that the other party may rely on it. Any party that grants such a warranty can expect to meet the cost incurred by the other party should the information prove inaccurate or incomplete. | |
| whole-life cost | The total cost of investing in an asset, evaluated by taking into account not only the initial outlay but also all the costs of owning, operating and disposing of that asset. See also <i>value-for-money model</i> . | 6.7 |
| 'windfall' profits | In outsourced contracts, an exceptional benefit enjoyed by a contractor arising from exploiting significant efficiency gains, usually in the early stages of a <i>contract</i> . Preventable by identifying efficiency opportunities during the <i>procurement process</i> and building arrangements into the <i>contract</i> for recovering these benefits either wholly or partially from the contractor. | 5.3 |

Further Reading

- Arino, A., de la Torre, J., Ring, P.S., (2001) *Relational Quality: Managing Trust in Corporate Alliances*, California Management Review, Vol. 44, No. 1
- Barrat, C. and Whitehead, M., (2004) *Buying for Business, Insights in Purchasing and Supply Management*, Wiley
- Bradley, A., (2006) *Clause and Effect*, Supply Management, 16 February, Volume 11, Issue 4
- Capital Ambition (2011), *Supplier Relationship Development: Implementation Toolkit for the Public Sector*, www.capitalambition.gov.uk/srdtoolkit
- Davies, A., (2005) *Contact Triumphs Over Contract*, CPO Agenda, Vol. I, Issue 3, Autumn
- Davies, A., (2006) *The Roots of Good Practice*, Supply Management, 3 August, Volume 11, Issue 16
- Greater London Authority, *Responsible Procurement*, website: www.london.gov.uk/rp/
- London Centre of Excellence (LCE) and London Fire Brigade (LFB) (2006) *Status Review of Contract and Relationship Management in London: Final Report*, www.londoncouncils.gov.uk/capitalambition/projects/supplierrelationshipdevelopment/youandyourcontractor.htm
- London Fire Brigade (2010), *Increasing Resilience Through Suppliers – Toolkit*, [URL tba]
- Moore, M., (1999) *Commercial Relationships*, Tudor Business Publishing
- National Audit Office (NAO)/Office of Government Commerce (2008) *Good Practice Contract Management Framework*, December 2008 www.ogc.gov.uk/documents/Management_Framework_Good_Practice_FINAL.pdf
- Office of Government Commerce (2001) *Best Practice: How Major Service Contracts Can Go Wrong*, www.ogc.gov.uk/documents/BPHowMajorServiceContractGoWrong.pdf
- Office of Government Commerce (2003), *Effective Partnering*, www.ogc.gov.uk/documents/cp0078_Effective_partnering.pdf
- Office of Government Commerce (2006), *Category Management Toolkit: Benchmarking* [www.ogc.gov.uk/documents/Benchmarking\(1\).pdf](http://www.ogc.gov.uk/documents/Benchmarking(1).pdf)
- Office of Government Commerce (2007), *Gateway Process Review 5: Operations Review and Benefits Realisation*, www.ogc.gov.uk/documents/FINAL_BOOK_5.pdf
- Office of Government Commerce (2010), *Contract Management in Long Term or Complex Projects: Key Commercial Principles to Help Ensure Value for Money* [www.ogc.gov.uk/documents/Contract_Management_in_Complex_Procurement\(1\).pdf](http://www.ogc.gov.uk/documents/Contract_Management_in_Complex_Procurement(1).pdf)
- Strategic Partnering Taskforce, (2004) *Rethinking Service Delivery, Volume Five: Making the Partnership a Success*, February. www.communities.gov.uk/documents/localgovernment/pdf/135109.pdf
- Strategic Partnering Taskforce, (2004) *Final Report*, March www.communities.gov.uk/documents/localgovernment/pdf/135055.pdf
- Strategic Partnering Taskforce/Nuffield Institute, (2003) *Assessing Strategic Partnership: The Partnership Assessment Tool*, May. www.communities.gov.uk/documents/localgovernment/pdf/135112.pdf

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APPENDIX A: Key Facets of CRMGT for Inclusion in a Job Description for a Contract Manager

Source: London Fire Brigade

Key Facets

Relationship Management

- Embed commitment to partnership through effective and informed relationship management. Establish a Partnership Protocol.
- Manage the Contractor/Client interface (formal and informal) to ensure workable and effective communication.
- Establish formal joint contract management teams as appropriate. Procedures to include effective recording of decisions and action chasing.
- Establish and manage compliments/complaints/concerns process from end users and contractor to inform and guide the joint consideration of key issues.
- Negotiate revisions to the contract provisions as appropriate.

Contract Monitoring/Management

- Develop effective performance measures/incentive regimes.
- Establish and maintain comprehensive contract management database.
- Regularly (monthly normally) review monitoring information for performance against contractual requirements. Systematise contract management processes where practicable.
- Continually reassess level of scrutiny required (ranging from acceptance through sampling to 100% check) depending on level of confidence in contractors' data and availability of verification data in-house.
- Continual close liaison with the contractor to ensure their information systems are robust, accurate and comprehensive to support the "self-monitoring" concept where appropriate.
- Ensure balanced approach to the effective use of resources to support/monitor the contract.

Financial Management

- Management of the contract budget, including monitoring and financial projections.
- Establish and maintain comprehensive finance database.
- Approve charges/abatements incurred against contract provisions.
- Scrutinise invoices and authorise contract payments.
- Examine/challenge proposed new service additions in conjunction with end users and technical colleagues to ensure they represent value for money.
- Continuously monitor "financial health" of contractor to ensure viability.

Continuity and Improvement

- Support professional colleagues to co-ordinate the specification, costing and commissioning of new contract services/fleet items.
- Contribute to the specification of future contracts to ensure contract management issues are provided for effectively at concept.
- Ensure sufficient and adequate contingency arrangements in the event of contract default.

General

- Management of administrative support.
- Provide advice and guidance to other contract managers on best practice and value for money.
- Co-ordinate policies and procedures for all aspects of contract management
- Drive continual improvement in contract performance and contract arrangements.

APPENDIX B: Performance Standards

– Sample

Source: London Fire Brigade

Key Performance Indicators

This document sets out the criteria to be used to determine performance via a set of Key Performance Indicators (KPIs).

| KP1 | Health and Safety – Secure retention of Evidence |
|--|---|
| Performance Standards: | <p>1.1 The Contractor will, in relation to a Safety Event, maintain continuity of Evidence in accordance with the contract or is reasonably anticipated pursuant to the agreed Health and Safety procedures.</p> <p>1.2 The Contractor will maintain the agreed documented Health and Safety procedures in place and ensure that its employees, agents or relevant sub-contractors understand the requirements for maintaining and securing Evidence.</p> |
| Performance points: <p>1.1 X points for failures in respect of each Safety Event</p> <p>1.2 X points for failure in a Monitoring Period</p> | |

| Performance Standards: | <p>The Contractor will provide all reasonable assistance to the Authority to enable it to undertake its investigations into Safety Events unhindered by:</p> <p>2.1 ensuring that a member of its personnel is available at all times to deal with all requests for access to Evidence and records relating to Evidence and where appropriate provide access to its premises and use its reasonable endeavours to procure access to the premises of its sub-contractors and agents for such purposes (subject to the restrictions on access to such sub-contractors' premises set out in this Contract);</p> <p>2.2 enabling the Authority to take photocopies, photographs or recordings of any relevant Evidence in accordance with the agreed Health and Safety procedures; and</p> <p>2.3 providing appropriate personnel to give statements as required to the Authority's Investigating Officer or any other Investigating Authority.</p> |
|--|---|
| Performance points: <p>1.1 X points for failures in respect of each Safety Event</p> <p>1.2 X points for failure in a Monitoring Period</p> | |

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|--|---|
| KP3 | Health and Safety – Maintenance of records relating to Health & Safety standards Records means any paper, computer file or document relating to work carried out in relation to the provision of the Services in relation to Health and Safety and any CEN technical files. These Standards include any requirement relating to the CEN certification standards, design, specification, provision supply and maintenance of any PPE Item to which specific health and safety, product or vehicle Legislation relates or to which general duties apply as prescribed by health and safety or product legislation in force at the time. |
| Performance Standards: | The Contractor will: 3.1 maintain the Records in relation to the above Standards 3.2 keep such records for such period of time as agreed with the Authority |
| Performance points: 3.1 30 (max) for all failures in any Monitoring Period with 5 day rectification period 3.2 5 per failure per Monitoring Period with no retrospective effect | |

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| KP4 | Environmental issues The development and maintenance of an Environmental Management System to reflect the Authority's approach to environmental controls which is to ensure that any harmful environmental impact of its service delivery is avoided, reduced or mitigated in accordance with a best practice approach to sustainability. |
| Performance Standards: | The Contractor will develop and maintain an effective Environmental Management System based on the principles of and in accordance with the standards in ISO 14001 and agree with the Authority environmental objectives and targets to be set for each level of the Contractor's management, document these objectives and targets within 6 months of the Service Commencement Date and report to the Authority at intervals to be agreed with the Authority on progress in attaining the objectives and targets. |
| Performance points: 5 for failure with 1 month rectification period | |

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| KP5 | Cleaning items |
| Performance Standards: | The Contractor will clean and return an item of PPE within 7 calendar days of collection. |
| Performance points per item per failure per 24 hours 1 per failure per Item per 24 hours including where the standard of cleaning is rejected as being inadequate | |

| | | |
|--|--|--|
| KP6 | Compliance with Maintenance Programmes | |
| | All Maintenance Programmes will be agreed in advance from time to time by the JCMT (as may be varied from time to time with agreement of the Authorised Officer). All Maintenance Programmes will be agreed in advance by the Contractor and the Authorised Officer. | |
| Performance Standards: | <p>Save when the Maintenance Event is cancelled by the Authority and subject to the Authority making the Item available for collection by the Contractor, the Contractor will:</p> <p>6.1 comply with the agreed Programmes</p> <p>6.2 arrive for each appointment time in the Programme within X hours of the appointment time.</p> | |
| Performance points per failure: | X per Item and per Monitoring Period where the Programme is not achieved | X per appointment where the Contractor arrives later than X hours after the appointment time |

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| KP7 | Production of monitoring information within agreed time-scale and in agreed format. |
| Performance Standards: | <p>The Contractor will provide:</p> <p>7.1 the contractually agreed monitoring and other information at the end of each Monitoring Period or within XX days thereafter</p> <p>7.2 agreed standard reports when requested by the Authorised Officer (or persons authorised by him) within 4 hours (or such other time as may be agreed) of the request being received</p> <p>7.3 annual audit reports as required by the contract</p> |
| <p>Performance points:</p> <p>X for each report not received on time, not in agreed format or containing materially inaccurate or insufficient information.</p> | |

| KP8 | Maintenance of the Authority's positive public image |
|--|---|
| Performance Standards: | <p>The Contractor will:</p> <p>8.1 maintain agreed appearance standards and rectify any deficiencies within one day of notification.</p> <p>8.2 incur Performance Points where the Authority is required to attend a special Committee of the House of Commons or House of Lords or the Greater London Authority (or any successor body) to answer questions in relation to the poor performance of the services by the Contractor as a result of which rectification action by the Contractor is required in respect of the Services</p> |
| Performance points: | |
| <p>8.1 X per item per failure for not meeting agreed standards</p> <p>8.2 X for House of Commons or House of Lords</p> <p>X for Greater London Authority</p> | |

| KP9 | Compliance with Replacement Programmes |
|--|---|
| Performance Standards: | <p>The Contractor will achieve agreed Replacement Programmes provided that:</p> <p>9.1 If the Items are planned to be brought into service ahead of the lifing policy referred to in the contract and the lifing policy for the Item (s) has not been exceeded a failure to achieve the Replacement Programme will not incur performance points.</p> <p>9.2 The Contractor will not incur Performance Points if a Force Majeure Event has occurred and the Contractor demonstrates to the reasonable satisfaction of the Authority that:</p> <ul style="list-style-type: none"> (a) the Contractor and its sub-contractors could not reasonably have foreseen the occurrence or consequences of the relevant event and could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken without incurring material expenditure; (b) the Event directly caused the failure to the above Performance Standard; (c) the failure of the Performance Standard could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with good industry practice without incurring material expenditure; and (d) the Contractor is using reasonable endeavours to comply with the Performance Standards. <p>2.2 enabling the Authority to take photocopies, photographs or recordings of any relevant Evidence in accordance with the agreed Health and Safety procedures; and</p> <p>2.3 providing appropriate personnel to give statements as required to the Authority's Investigating Officer or any other Investigating Authority.</p> |
| Monitoring Period: Per monthly programme | Performance points per missed Item per Monitoring Period in an agreed programme: X for each Item |

| KP10 | Service Support |
|--|--|
| Performance Standards: | <p>The Contractor will:</p> <p>10.1 provide Service Support at all required times staffed with sufficient and appropriately trained personnel</p> <p>10.2 ensure that the Service Support Freephone number is answered by a human being (i.e. not a recorded message)</p> <ul style="list-style-type: none"> • within X seconds on % of occasions • within X minute on % of occasions <p>A lost call is deemed answered at the time when the call is lost.</p> |
| Performance points: X point for every percentage under % during one Monitoring Period. Y for every percentage under % in a Monitoring Period. | |

| KP11 | User satisfaction and complaints |
|--|--|
| Performance Standards: | <p>The Contractor will:</p> <p>11.1 Comply with the Authority's and the Contractor's agreed satisfaction and complaints procedures</p> <p>11.2 Incur performance points for each substantiated complaint in relation to the provision of the Services which is not frivolous or vexatious.</p> |
| Performance points: <p>11.1 X per failure to comply with the agreed procedures</p> <p>11.2 Y per substantiated complaint.</p> | |

| KP12 | Agreed actions |
|--|---|
| Performance Standards: | <p>The Contractor will:</p> <p>Comply with actions agreed with the Authority's Contract Manager (whether in the joint liaison forum or via correspondence) to the satisfaction of the Contract Manager.</p> |
| Performance points: <p>12.1 X point per failure per issue per day</p> | |

APPENDIX C: Abatements for Availability – Sample

Source: London Fire Brigade

If the contractor fails to make available [the asset] within the [Repair and Replacement Times], the levels of abatement set out in Tables A and B below will apply.

Table A: Continued Unavailability Abatement – Critical Items

| | 2 hours and 1 minute to 4 hours | 4 hours and 1 minute to 6 hours | 6 hours and 1 minute to 8 hours | And for each two hour period missed thereafter |
|------------------|---------------------------------|---------------------------------|---------------------------------|--|
| [Critical Items] | £[x] | +£[x], i.e. £[2x] in aggregate | +£[x], i.e. £[3x] in aggregate | +£[x] |

Table B: Unavailability Abatement – all Items (excluding Critical Items)

| | 4 hours and 1 minute to 8 hour | 8 hours and 1 minute to 12 hours | 12 hours and 1 minute to 16 hours | And for each four hour period missed thereafter |
|----------------------|--------------------------------|----------------------------------|-----------------------------------|---|
| [Non-Critical Items] | £[y] | +£[y], i.e. £[2y] in aggregate | +£[y], i.e. £[3y] in aggregate | +£[y] |

Appendix D: Benchmarking Guidelines

Source: London Fire Brigade

- a) As part of the Best Value regime set out in Paragraph [] above the Authority and the Contractor will agree a Benchmarking procedure based upon the following guidelines.
- b) A benchmarking exercise in respect of the Services will be carried out during the [fifth, tenth and fifteenth] Contract Years so as to compare on a like for like basis the quality and scope of the Services and obligations undertaken by the Contractor under this Contract with comparable services in the public emergency service sector (and/or, if appropriate, elsewhere) with a view to providing an objective demonstration of the relative value for money which the Contractor is delivering under the terms of this Contract.
- c) Adjustments to the benchmarks to take in to consideration higher or lower quality services will be agreed by the Joint Performance Team (JPT).
- d) The Parties will by no later than 3 months before the end of the [fourth, ninth and fourteenth] Contract Years set up a Joint Benchmarking Working Group to:
 - i) identify those areas to be benchmarked, in the fifth, tenth and fifteenth Contract Years respectively;
 - ii) decide on what these areas are to be benchmarked against;
 - iii) decide on a timetable for the benchmarking exercise to ensure its completion by the end of the fifth, tenth and fifteenth Contract Years respectively;
 - iv) decide on the outputs of the benchmarking exercise.and the Joint Benchmarking Working Group will submit a report to the JPT on (a) to (d) above by not later than the end of the fourth, ninth and fourteenth Contract Years.
- e) On each occasion that a benchmarking exercise is to be carried out by the Contractor, the Contractor will undertake a comparison of the Unitary Payment and the quality and scope of the Services provided under this Contract through liaison with other providers, benchmarking clubs and independent benchmarking agencies as may be agreed between the Contractor and the Authority or, in default of agreement, as may be determined under the Disputes Resolution Procedure.
- f) Where the Contractor and the Authority agree (within 30 days after the first meeting for such purpose or such other period as the Parties may agree) the results of any benchmarking exercise, it shall be final and binding on the Parties and there shall be no right of reference thereafter to the Disputes Resolution Procedure. Where the Parties fail to reach agreement within that 30-day period or such other period as the Parties may agree that the result of any such benchmarking exercise is conclusive the matter shall be referred to the Disputes Resolution Procedure.
- g) The Unitary Payment will be reduced where it can be demonstrated through the benchmarking exercise that the Contractor's costs are higher than the benchmarking average. Where the Contractor can demonstrate through benchmarking that its Costs are higher than those against which benchmarking has taken place, notwithstanding adjustments in earlier Contract Years due to Indexation, the Contractor will be able to increase the Unitary Payment to the extent an increase is necessary to restore its base case return as set out in the Financial Model contained in Appendix []. The Contractor shall recalculate its Financial Model after each benchmarking.

Appendix E: Partnership Charter – Sample

Source: Royal Borough of Kensington & Chelsea

Addendum to Contract

Partnership Charter

between

the “the Council”

and “the Contractor”

This Partnership Charter is to be read in conjunction with the contract for the provision of [the Service] which has been awarded to the Contractor and which is to commence first as stated in the contract.

The Partnership Charter will run for the complete duration of the contract.

1. CONTEXT

The Council has engaged the Contractor as a partner to undertake [the Services].

The Council and the Contractor agree to work with each other co-operatively in partnership to discharge their responsibilities in relation to the services and to apply their respective special knowledge, skill and expertise, in accordance with the terms of the contract and this Charter.

2. DEFINITIONS

Partnership Charter/Charter means this agreement

Contract means the contract terms

Parties means the Council and the Contractor

Partners means the Council and the Contractor

The Services are the services described in the Contract and its appendices.

The Partnership Board means a co-operative group established under this Charter and described in clause 3.

The Innovation Forums means the groups established to bring innovation to the service and described in clause 4.

Capitalised terms used but not defined in this Charter shall be defined in accordance with the Contract.

3. THE PARTNERSHIP BOARD

The Partnership Board shall be chaired by the Council's Director of [Service] and shall meet quarterly or at such other times as the Partnership Board may determine.

The members of the Partnership Board are to be nominated by the parties to the contract. As a minimum the Partnership Board shall consist of the following four members:

The Council:

1. Director of [Service],
2. Council's Representative under the Contract

The Contractor:

3. Operations Director
4. Senior Contract Manager

Annually, one of the quarterly meetings will be attended by:

5. Council's Representative from elected members
6. The Contractor's Chief Operating Officer - Collection Division

to receive, on behalf of each of the Parties, annual reports of the Partnership.

The Partnership Board meetings can be attended by persons who are not members of the Board, at the invitation of the Board e.g. Chairpersons of the Innovation Forums or specialist advisors to the Board.

The functions of the Partnership Board are:

- **To Monitor Service Performance:** Ensure the services are delivered to a high standard in accordance with this Charter and the contract, in particular by commissioning qualitative and quantitative reports on performance and implementing/reviewing procedures for self-monitoring and reporting.
- **To be Innovative:** Develop and/or consider proposals for service improvement and for greater cost-effectiveness in the delivery of the services on a whole life cycle costs basis, in particular by studying examples of best practice elsewhere. To implement studies, reports and projects managed by the Innovation Forums and using joint teams.
- **To be Proactive:** Anticipate and consider proposals for any change in the service that may be required, for example, by any change in law or policy, or by any change in economic or social circumstances or expectations. To implement studies, reports and projects managed by the Innovation Forums and using joint teams.
- **To Ensure Partnership:** Consider any representations that may be made by either party to the contract concerning any matter that appears to be inconsistent with the parties' commitment to work co-operatively.
- **To Resolve Differences:** Seek the rapid and fair resolution of any differences between the parties to the contract. The Parties commit to discuss problems as soon as they arise and to work together in a no blame culture. To put in place procedures for referring disputes to the Partnership Board if they cannot be resolved at Contract level.
- **To Review Partnership Performance:** Receive annual reports prepared separately by each of the Partners setting out an open account of that Partner's opinion of the state of the partnership, successes and shortcomings over the year, and proposals for improvement in the partnership in future.
- **To Report on Performance:** Receive an annual report prepared jointly by the partners' senior staff on workforce matters, dealing with such matters as trends and notable events in relation to recruitment, retention, training and development, health and safety, equalities, and performance management.

4. INNOVATION FORUMS

The Partnership Board will establish Innovation Forums. The purpose of the Innovation Forums is to manage projects to:

- Develop and/or consider proposals for service improvement and for greater cost-effectiveness in the delivery of the services.
- Anticipate and consider proposals for any change in the service that may be required, for example, by any change in law or policy, or by any change in economic or social circumstances or expectations.

Separate Forums would be established for each of the following subject areas:

[]

These forums would meet formally and regularly and make written reports to the Partnership Board.

The frequency of the forum meetings would be determined by the demands of the particular projects upon which they have been directed to work.

Further Innovation Forums can be established, or existing ones dissolved as determined by the Partnership Board.

Where projects require funding, this can be provided by the Partnership Board, from an Innovation fund, set up specifically for this purpose. The Innovation Fund will receive £50,000 per annum through the Contract Budget from the Contractor. At the meeting of the Partnership Board closest to the anniversary of the contract commencement date the Partnership Board will decide whether to pay over any monies remaining in the Innovation Fund to the Council or whether to roll over such monies to the following year's innovation Fund.

The Innovation Forums will be charged with seeking and securing external grant funding for projects whenever appropriate.

Members of the Forums will be persons from both the Council and the Contractor with the appropriate experience and background to manage and promote the work of each specific Forum.

Equal participation and membership from both the Council and the Contractor will be an aim of the Forums.

5. PARTNERSHIP DUTIES

The Partners each accept a duty to:

- Make a sincere effort to understand the other partner's obligations, goals, expectations, duties and objectives in entering and performing their obligations under the contract and this Charter.
- Be just and faithful in all dealings relating to this Charter and to the contract, and to give a true account of such dealings.
- Work at all times within a spirit of co-operation to ensure the delivery of the services to a high standard.
- Resolve differences that may arise in relation to this Charter or the contract by discussion and negotiation wherever possible.
- Communicate clearly and effectively, and in a timely manner, on all matters relating to the contract.
- Make the most efficient use of resources, and seek to achieve cost-effective savings to the benefit of both partners.
- Make every endeavour to ensure that all persons engaged on the contract diligently and faithfully employ themselves to bring about its performance to a high standard.

- Give an early warning to the other partner of any mistake discrepancy or omission of which either partner becomes aware within or between the Charter and the Contract, and offer fair and reasonable solutions where practicable.
- Give an early warning to the other party of any matter that they become aware of that could affect the achievement of any objective, obligation, or the like contained in this Charter or the contract.
- Finalise those matters to be agreed prior to commencement of the services and described in clause [] of the contract.

6. DAY TO DAY WORKING IN PARTNERSHIP

To foster a successful working partnership at every level, the partners will ensure that:

- The Contractor's staff will work immediately alongside the Council's staff, and not occupy separate rooms
- Staff secondments between the partners will be encouraged
- Joint training and induction of staff will be encouraged
- The Partners will share the same information and communication systems.

7. OPEN BOOK ACCOUNTING

The Partners agree to develop and improve the system of 'open book accounting' agreed during the negotiations and set out in the contract.

The Partners agree that for the contract and the Partnership to be successful it must be based on sustainable, accurate and realistic operational performance and on clear and robust financial information, and further that it is to their mutual benefit to share such information in confidence in order to develop trust and to better understand the pressures and market forces exerted on each of them.

The Partners will at all times act reasonably and in good faith in relation to all matters that may arise under this Charter and the contract. This mutual commitment to each other includes an obligation on each Partner to ensure that the other Partner is not unduly prejudiced, financially or otherwise, as a result of the operation of the contract, the acts or omissions of the other Partner, market forces, changes of law or otherwise.

Subject only to any requirements in law, the partners commit themselves not to disclose to any third party any commercially sensitive information unless by express written agreement of the other Partner.

8. LEGAL ENFORCEMENT

It is intended that this Charter shall be legally binding on the Parties and shall operate in tandem with the Contract and shall expire when the Contract expires.

However this agreement does not create a legal partnership or agency relationship between the Parties.

Signed on behalf of the Council

Date:

Title:

Signed on behalf of the Contractor

Date:

Title:

Appendix F: Standing Agenda for Regular Review Meetings – Sample

Source: London Fire Brigade

(NAME OF AUTHORITY)

(NAME OF CONTRACT)

CONTRACT MANAGEMENT MEETING

to be held on [date] at [time] at [venue]

AGENDA

Standing Items

1. Apologies for absence
2. Matters Arising
3. Action Log Update
4. Review of Performance Monitoring Information
5. Health and Safety – Policy
6. Sustainability, Equality & Diversity
7. Contractual Obligations - Targets and Timetable
8. Complaints, Compliments and Concerns
9. Project Updates
10. Risk Register

New Items

11. []
12. []
13. []
14. Any Other Business
15. Date and Time of Next Meeting

Appendix G: Communications Plan – Template

Source: London Centre of Excellence

| 1. Communications Objectives: | | | |
|---|-------------------------|-------------------------|-------------------------|
| <ul style="list-style-type: none"> To communicate the aims and objectives of the project clearly and effectively to those people who need to know about it To communicate the progress and achievements of the project in the same way To gain the buy-in and support of key stakeholders to the project To manage communications proactively to achieve these objectives [more] | | | |
| 2. Key Messages: | | | |
| <ul style="list-style-type: none"> | | | |
| 3. Audience: | | | |
| Type of audience (e.g. Primary or Secondary) | Audience Group | Type of Message | Method of Communication |
| | | | |
| | | | |
| 4. Resources: | | | |
| Budget | Staffing | Others (e.g. materials) | |
| | | | |
| 5. Communications Action Plan: | | | |
| Action | Owner | When | |
| | | | |
| | | | |
| 6. Measures of Success: | | | |
| Success Factor | How it will be measured | Target Achievement | When |
| | | | |

Appendix H: Press & PR Protocol – Sample

Source: London Fire Brigade

[Name of Authority] and [Name of Contractor]

JOINT PROTOCOL FOR DEALING WITH ENQUIRIES FROM THE MEDIA AND THE PUBLIC

1. Purpose of the Protocol

- 1.1 To record the arrangements agreed between [the Authority] and [the Contractor] for dealing with enquiries from the media and the public which relate to the Services provided by or the Contract with the Contractor dated [date] for the [Service].

2. Status of Protocol

- 2.1 This Protocol has been agreed by the Authority and the Contractor as dated below and will remain in use unless and until any amendments to it are jointly agreed by the Joint Performance Team (JPT).

3. The Authority's Organisational Arrangements

- 3.1 The Authority's Press Office has a complement of [number] full-time staff and is managed by the Deputy Head of Press and Public Relations who reports to the Head of Press and Public Relations. Names and contact arrangements for these staff are set out in Appendix [] to this Protocol. The Authority will advise the Contractor of any changes to Appendix [] within 5 Working Days of the changes being effected.
- 3.2 The Press Office is generally staffed from [opening hours] inclusive. Outside these hours the three telephones in the Press Office [telephone numbers] are diverted to [out-of-hours number] which can deal with routine media enquiries or, where necessary, page the Duty Press Officer.

4. The Contractor's Organisational Arrangements

- 4.1 Names and contact arrangements for these staff are set out in Appendix [] to this Protocol. The Contractor will advise the Authority of any changes to Appendix [] within 5 Working Days of the changes being effected.

5. Authority arrangements for dealing with enquiries from the media and public

- 5.1 The Press Office will continue to handle all enquiries from the media and the public relating to the Authority's services.
- 5.2 So far as matters directly relating to the Services provided by the Contractor and matters relating directly to the Contract are concerned, the Press Office will:
 - [a] without contacting the Contractor, provide factual information to the media and the public
 - [b] notify one of the Contractor's contacts set out in Appendix [] at the earliest possible opportunity, by phone, email or fax of any enquiry from the media or the public relating to the performance of the Services by the Contractor or the contractual arrangements with the Contractor
 - [c] issue a holding statement in response to enquiries under 5.2 [b] above and agree with the Contractor the text of any oral or written material to be issued to the media or the public

- [d] advise the Contractor's contacts of any proposed public relations events which could reasonably be expected to involve matters relating to the performance of the Services by the Contractor or the contractual arrangements with the Contractor and agree any action to be taken by the Parties
- [e] deal expeditiously with and not unreasonably withhold approval to any material referred to in 6.1 [a] below and any requests referred to in 6.1 [d] below.

6. The Contractor's arrangements for dealing with enquiries from the media and public

6.1 So far as matters relating to the Services provided by the Contractor and matters relating to the Contract are concerned, the Contractor will:

- [a] provide factual information to the Authority for issue to the media and the public under 5.2 [a] above
- [b] notify one of the Authority contacts set out in Appendix [] at the earliest possible opportunity, by phone, email or fax of any enquiry from the media or the public relating to the performance of the Services by the Contractor or the contractual arrangements with the Contractor
- [c] issue a holding statement in response to enquiries under 6.1 [b] above and agree with the Authority the text of any oral or written material to be issued to the media or the public
- [d] contact the Authority's Press Office by phone, email or fax with requests from the media to photograph or film at [] for approval by the Head or Deputy Head of Press and Public Relations and agreement as to the arrangements to be made and the requests will not be agreed until such approval is given
- [e] advise the Head or Deputy Head of Press and Public Relations of any proposed public relations events which could reasonably be expected to involve matters relating to the performance of the Services by the Contractor or the contractual arrangements with the Authority and agree any action to be taken by the Parties and the event will not proceed until such agreement is reached
- [f] so far as 6.1 [d] above is concerned, where approval is given for photographing or filming at [], ensure that those attending from or on behalf of the Contractor comply with all instructions issued by the [Authority's Representative] at the incident or exercise.

7. Standing Item on [Regular Review Meeting] Agenda

7.1 There will be standing item on agenda for [regular review meetings] to deal with Press and PR Matters and for which specialist advisers from the Authority and the Contractor may attend.

8 Disputes

8.1 Any dispute arising in relation to this Protocol shall be referred to the [regular review meeting] and in the event of dispute shall be resolved in accordance with clause [Dispute Resolution] of the Contract.

Signed _____ for the Authority

Signed _____ for the Contractor

[date]

Appendix J: Audit Terms of Reference – Template

Source: London Fire Brigade

Background

- 1.1 The contract between the Authority and the Contractor facilitates two formal audits per year. The details of the plan for this first audit are contained in this strategy document.

Timescales

- 2.1 Audit planning will be completed before [date] and an initial consultation with [job title] will occur at [time] on [date]. This will prepare [job title] for the audit and establish the responsible officers at the Contractor who will assist in the audit process.
- 2.2 Planned audit visits to the Contractor's offices etc will be undertaken during [month] [year].
- 2.3 Subsequently, a report complete with recommendations will be prepared for joint agreement at the joint contract management meeting on [date].

Objectives

- 3.1 To ensure the validity and accuracy of the KPI self monitoring regime; that it is being conducted in accordance with contractual requirements; and that effective data capture mechanisms are sufficiently robust and adhered to ensuring that all KPI events are being included in the reporting of monitoring information.
- 3.2 To ensure that the commercial risks to the contract arising from fire and similar emergencies are being adequately controlled and managed.
- 3.3 To ensure that the contract is achieving best value with regards to the procurement of [assets].
- 3.4 To ensure that the system of [process] is effective.
- 3.5 To ensure that an effective quality control procedure is being utilised by the Contractor.
- 3.6 To ensure that targets are being achieved against schedules (from contract start to date, but specifically concentrating on performance within the past 18 months).

Methodology

- 4.1 The main audit methods will be

- Consultation staff via interviews.
- Evaluation of business processes and documented procedures.
- Evaluation of data from management information systems.
- Use of sampling techniques and specific tests to verify the accuracy of data and the effectiveness of management controls.

Outputs

- 5.1 A detailed audit report will be produced which will include recommendations for the continuous improvement of contractual performance between the two parties. Joint agreement will be sought at the joint contract

management meetings in order to implement the recommended improvements. The report will be forwarded to the Partnership Board and the [member committee] for acknowledgement.

The Auditors

- 6.1 Initially, [auditor] will conduct the audit preparations. External auditors will be appointed. Confidentiality clauses will be included in the contract agreement with the external auditors.

[illegible]

Appendix L: Continuous Improvement Clause – Sample

Source: London Fire Brigade

Best Value

Definitions

- a) For the purposes of this Paragraph [], the following expressions shall have the following meanings:

“Best Value Duty” means the duty imposed on the Authority by Part 1 of the 1999 Act and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the Guidance issued from time to time by a Relevant Authority pursuant to, or in connection with, Part 1 of the 1999 Act

“Best Value Performance Plan” means the performance plan required to be prepared by the Authority in accordance with Clause 6 of the 1999 Act.

“Best Value Review” means the review which is required to be conducted by the Authority in accordance with Clause 5 of the 1999 Act.

“User Survey” has the meaning given in Paragraph [] to this schedule

Duty of Best Value

- a) The Contractor acknowledges that the Authority is subject to the Best Value Duty.
- b) The Contractor shall, throughout the Contract Period, be subject (to the extent of its obligations under this Contract only) to the Best Value Duty in the same way as if it were the Authority. The costs of carrying out the procedures under the Best Value Duty shall be borne by the Contractor but where the consequences of the Best Value Duty (in particular, but not limited to, the consequences of a Best Value Review) result in any change to the Services, such change shall be an Authority Change.
- c) In carrying out the procedural aspects of the Best Value Duty the Contractor shall comply with the provisions of this Clause and shall undertake or refrain from undertaking such actions as the Authority shall request to enable the Authority to comply with the Best Value Duty including:
- i) actively promoting, supporting and assisting the Authority in meeting its Best Value Duty in respect of the Service including the Authority conducting Best Value Reviews and preparing Best Value Performance Plans;
 - ii) complying with all requests by the Authority for assistance in preparing its Best Value Performance Plans; and
 - iii) complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value duty including:
 - (1) to facilitate the inspection of the Authority's compliance with its Best Value Duty pursuant to Part I of the 1999 Act; and
 - (2) to assist the Authority in relation to any action taken by the Secretary of State under Section 15 Local Government Act 1999;

- (3) to enable the Authority to comply with the annual Publication of Information Direction (England).
- iv) The Authority shall at all times act reasonably in making or refraining from making requests of the Contractor in connection with the performance, satisfaction and discharge of the Authority's Best Value Duty in accordance with this Paragraph [].
- d) User Survey
 - i) The Contractor shall, at least once in each Contract Year, unless otherwise agreed by the JPT, undertake (or procure the undertaking of) a User Survey the content and arrangements for the conduct of which shall be agreed by the JPT but which shall reflect the following principles which shall include:
 - (1) assessing the level of satisfaction among Users with the Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services; and
 - (2) assisting the Authority in the preparation of its Best Value Performance Plans.
 - ii) The costs of conducting any User Survey shall be borne by the Contractor.

Appendix M: Gainshare Clause – Sample

Source: London Fire Brigade

To secure its Principal Aim the Authority is focusing on three key areas:

- **modernisation:** the identification of ways to improve responses to emergency incidents and to modernise the fire service, in line with the recommendations made by the Audit Commission in their report “In the Line of Fire.”
- **partnership:** working with other organisations in the public and private sectors to provide best value
- **quality:** seeking, innovative and imaginative solutions which will both improve the quality and reduce the costs of services, in particular, support services.

The Authority is accountable to the people who live, work and visit London and to the Council Tax payers whose money helps to fund the service. The Authority wishes to be known for its high quality services and to be sure that they are delivered on time in a polite and friendly manner. The Authority each year will set standards and measure its success in meeting them.

Third Party Revenue

- a) So far as may be practicable within the context of the Authority’s public image and statutory duties, the Authority will co-operate with the Contractor to enable the Contractor to earn, so far as is reasonably practicable, income from allowing third parties to use equipment, labour or premises used by the Contractor to provide the Services (the “Facilities”). The Contractor understands and agrees that it is the Contractor’s first priority to provide the Services and the provisions of Clause [] apply.
- b) In all cases where services utilising the Facilities are supplied to a third party as a direct result of an introduction by the Authority, the Contractor shall pay a finder’s fee to the Authority of an equitable amount to be agreed on a case by case basis.
- c) The terms of use of the Facilities shall be agreed between the Parties at the time (including all terms relating to liability and the allocation of risk). The Authority and the Contractor undertake that they will negotiate in good faith the terms of use of the Facilities.
- d) Subject to the Authority agreeing to allow third parties to use the Facilities in accordance with Clause [] and Paragraphs [] above the Contractor agrees to account to the Authority for the Authority Share as set out in Paragraph [].
- e) Notwithstanding Paragraph [] above, in the event that the Contractor proposes at some future date to use the Facilities to undertake related activities, utilising the transferred staff and leased premises, of a type not envisaged by the Contractor or by the Authority on entering into this Contract, both Parties will agree a new and equitable basis for division of the benefit of such activities designed to secure Best Value for the Authority and to maximise value for money to the Contractor.

Sharing of Sponsorship Revenue and Third Party Revenue

- a) The Authority and the Contractor shall share Total Third Party Revenue (as calculated under the foregoing provisions of this Clause []) as set out below.
- b) The Authority Share shall be 50% of Total Third Party Revenue less the Third Party Revenue Allowance relevant to the Contract Year in question. Thus where:

AS = Authority Share of Total Third Party Revenue
 CSR = Contractor Sponsorship Revenue
 TPR = Third Party Revenue
 TA = Third Party Revenue Allowance

$$AS = \frac{CSR + TPR}{2} - TA$$

Windfall Profits

- a) The Parties acknowledge that the Contractor may be required to share with the Authority any excess or windfall profit that the Contractor achieves through the performance of the Services.
- b) The Parties therefore agree that where it can be reasonably demonstrated that an excess or windfall profit has been earned by the Contractor, the Parties shall discuss and consider an agreed method by which the Authority can benefit from the occurrence of the same.
- c) For these purposes the Parties will discuss whether an excess or windfall profit shall have been earned when the average profit before interest and tax earned by the Contractor in any Contract Year exceeds [100+] % of the profit expressed in the Financial Model but in their discussions, the Parties will without limitation take into account (to the extent that they relate to this Contract) the Contractor's
 - investment profile
 - other liabilities
 - losses
 - reduced profits
 - availability of cash
 - profits earned from Third Party Revenue

for previous and (predicted for) the next following Contract Years.

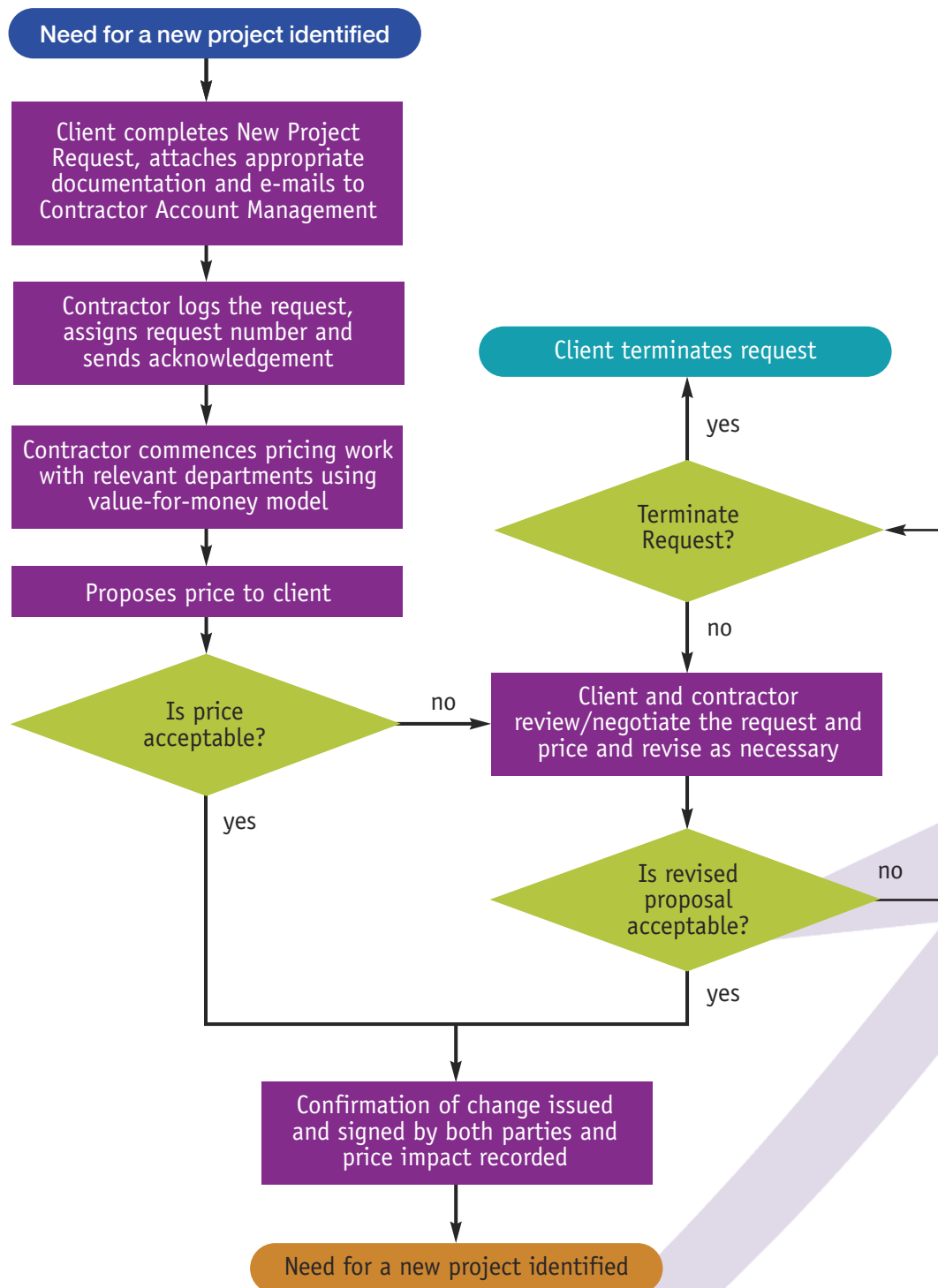
Gainshare mechanism

- a) The Authority and the Contractor shall separately and/or jointly seek to identify Gainshare projects of the type set out below which may result either in savings for the Authority or the Contractor or both. Once identified and costed by the Contractor, Gainshare projects shall be presented to the JPT for approval. Proposed savings in the Contractor's Costs which are agreed to be other than efficiency gains arising from the Contractor's management skills or proposed savings in the Authority's internal management or administration costs will be identified as stand alone projects by either the Contractor or Authority. The Contractor will be entitled to retain all the benefit of its efficiency gains and the Authority will be entitled to retain all the benefits of savings in the internal management or administration costs. Any dispute whether a saving is the result of the Contractor's efficiency or arises out of a project or is the result of an aspect of the Services being dispensed with by the Authority (under Paragraph []) will be resolved by the Partnership Board or in default of agreement through the Disputes Resolution Procedure. Savings resulting from Gainshare projects (as set out in Paragraph [] below) will be shared between the Authority and the Contractor as set out in Paragraph [] below.

- b) Each project shall be presented to the JPT as a stand alone business case and shall as a minimum identify:
 - i) the investment required to achieve the saving;
 - ii) the forecast of revenue saved by the project;
 - iii) the point at which costs of the project shall have been covered by savings achieved;
 - iv) the overall benefit to both Parties of carrying out the Gainshare project;
 - v) any other matter which the Contractor and the Authority consider to be material.
- c) In the event that the JPT can not reach an agreement on the project, the dispute shall be passed to the Partnership Board. Within 21 days of being notified of the dispute, the Partnership Board will consider it and endeavour to reach agreement. If agreement cannot be reached by the Partnership Board, either Party may invoke the Disputes Resolution Procedure. Projects will be implemented to an agreed timetable once approved or determined under the Disputes Resolution Procedure.
- d) Where a project is approved by the JPT or the Partnership Board or determined through the Disputes Resolution Procedure (as the case may be), the Authority Gainshare and/or Contractor Gainshare generated by the project for every subsequent Monitoring Period of the Contract Period shall be calculated by taking the value of the total savings in Costs achieved by the Contractor through the project in question and subtracting the direct expenditure actually and properly incurred by the Contractor and/or by the Authority in implementing and operating the project. Such expenditure shall include direct costs and overheads specifically attributable to the project and its operation but shall not include any general overhead of the Contractor nor general administrative cost of the Authority nor any Costs which the Contractor would have incurred in any event in providing the Services if the project in question had not been proposed or implemented. The Authority Gainshare shall be 50% of the result.
- e) Where a project is approved by the JPT or the Partnership Board or determined through the Disputes Resolution Procedure (as the case may be) and a saving in the Authority's costs of external supply of goods or materials is identified by the Contractor and approved by the JPT as being a cash saving the Contractor Gainshare generated for every subsequent Monitoring Period of the Contract Period during which such saving shall continue shall be calculated by taking the value of the total savings in costs achieved by the Authority during the period of the saving and subtracting the direct expenditure actually and properly incurred by the Authority in implementing and continuing the saving. The Authority's expenditure shall include direct costs and overheads specifically attributable to the saving and its operation but shall not include any general administrative cost of the Authority. The Contractor Gainshare shall be 50% of the result.

Appendix N: Change Control Process

– Flowchart



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