

Council Policy 3.3.10 – Contract Management

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| Responsible Directorate | Corporate Services |
| Responsible Business Unit/s | Procurement |
| Responsible Officer | Manager Governance and Strategy |
| Affected Business Units | All |

Objective

The objective of this Policy is to set out the Shire's approach to Contract Management. This policy describes who is authorised to enter into contracts on behalf of the Shire, authorise variations and/or extensions to those contracts, and outlines Contract Management roles and responsibilities.

Scope

This Policy applies to contracts for goods and services entered into by the Shire regardless of value. The following contracts are excluded from this policy:

- Employment contracts.
- Outgoing funding agreements, donations and sponsorships.
- Incoming funding agreements.

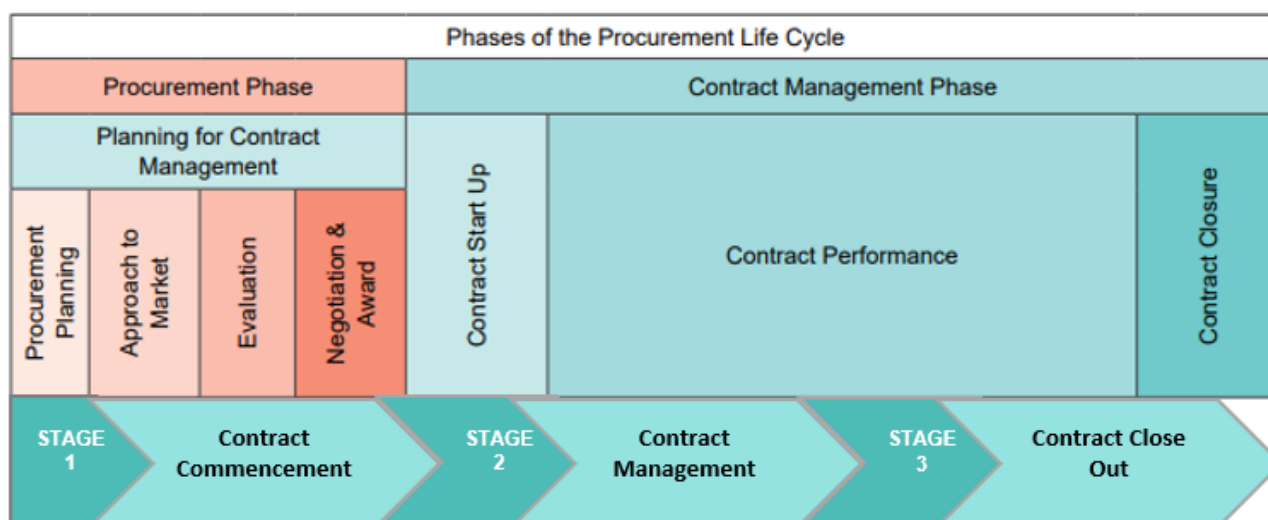
Policy

This policy provides a framework for managing contracts with a value threshold of:

1. \$250,000 or greater, whether they were publicly advertised or not;
2. less than \$250,000, but greater than \$75,000;
3. less than \$75,000.

Contract Management

Contract Management integrates with the overall Procurement Life Cycle.





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Contract management involves three key stages, contract commencement, contract management and contract close out. These three stages are then split into six distinct phases:

- Contract planning and negotiation
- Contract execution
- Contract performance management
- Variation management
- Contract extensions
- Contract close out

The Shire's approach to each of the six distinct phases is described in the following sections.

Contract planning and negotiation

Each procurement process involving a publicly advertised tender is required by Regulation 14 of the *Local Government (Functions and General) Regulations 1996* (the Regulations) to have detailed specifications of the goods or services required. To avoid any possible confusion, tenders that are exempt from public advertising must also have a specification of the goods or services required.

These specifications form the basis for contract management of quality, performance and the activities that will follow.

In considering procurement options and the specifications for the preparation of the decision to call for tenders or otherwise purchase goods and services greater than \$250,000 through exemptions from public tendering under legislation, Officers will have regard to:

- The legislative rules associated with procurement via tender, including delegated authority to call tenders.
- Procurement and contractual options to provide value for money.
- The means that performance will be assessed.
- The appropriateness of contract extension options.
- The most appropriate contractual arrangements.
- The need for contingency and provisional sums.

A decision regarding the contractual arrangements must be made prior to the decision to call tenders. The call for tenders must include information regarding the contractual arrangements and assessment criteria.

The Shire's contract standard inclusions will comprise the following parts:

- Letter of Award
- Conditions of Tendering
- Specification and/or plans/drawings
- General Conditions of Contract
- Special Conditions of Contract
- Respondent Offer

Regulation 20 of the Regulations provides rules for varying the goods or services required after the tender has been awarded, but prior to entering into the contract. A variation of this kind must be made in accordance with the Regulations and the relevant delegation. Regulation 20 only applies before a contract has been executed.



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Contract execution

Following the awarding of the tender, the contract must be executed in accordance with Council Policy 1.1.4 – Execution of Documents and Use of the Common Seal.

Following execution of the contract, the details of the contract will be recorded in the Shire's Contract Management Register by Procurement.

Contract performance management

Properly managing supplier performance with respect to outcomes and deliverables clearly specified and agreed in the contract will help ensure Council and its customers obtain the business benefits and value for money within target timeframes.

Contract performance management involves:

- Relationship management with the suppliers' nominated contact.
- Monitoring timeliness and quality of deliverables including reporting.
- Issue identification and escalation.
- Assessment of invoices to contract terms and conditions.
- Tracking performance against budget.
- Ensuring ongoing compliance with relevant licences, qualifications, permits and insurances.
- Ensuring quarterly contract management meetings are conducted.

The Contract Manager is responsible for performance management of the contract.

Variation management

Council authorises the Chief Executive Officer to vary contracts in accordance with Regulation 21A of the Regulations where:

- the expenditure required for the variation is contemplated in the Budget; and
- if the variation is a renewal or extension of the term of the contract as described in Regulation 11(2)(j) that it is in accordance with relevant delegations and Council resolutions.

The Contract Manager is responsible for reviewing variations submitted by contractors and making a recommendation to the Chief Executive Officer.

In the event that a Superintendent has been appointed to administer the contract, the Superintendent may approve variations subject to terms of the contract and where applicable under this policy and the conditions of their appointment. The conditions of appointment of a Superintendent are to include requirements to adhere to Shire policies, procedures and project management framework where they do not directly conflict with the Australian Standard contract conditions.

A request for approval to vary the contract should come from the Contract Manager in the approved form. If approved, the signed form is to be attached to the requisition. The details of the variation must be recorded according to record keeping standards.

Variations to a contract require the approval of both parties to the Contract.

Where the variation is not contemplated in the contract in the form of contingency or other reserve amount and the expenditure required is not contemplated in the project budget, Council approval is required prior to acceptance of the variation and approval to commence works. See the following section for contract variations where a Superintendent has been appointed.



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Where a variation would change the scope of the contract, in accordance with Regulation 21A of the *Local Government (Functions and General) Regulations 1996*, a new procurement process would be required for the variation item.

Variations management where a Superintendent has been appointed

A Superintendent may be appointed to assist the management of a contract.

In the event that a Superintendent has been appointed to administer the contract, the Superintendent may approve variations subject to terms of the contract, where applicable under this policy and the conditions of their appointment. The conditions of appointment of a Superintendent are to include requirements to adhere to Shire policies, procedures, and project management framework where they do not directly conflict with the Australian Standard contract conditions.

The Superintendent's role is to 'administer' the contract and ensure the contractual obligations are performed. Under a traditional construction contract, the Superintendent has two separate and distinct roles:

- to act as agent for the principal; and
- to act as an independent certifier.

The Superintendent administers the contract terms and conditions in accordance with legislation and where applicable, Shire policies and procedures.

The Superintendent's specific functions when acting as agent include:

- issuing directions to the contractor on behalf of the principal;
- approving programs;
- approving subcontractors;
- controlling employees;
- resolving contract document ambiguities;
- examining and testing materials;
- postponement and suspension of work; and ordering variations.

The types of issues the Superintendent may be asked to certify include:

- extensions of time;
- payment of liquidated damages;
- the amount of delay costs payable to the contractor;
- valuing variations;
- payment certificates;
- issuing final certificates and certificates of practical completion;

Noting the roles and powers outlined above, it is essential that the Contract Manager proactively manages any potential variations. Variations must be managed in line with cost and contingency availability and early advice of potential above contract variations must be negotiated and progressed in sufficient time to obtain formal approvals for additional budget. The only exception to this requirement is for emergency works and where an extreme safety risk requires immediate attention.

Once the variation is approved, a Purchase Order for the specific variation, notated with the Variation Reference and detail is created. This amount is over and above the original Purchase Order value, as it is assumed all other estimated costs will be billed against the remaining available budget.



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Variations contemplated by the contract

The following circumstances does not constitute a variation under Regulation 21A because they are contemplated by the contract:

- additional costs that relate to items within the budget where these items form part of the contractor's obligation to complete everything necessary to carry out the contract work and can be met by the contingency within the contract; or
- substitution of materials where the contract contemplates a substitution.

Where necessary variations are contemplated by the contract and budget permits, the Contract Manager may raise a requisition. Approval for the expenditure must be in accordance with the Shire's purchasing power authorisations.

The decision to agree to a variation contemplated by the contract must be in accordance with the Shire's Project Management Framework and must be recorded in the Shire's Contract Management Register.

Contract extensions

The Contract Manager is responsible for making recommendations regarding contract extensions contemplated by Regulation 11(2)(j) of the Regulations. Note that any contract extensions must be based on performance of the contractor being to the specified standard in the contract. The Chief Executive Officer is authorised to approve contract extensions contemplated by Regulation 11(2)(j) unless otherwise specified by Council resolution or limit on delegated power.

Contract close-out

The Contract Manager is responsible for contract close-out. This involves ensuring that all contractual obligations have been met, any disputes resolved, all asset documentation is received and complete, lessons learned recorded and final payment made.

Contracts resulting from a procurement process to establish a schedule of rates

Where the Shire has conducted a procurement process to establish a schedule of rates, contractual arrangements will include an initial contract that will bind work conducted based on that tender and a contract for the specific works provided for in the Shire's purchase order. This condition applies to all contracts.

Contracts with a value of less than \$250,000, but greater than \$75,000

Purchasing of goods and services up to \$250,000 is dealt with in Council Policy 3.2.4 – Purchasing – Procurement of Goods or Services up to \$250,000.

Following execution of the contract, the details of the contract will be recorded in the Shire's Contract Management Register by Procurement.

Contract variations

A request for approval to vary the contract should come from the Contract Manager in the approved form. If approved, the signed form is to be attached to the requisition. The details of the variation must be recorded according to Record Keeping Standards.

Variations to a contract require the approval of both parties to the Contract. Approval of contract variations are subject to the Shire's Execution of Documents Policy.



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Variations requiring additional expenditure for contracts with a value of between \$75,000 and \$250,000 are governed by the following rules:

- The variation must be within the available budget.
- Approved by an Officer with appropriate financial authority, where the total of all approved variations to the contract to date does not exceed the individual approver's financial authority threshold.

The decision to agree to a variation must be recorded in the Shire's Contract Management Register by Procurement.

Contract extensions

Contract extensions should be contemplated in the contract and should not be used to avoid adherence to purchasing rules.

Contracts with a value of less than \$75,000

Purchasing of goods and services over \$5,000 and up to \$75,000 is included in and dealt with in Council Policy 3.2.4 – Purchasing – Procurement of Goods or Services up to \$250,000.

Contracts with a value of less than \$75,000 comprise:

- the Shire's purchase order terms and conditions; and
- the specifications and scope of the works against which the price was costed.

For all contracts up to \$75,000 the Officer raising the requisition is responsible as the Contract Manager.

Contract variations

Variations to contracts with a value less than \$75,000 that involve additional expenditure are governed by the following rules:

- The variation must be within the available budget.
- Approved by an Officer with appropriate financial authority, where the total of all approved variations to the contract to date does not exceed the individual approver's financial authority threshold.

Contract extensions

Contract extensions should be contemplated in the contract and should not be used to avoid adherence to purchasing rules.

Definitions

Budget - This is the approved budget for the Project or works as adopted by Council, as part of the annual budget or subsequent Council decision to adjust or amend the budget allocation.

Contract Manager - Each procurement process that leads to a contract with a value of \$250,000 or greater will have a Contract Manager. The Contract Manager will be nominated during the decision to call for the tender. The Contract Manager has the following responsibilities:

- Day to day management of assigned contracts.
- Clearly defining in the specifications used to call for tenders or otherwise the performance standards, review mechanisms and deliverables required from contractors.



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- Ensuring contracts are managed in compliance with approved policies, procedures and processes and all client obligations contained in contracts are fully satisfied.
- Reporting on contract status and identifying issues for escalation.
- Making recommendations on the appropriateness variations that are not contemplated by the contract.
- Assessing the appropriateness of variations that are contemplated by the contract.

Contract Management Register - This is a register of contracts resulting from contracts with a value of over \$75,000. The register will include information regarding the parties to the contract, the duration, a link to variations requested, approved or declined and the total contract value including any extensions. This register is an auditable record.

Financial Authority Threshold - The Financial Authority is the limit set out in Business Operating Procedure – Authorisation to Issue Purchase Requisitions.

Procurement team - The Shire's procurement team has the following responsibilities:

- Preparing the contract
- Maintaining the contract management register

Superintendent - The Superintendent is the person appointed by the Shire to perform the role of Superintendent as described in this policy.

Relevant Policies/Council Documents

- Council Policy 1.1.4 – Execution of Documents and Use of the Common Seal
- Council Policy 3.2.4 - Purchasing - Procurement of Goods or Services up to \$250,000
- Council Policy 3.2.5 - Procurement of Goods or Services through Public Tendering
- Business Operating Procedure – Authorisation to Issue Purchase Requisitions

Legislation/Local Law Requirements

- *Local Government Act 1995*

| Office Use Only | | | | |
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| Relevant Delegations | | | | |
| Council Adoption | Date | | Resolution # | |
| Reviewed/Modified | Date | | Resolution # | |
| Reviewed/Modified | Date | | Resolution # | |

**Council Policy 3.3.10 – Contract Management****ATTACHMENT 1****Contract Management Roles and Responsibilities****Key roles**

| Item. | Role | Responsibilities |
|-------|--|--|
| 1 | Contract Owner <i>(Manager or Director subject to value and risk)</i> | <ul style="list-style-type: none">• Person accountable for the budget/cost center that funds contract• Employee with delegation to approve contract payments and variations• Allocate contract management roles within own team• Ensure compliance and performance• Obtain necessary delegate approvals (Council, CEO or Director as applicable)• Manage ongoing under performance in conjunction with Governance |
| 2 | Contract Manager <i>(Note this may be the same as the Contract owner in some instances subject to value/structure)</i> | <ul style="list-style-type: none">• Manage contracts through post-award lifecycle as the single point of contact for suppliers on all contract matters• Monitor contract performance and compliance• Recommend being a representative within the business unit with the relevant skills• Contract management meetings (quarterly and annually)• Contract Development clearly define scope and performance standards, negotiation, execution, and management of contracts in accordance with approved policies, procedures, and processes.• Manage contract extensions, and renewals and preparation for future contracts / RFX• Manage contractor efficiently and effectively to ensure contract value is achieved• Manage contractors and supplier relationships• Manage contract services communication and messaging• Contract OH&S engagement and assurance• Contract risk identification and management• Contract closure activities• Understand and manage confidentiality |
| 3. | Where there is a Support Officer/s a contract Manager may delegate the following tasks. | <ul style="list-style-type: none">• Contract operational administration.• Quotes/Confirmation of rates, goods receipting requisitions• Records management and compliance• Variation registers for contracts below \$250,000• Contract closure activities |

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| 4. | Procurement Coordinator | <ul style="list-style-type: none">• Perform administrative activities over the contract management lifecycle for the, overarching contract documentation, variations, and provide compliance assurance• Records management and compliance for RFX's• Variation registers for contracts above \$70,000• Contract extensions documentation• Support quarterly contract assurance/performance and ensure the Minutes and Actions are recorded in the contract record |
| 5. | Project Management Office Leader | <ul style="list-style-type: none">• Manage the Contract Management Framework and supporting processes and system tools• Work with IT and internal stakeholders to implement and improve the OneComm Contract Management module• Provide input and assurance to specifications, scope, negotiations, and variations• Support quarterly contract assurance/performance meetings as required• Update and maintain the corporate Contracts Register |
| 6. | Governance, Corporate Performance Advisor | <ul style="list-style-type: none">• Risk Management Policy• PPLGS Reporting |
| 7. | Employees | <ul style="list-style-type: none">• Compliance with the contract management Framework and underpinning Policy and processes.• Records management• Understand and manage confidentiality |
| 8. | Shire Audit Team | <ul style="list-style-type: none">• Annual audits and reporting• Following up improvements and recommendations |