Contract extensions and variations procedure

This is a mandated procedure under the operational policy framework. Any edits to this page must follow the process outlined on the creating, updating and deleting policies page.

Overview

This procedure outlines the requirements to manage contract extensions and variations effectively, in accordance with Treasurer's Instruction 18 and the Department of Treasury and Finance's (DTF) contract management policy.

Scope

The procedure applies to all corporate employees, education offices and public authorities operating within the department's procurement framework.

This procedure should be read in conjunction with the procurement governance policy, procurement procedure (PDF 231KB), and contract management procedure (PDF 190KB).

School and preschool employees, school governing councils, school councils and preschool management committees should refer to the school and preschool procurement procedure (PDF 246KB).

Contents

Detail

Conditions for extensions and variations

To support any extension or variation to a contract, the Contract Manager must demonstrate that:

- the extension or variation will deliver value for money
- the extension or variation is supported by business need
- the supplier(s) performance has met expectations.

If all of these conditions are met, employees must be guided by the extension or variation process outlined in the contract. Varying a contract or exercising an extension option must be formally documented and agreed to by both parties in accordance with the terms of the contract.

In accordance with the contract management procedure (PDF 190KB), all variations and extensions must be referred to Procurement and Contracting for advice and/or to undertake the process. Submit a request through edProcure for assistance.

Contract extensions

An existing contract may be extended for a further period if there is a continuing need for the good or service. The contract may only be extended if both of the following conditions are met:

- the contract contains an unused option to extend
- the contract has not yet expired.

Contract extensions with options

Where an unused option exists, contract extensions must be managed in accordance with the timelines and requirements detailed in the contract.

Contract managers should plan and begin discussions with a supplier to exercise any extension option well in advance of the current expiry date. This should be completed in line with the timeframes outlined in the contract, but as a general guide it is recommended to be commenced a minimum of 60 days before the expiry date. This will allow sufficient time to undertake a new procurement process if the extension option is not agreed to by both parties.

Procurement and Contracting must be consulted as part of this process to provide advice and formally exercise the extension option. To do this, submit a request through edProcure.

Varying a contract to extend

A contract may be extended for a period that is different to its extension options, if it is in the department's best interests. This will be managed as a variation to extend the contract. This may be appropriate for one of the following reasons:

- a change in business needs (not changes to scope – this would be considered a new procurement)
- identified issues with supplier performance
- alignment with planned procurement activities.

For information on variations, see contract variations.

Extending a contract with no extension options

A contract with no extension option/s that has not yet expired may be extended if the goods or services are required beyond the end date. This will be managed as a variation. Both parties must agree to vary the contract to extend the end date. Approval to deviate from the original procurement documents, including the acquisition plan and purchase recommendation, will also be undertaken if required.

In the instance that allowing a contract to lapse would result in an unacceptable risk to the department, it may be necessary to temporarily extend the contract to allow a proper analysis or procurement activity to occur.

Once a contract has expired, it must not be varied or extended. An interim agreement may be established as a short-term solution to finalise the supply of goods or services required under the original contract or while a new procurement process is undertaken. The interim agreement must be established in compliance with the department's procurement procedure (PDF 231KB). Procurement and Contracting must be contacted in this instance. To do this, submit a request through edProcure.

Contract variations

A contract variation refers to adding, removing, or changing an existing contract provision. It must be undertaken in accordance with the procedures set out in the contract.

This may include any change to:

- the scope of the contract
- the value of the contract
- extension options to be exercised
- pricing
- quantity purchased
- specifications.

Variations must not change the original objectives of the contract. Where a contract is varied, this should be formally agreed to in writing between both parties in accordance with the terms set out in the contract.

All variations must be referred to Procurement and Contracting who will oversee the variation process. This includes obtaining the necessary approvals in line with the financial and procurement authorisations listing (XLSX 361KB), and ensuring the details are captured in the department's reporting system.

Where a variation to a contract takes the total value of the contract above $55,000 (GST inclusive) and the previous total value was less than $55,000 (GST inclusive), then the contract, including expenditure details, must be recorded on the Procurement Activity Reporting System (PARS) following approval of the variation. This will be undertaken by Procurement and Contracting, once notified by the Contract Manager.

Contract managers must be aware that communication with a supplier can result in an unintentional variation to the contract. When discussing any variations, contract managers should ensure comments are in line with the contract, and not imply agreement until all aspects of a proposed variation have been considered. The Contract Manager should maintain a written record of any outcomes of discussions with suppliers and email these to the supplier to avoid any uncertainties.

Prior to seeking formal approval for any variation through Procurement and Contracting, the Contract Manager should ensure that the proposed variation and any impacts have been discussed with the supplier. Any variation to a contract should be formally agreed in writing between the parties.

For any contract variation or adjustment that would increase the total value of the contract, appropriate approval must be received in line with Treasurer's Instruction 8: Financial Authorisations and the financial and procurement authorisations listing (XLSX 361KB) as laid out below.

Variations with no financial impact

For any variations that do not have a financial impact on the contract, a variation letter must be completed and signed by the Chief Procurement Officer or Deputy Chief Procurement Officer. The letter can be accompanied by additional information for the approval delegate's consideration, such as written agreement from both parties, and other contextual information.

The signed letter must be sent to the supplier, to ensure the implication of the variation on the contract has been agreed on and understood. Formal written agreement must be received from the supplier, and stakeholders must be notified. All information and communication must be documented and filed appropriately for audit purposes.

Minor variations of less than or equal to 5% of total contract value

For an amendment which, when aggregated with any previous amendments, does not increase the total value of the contract by more than 5% of the original value, the amendment, taken by itself, must be approved by the appropriate contractual delegate.

Variations which increase the total contract value by less than 5% must receive financial, procurement, and contractual approval (XLSX 361KB) for the value of the variation on its own.

For any variations that will increase the total contract value by less than 5%, a minute must be completed summarising the changes. This minute must be endorsed by the Contract Owner and approved by the appropriate financial, procurement, and contractual delegate (XLSX 361KB) for the additional contract expenditure.

Once approved, the variation must be formally communicated through a letter to the supplier, to ensure the implication of the variation has been agreed on and understood. The variation must also be communicated to stakeholders. All approvals must be documented and filed appropriately for audit purposes.

Major variations of more than 5% of total contract value

For an amendment which, when aggregated with any previous amendments, increases the total value of the contract by more than 5% of the original value, the amendment must be approved as if the total value of the amendment and the original contract was a new contract.

Approval must be received for the variation as per the new contract value including the variation value.

A briefing must be completed, treating the total contract value and the variation amount as if it were a new contract. This briefing must be endorsed by the appropriate financial and procurement delegate (XLSX 361KB) and approved by the appropriate contractual delegate (XLSX 361KB).

An assessment of a proposed variation and the need for any approvals should be made in terms of the impact on contract deliverables, pricing and identified timeframes while maintaining value for money, probity, transparency, and accountability.

All decision making for variations to contracts must be clearly documented to ensure that the decision is defensible and still presents value for money. Employees should communicate regarding any potential variation with the supplier and document this in writing, to ensure both parties sign as evidence of their agreement to the change(s).

Once the variation has been finalised, employees should communicate this to stakeholders so that they have a clear understanding of what goods or services to expect under the varied contract.

DTF's contract extensions and variations guideline (PDF 174KB) provides further detail on managing variations and extensions to contracts. For further advice, submit a request through edProcure.

Roles and responsibilities

Contract Owner

Appoint an adequately skilled Contract Manager and oversee the contract and any major contractual changes and strategies.

Direct strategies and execute key decisions that ensure good governance of the contract and its financial performance and is generally a senior employee or executive.

Accountable for the budget that funds the contract and has the authority to commit funds for the contract, approve contract payments and minor variations.

Contract Manager

Manage contracts (in accordance with value and complexity) to ensure the department obtains value for money through satisfactory contractor performance.

Chief Procurement Officer/Deputy Chief Procurement Officer

Approve variations to contracts that have no financial impact, and endorse formal variation letters to be sent to suppliers.

Procurement and Contracting Unit

Manage approval for extensions and variations on behalf of business units.

Definitions

contract

A legally binding agreement between two or more parties for the supply of goods and services for an agreed value that also describes the terms on which the agreement is made.

Contract Manager

The person charged with the administrative management of the contract. Primary duties are to plan activities, manage risk, monitor contractor performance, exercise delegated authority, manage relationships, and ensure compliance with terms and conditions.

Contract Owner

The person sponsoring the project and charged with overseeing the contract and any major contractual changes and strategies.

Procurement Governance Committee

A committee consisting of senior department executives who are responsible for the oversight of procurement and contracting activity and reform within the department.

Supporting information

Related legislation

Public Finance and Audit Act 1987

Treasurer's Instruction 8: Financial authorisations

Treasurer's Instruction 18

[Code of Ethics for the South Australian Public Sector]

Related policies

[Procurement governance policy]

[Procurement procedure (PDF 231KB)]

[Contract management procedure (PDF 190KB)]

[Managing risk in procurement procedure (PDF 224KB)]

[Contract management plan (DOCX 488KB)]

[Annual contract review report (391KB)]

[Contract closure report (DOCX 387KB)]

[DTF procurement governance policy]

[DTF procurement planning policy]

[DTF sourcing policy]

[DTF contract management policy]

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Contact

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Ask your question or lodge a request through edProcure.