



New South Wales Government

## **NSW Government Procurement Guidelines**

# **Service Contracting**

**May 2007**

version	2.0
revision date	May 2007
further information	agency procurement information service
phone	02 9372 8600
e-mail	<a href="mailto:gpshelp@commerce.nsw.gov.au">gpshelp@commerce.nsw.gov.au</a>

These guidelines were prepared by the NSW Department of Commerce for the NSW Government. They are available from the procurement process maps on

<http://www.treasury.nsw.gov.au/procurement/procure-intro.htm>

For further information on these guidelines contact NSW Procurement help desk by phone 02 9372 8600 or e-mail [gpshep@commerce.nsw.gov.au](mailto:gpshep@commerce.nsw.gov.au)

## Issue log

Issue number	release date	details
2	May 2007	Minor editorial changes

## Related Guidelines

[NSW Government Procurement Policy](#)

[NSW Government Code of Practice for Procurement](#)

[NSW Government Tendering Guidelines](#)

## Related Instruments

[NSW Government Procurement Manual](#)

[Service Competition Guidelines \(Premier's Memorandum 97-24\)](#)

[Public Sector Management Act 2002](#)

[Public Sector Management \(Goods and Services\) Regulation 2000](#)

[Pitfalls or Probity: Tendering and Purchasing Case Studies](#)

# Table of Contents

<b>1 Purpose of this document .....</b>	<b>1</b>
<b>2 Service contracting overview.....</b>	<b>3</b>
<b>3 Government policy .....</b>	<b>5</b>
Policy framework.....	5
Roles and responsibilities of key agents .....	7
Probity .....	10
Accountability .....	11
<b>4 Principles.....</b>	<b>13</b>
<b>5 Implementation.....</b>	<b>16</b>
<b>6 Benefits, costs and risks .....</b>	<b>18</b>
Risks .....	19
<b>7 Service contracting process .....</b>	<b>22</b>
Overview .....	22
1 Specify the activity .....	23
2 Select the acquisition strategy .....	24
3 Develop and release tender documentation .....	26
4 Receipt of tenders .....	29
5 Evaluate the tender bids.....	30
6 Decision and implementation .....	33
7 Management and monitoring.....	34
8 Contract evaluation and succession planning .....	36
<b>Appendix A – Service contracting process checklist .....</b>	<b>39</b>
Overview .....	39
1 Specify activity .....	40
2 Select acquisition strategy .....	40
3 Develop and release tender documentation .....	41
4 Receipt of tenders .....	41
5 Evaluate tender bids.....	41

6 Decision and implementation .....	42
7 Contract management .....	43
8 Contract evaluation and succession planning .....	43

# 1 Purpose of this document

The NSW Government has an obligation to provide the community with the best value in the delivery of public services whilst achieving economic, environmental and social outcomes for the community. Service contracting (SC) is one tool which can assist government agencies to achieve the NSW Government's obligation when providing such services.

In the context of these Guidelines, service contracts can be defined as being primarily performance-based agreements with external providers which specify required service outcomes, outputs and standards. Service contracts incorporate key performance indicators as a primary method of assessing whether the contract requirements have been achieved. In a service contract arrangement, while the service provider is accountable to the agency for performance, the agency remains accountable to clients of the service and government for outcomes achieved.

SC is not new and has evolved over many years. Many services previously directly provided by government agencies are now being provided using the SC mechanism. In fact, SC was in vogue in England at the time Arthur Phillip was assembling the First Fleet, which included outsourced elements.

Government agencies need to make a well researched and open decision as to which activities should be the subject of service contracting and then the manner in which these services will be sought. This document has been prepared as a guide to managers in this decision-making process and provides an overview of the implementation process.

These Guidelines do not replace the [Service Competition Guidelines, 1997](#), issued through the Council on the Cost of Government, but are to be read in conjunction with them. They provide a framework for NSW government agencies to follow in the event they decide to undertake the SC process, having reached that decision after following the procedures outlined in the [Service Competition Guidelines](#). They also alert agencies to the particular risks and costs associated with contracted services. They strive to ensure the risks are allowed for when developing business case scenarios to assist in deciding whether or not to embark on an SC strategy.

The Guidelines are designed to provide agencies with a holistic view of the SC process as conducted by NSW government agencies. They outline the prevailing government policy framework for procurement, and identify its main principles. Considerations such as risk management, probity and accountability are canvassed before the central operational elements of the SC process are detailed. Procurement options are identified to assist agencies in designing a procurement strategy to suit their particular needs and circumstances.

SC can require significant change in conduct and procedures for agencies, where services once delivered by the agency are now delivered by a third party. Managers need to equip themselves and their agency to attend to their responsibilities in managing the business relationship with a service provider and the emerging different relationship with the agency's clients or service users.

A successful SC outcome for government, providers and clients depends on having a sound process. It is crucial that agencies undertaking SC ensure the use of adequate knowledge, skills and experience, and that staff involved understand and adhere to the agency's approach.

## 2 Service contracting overview

Under the [Service Competition Guidelines \(Premier's Memorandum 97-24\)](#), government agencies are required to undertake the following to achieve competitive delivery of services:

- know the costs of activities and levels of performance being achieved
- benchmark performance and processes against the best-performing comparable organisations
- drive internal performance improvement to increase efficiency and realise potential gains
- collaborate with other agencies in common service delivery arrangements
- consider inviting competitive bids for services where internal efforts have not realised substantial improvements in efficiency or quality.

Service contracting is a process that addresses the last of the above tasks directly and, indirectly, a number of the other tasks. It is the process of selecting the preferred provider of goods and services from a number of bidders, by evaluating them against predetermined selection criteria.

The success of this form of contracting is in clearly defining the outcomes required, especially levels of service, and to take an active approach to contract management. Key performance indicators are important in managing performance-based service contracts. If the service requirement cannot be defined (quantified in terms of outcomes) then service contracting is probably not appropriate for the service provision. Despite this prerequisite, service contracting has a wide range of benefits including reduced costs, demand management, access to expertise, economies of scale and providing more time for agency staff to concentrate on service delivery.

Before implementing SC, agencies need to attend to the following:

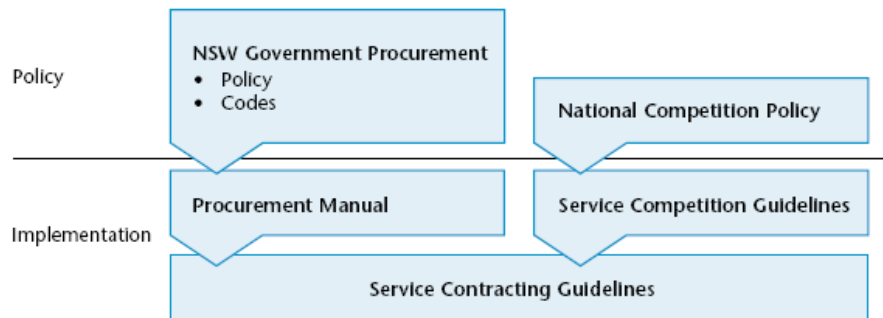
- determine what the agency wishes to achieve by using SC. SC is not an end in itself but a means of achieving performance improvement. The overall objectives should direct the process, including the approach to the market

- understand the needs of the agency's clients or users
- ensure that the standards outlined in the agency's service contracting overview Results and Services Plan (RSP) are met
- understand the market, including its offerings to meet the agency's objectives and the effect of an agency's entry into, and possible exit from, the market
- decide whether to allow an in-house bid
- understand [competitive neutrality](#) and its implications for the design and implementation of the tendering process
- manage staff and workplace relations, including skills development and training
- identify opportunities for industry development
- develop risk management strategies to deal with SC and changes to modes of service delivery, as well as changes in client and user expectations
- understand the Government's protective security requirements, especially where the contract will involve creation of or access to security-classified information
- identify accountability requirements such as contract compliance, conflict of interest, privacy and complaints
- develop suitable strategies for contract renewal following a scheduled expiration of the contract period or unplanned contract cancellation. Critical considerations can include access to data collected by the outgoing service provider and ownership of intellectual property, as well as the capability to continue service provision during any transition period
- identify any need for and obtain expert legal advice.

Once these matters have been addressed, the steps involved in implementing SC include specifying the activity to be done by a contractor, selecting the acquisition strategy, developing and releasing the tender documentation, evaluating tenders, deciding on awarding and managing the contract and evaluating the outcomes. When evaluating outcomes agencies must also consider succession planning at contract completion.

## 3 Government policy

*Figure 1 Government Policy*



### Policy framework

#### National Competition Policy

The [National Competition Policy](#), arising from the [Hilmer Report issued in 1992](#), seeks to improve economic efficiency through competition. [The National Competition Policy Agreements](#) between the Commonwealth, States and Territories provide for the separation of contestable activities of public monopolies, oversight of monopoly pricing to be extended to the public sector, and establishment of competitive neutrality between public and private sectors. These actions provide an environment conducive to achieving better value for money, higher delivery standards and greater innovation in the provision of services to the public.

#### Service Competition Guidelines

The [Service Competition Guidelines](#), developed by the Council on the Cost of Government and issued in 1997, are the blueprints for NSW government agencies for compliance with the [National Competition Policy](#).

The Guidelines require competitiveness to be demonstrated by agencies in the delivery of government services, and provide detailed advice on how to go about making suitable decisions on whether to embark upon a contracting out strategy. The Guidelines, however, do not provide detail on procurement implementation. This includes defining and documenting the service to be provided, securing and managing an external service provider, measuring whether the service requested is being properly provided and succession planning to deal with the contract completion stage.

## NSW Government Procurement Policy

The NSW Treasurer is responsible for determining policy relating to procurement across the whole of the NSW government sector.

The [NSW Government Procurement Policy](#) and [NSW Government Code of Practice for Procurement](#) set standards of behaviour applicable to all government agencies, their personnel and suppliers of goods and services, either directly or indirectly, to government.

The [NSW Government Procurement Manual](#) provides detailed guidelines for the application of government procurement policy in relation to all goods and services. In summary it aims to:

- provide consistency across government agencies
- ensure the integrity and fairness of procurement practices
- achieve the Government's economic, environmental and social objectives
- provide enhanced training and education of staff managing the procurement process
- encourage continuous improvement through the introduction of best practice principles
- ensure the adoption of a strategic approach to procurement to provide a demonstrable benefit to all parties in the procurement process – government, client agencies and suppliers. Government economic, environmental and social objectives are dealt with through guidance on:
  - regional development
  - maximising opportunities for small-to medium enterprises
  - international competitiveness through new technology adoption, innovation and workforce development
  - cooperative industrial relations practices
  - equality of opportunity and affirmative action
  - development of the Aboriginal workforce
  - high standards of OH&S.
- Environmental benefit through incorporation of:
  - reduction, reuse, recycle, recovery principles
  - proper waste and asset disposal strategies.

As such, government procurement policy requires government agencies to adopt tendering and contract management practices that promote and support best practice by service providers. Such practices, as outlined in the [NSW Government Code of Practice for Procurement](#), include:

- procurement strategies which provide scope for innovation and value-adding by tenderers
- contract planning and management which emphasise performance, effective communication and maximisation of value under the contract
- appropriate recognition of superior performing service providers when calling tenders for subsequent government business. Also, the [NSW Government Code of Practice for Procurement](#) requires that contract planning and management are undertaken with an appropriate level of competence, including:
  - financial and technical skills
  - knowledge of the applicable procurement and contract system
  - commercial expertise
  - identification and allocation of risk.

## Roles and responsibilities of key agents

### **Treasurer**

The Treasurer has responsibility for the [NSW Government Procurement Policy](#) framework, reports to the Budget Committee annually or from time to time, and advises the Government on:

- the effectiveness of government procurement policies and guidelines
- the success of whole-of-government and agency procurement plans
- appropriate strategies to make better use of the Government's procurement power.

### **State Contracts Control Board**

The [NSW State Contracts Control Board](#) (SCCB) reports to the Minister for Commerce. Its responsibilities include:

- advice on whole-of-government procurement plans and performance against targets

- arrangement for the supply and disposal of goods and services for the NSW Public Service, and development of associated procedures
- investigation and resolution of grievances arising in the course of government procurement
- liaison with agencies and industry on the development of whole-of-government procurement policies, guidelines and practice
- monitoring the application of the [NSW Government Code of Practice for Procurement](#)
- consider and, where appropriate, approve a request from Government Trading Enterprises for exemption, on a business case basis, from aspects of the policy statement.

The [SCCB](#) is made up of the NSW Government's major policy and procurement agencies including:

- [Department of Commerce](#) (chair)
- [Premier's Department](#)
- [NSW Treasury](#)
- [The Cabinet Office](#)
- [Department of State and Regional Development](#)
- [Department of Health](#)
- [Department of Education and Training](#)
- [Department of Environment and Conservation](#)
- [NSW Police](#)
- [Sydney Water Corporation](#).

NSW Treasury participates in the strategic and policy roles in an advisory capacity.

The [Public Sector Management \(Goods and Services\) Regulation 2000](#) gives the [SCCB](#) sole power to tender for supply or disposal of goods and provision of services, except for capital works, on behalf of the Public Service. The Regulation requires that competition to supply goods and services is maximised, that probity is maintained in tendering and that the tender selected should be the most advantageous to the Public Service. The Public Service referred to in

the Regulation is the agencies listed in [Schedule 1](#) of the [Public Sector Management Act 2002](#), and generally includes all government departments and central agencies as well as certain other smaller government units.

The [SCCB](#) arranges purchasing of commonly used goods and services on behalf of the Public Service through period contracts. These contracts are standing offers by suppliers, which apply for a specific time. Due to the consolidation of purchasing power, the [SCCB](#) is able to obtain advantageous prices and more attractive conditions, which nevertheless fully comply with the Government's purchasing legislation and policy. Agencies are able to purchase directly through these contracts and avoid the need to go through a costly tendering process.

When no suitable period contract exists, the [SCCB](#) will purchase directly on behalf of the relevant agency using a range of tendering strategies. When the value of the purchase transaction is estimated at less than \$150,000 and no suitable period contract exists, the [SCCB](#) has delegated the direct purchase to public service agencies. Agencies must, however, ensure that the procurement is undertaken in a manner which conforms to government procurement policy.

The [SCCB](#) annually awards over 500 contracts, which includes some 200 period contracts which range from supply of the simplest items to very complex service arrangements such as, for example, cleaning of government buildings and the provision of a wide range of information technology related services. The annual value of goods and services provided under [SCCB](#) contracts is in the order of \$3.2 billion per annum.

Access to [SCCB](#)-arranged period contracts is available to all government, local government entities and certain non-government organisations, not just [Schedule 1](#) entities. Non Schedule 1 agencies are also free to engage the [SCCB](#) on a fee-for-service basis to carry out any specific procurement related to goods and services.

### **Department of Commerce**

Responsibilities include:

- advice to the Minister for Commerce for the Budget Committee regarding goods and services expenditure, opportunities and trends
- advice and support to the [State Contracts Control Board](#) in exercising its functions including the development of guidelines and other initiatives
- implementation, on behalf of the [State Contracts Control Board](#), of government procurement policy, including the

[Australia and New Zealand Government Procurement Agreement.](#)

- advice and assistance to government agencies including:
  - procurement planning
  - contracting strategies
  - contract management
  - risk management.
- developing proposals for strategic long-term contracts;
- acting as purchasing agent for the State Contracts Control Board through the office of NSW Procurement of the [NSW Department of Commerce](#).

## Probity

Procurement activities by government agencies are subject to scrutiny by both internal and external audit. [Section 11 of the Independent Commission Against Corruption Act, 1988](#), requires the reporting of any matter that is suspected to involve corrupt conduct. Any member of the public may also report such a matter to the Commission by way of complaint. Complaints can also be directed to the Ombudsman and information can be obtained from agencies through the [Freedom of Information Act, 1989](#).

The [Independent Commission Against Corruption](#) (ICAC) provides views on the processes that should be followed to ensure integrity and value for money. The [ICAC's](#) views are summarised as follows:

- if one supplier offers a good deal, it is likely that there will be others able to compete
- the best way to find out who is in the market is to ask the market, not to rely on the opinion of one or even several individuals
- for a process to be fair to all parties, the rules must not be changed mid-stream to advantage one party
- once confidential information belonging to one party is known to others, the process is no longer fair
- a privatisation or contracting-out process should neither inhibit in-house bidding nor give it a special advantage

- tender specifications should not be so narrowly drawn as to eliminate acceptable solutions
- tender documents should state whether non-conforming tenders will be considered and, if so, explain how they will be assessed
- those with a (commercial) interest in the outcome of a tender should not be involved in the evaluation process in a way that allows them to affect the outcome
- offers must be assessed in a consistent fashion, on pre-determined criteria
- the agency calling tenders should, as far as is practical, know with whom it is dealing, and how competitive the field really is
- tenderers should be advised in advance of the possibility of negotiation and the circumstances under which it may occur
- tendering should be impartial and seek the best value for public money. If the process is flawed, the outcome is likely to suffer.

## Accountability

When implemented well, SC can increase accountability for government involvement in an activity.

In the SC context, the need for accountability begins with the decision to use SC as a tool to improve performance, and with the process used to select the successful tenderer. These processes need to be transparent and auditable. Agencies should therefore ensure that all parties are aware of the process to be followed, how bids will be assessed, and what information provided by the successful tenderer will become public knowledge.

Accountability arrangements also encompass how agencies and providers monitor and report their performance. The style and level of these arrangements can create incentives or disincentives for the provider, so these arrangements will have a strong influence over how successfully SC can deliver improvements in performance.

Agencies should consider the following:

- whether concerns such as privacy, security, and access and equity are relevant

- effect on competition (for example, *would detailed and prescriptive arrangements discourage some service providers from tendering?*)
- practical implications (for example, *for audit purposes, what information would service providers need to retain on their decision-making processes?*)
- potential costs, which are likely to be reflected in the contract price.

Accountability arrangements can impose costs on service providers. Businesses may be discouraged from entering the market if they believe they will face excessive regulation and red tape. Agencies should carefully examine their information requirements and choose appropriate means of collection.

As a general rule, controls over the provider should relate to assuring quality and monitoring outputs and outcomes, rather than to the details of day-to-day operations. Methods must be available to ensure that the provider has adequate systems to control and monitor performance and prevent errors.

Contracts with service providers should include:

- a clear statement of the standards of service which can be expected by clients
- a clear statement of who is responsible if the service is not provided at the level promised
- details of a mechanism for dealing with complaints
- a clear statement as to which tender and contract information provided by the service provider will be treated as commercial-in-confidence, and which will not.

## 4 Principles

A successful service contracting outcome for government, providers and clients depends on using a sound documented process. It is crucial that agencies plan carefully, have access to the appropriate skills and that staff are consulted and kept informed on the development and progress of the SC process. A number of principles underpin a sound SC process. These principles are reflected in the [NSW Government Procurement Policy](#), its attendant [NSW Government Code of Practice for Procurement](#) and the [NSW Government Procurement Manual](#). The SC process should:

### **Be applied to achieve optimum value for money**

Achieving value for money requires a balance of risks, quality and benefits. The best value for money bid may not necessarily be the lowest-priced bid. It may be appropriate to evaluate ‘whole-of-life’ costs as part of this exercise. Agencies should ensure that the best outcome is achieved for the Government and community.

### **Be integral to an agency’s corporate strategy**

SC has implications for the way in which agencies operate. It is one of a number of performance improvement tools that agencies can use to achieve their corporate goals. As such, SC should be integral to the corporate planning process and reflect strategic goals.

### **Ensure agencies remain accountable for activities**

Agencies remain accountable to the Government and to their clients whatever method of service delivery is used. The guarantees of privacy, openness, ethical conduct and accountability that apply when services are delivered directly by the public service continue to apply when the service is delivered under a contract by the private sector.

### **Ensure dealings with industry are fair and ethical**

Business conducted fairly and ethically will help develop trust between agencies and service providers.

If agencies are not fair and ethical in their dealings with industry they may limit the number of potential bidders and hence competition. Agencies will also lose credibility if they seek bids from the market when there is no intention of letting a contract. Bids should not be used as a way of unfairly acquiring intellectual property or of using industry for unpaid research. Both of these actions are, in fact, clear breaches of the [NSW Government Code of Practice for Procurement](#).

### **Ensure open and effective competition**

Open and transparent tendering processes assist to encourage bids on contracts. An open SC process ensures that all potential providers have an equal opportunity to bid to ensure a competitive field.

### **Ensure staff affected are treated fairly and equitably**

Successful staff management and industrial relations (IR) are crucial to the maintenance of a productive and efficient operation. It follows that staff must be treated fairly and equitably throughout the SC process.

### **Only be used for reasons of public interest**

There are services which should be excluded from open competition for reasons of public interest. These are services considered strategic to government and for which contracting poses unacceptable levels of risk, or where it is believed that the risks can best be managed in-house.

### **Assist to achieve a robust assessment of activities and services**

During the corporate planning process, agencies will need to determine the most efficient and effective service delivery mechanisms to achieve their strategic goals on a 'best value for money' basis. Therefore, in undertaking this review, managers firstly need to determine the continued relevance of the current outputs to the agency's strategic goals and the Government's policy objectives, and secondly their potential for competitive tendering. Where new outputs are required by the Government, SC, wherever applicable, should always be considered as one of a number of alternative mechanisms for service delivery.

Any decisions on the retention of contracting of service provision must be based on a robust assessment of activities and outcomes for the efficient and effective achievement of the organisation's goals.

### **Be based on clear outcomes and measures**

Agencies should guard against overspecification. This is especially so where the contract specification is based on traditional methods of service delivery, inputs and processes.

Specifications should be flexible and emphasise the outputs and outcomes required (*ie the goods or services to be delivered and their effect*) rather than inputs or processes. This approach will encourage contractors to introduce innovations in processes, and vary inputs to improve their methods of service delivery and measurement.

**Be undertaken with fair and equitable terms for in-house bids**

Where in-house staff currently responsible for the service provision are to be given the opportunity to compete for a contract, this should be on the same terms as other bidders. This requirement is based on the principle of competitive neutrality and will ensure that decisions are based on optimal efficiency and effectiveness grounds.

**Be based on a full and complete risk assessment**

Without a risk analysis, it is impossible to determine if SC will provide value for money, which is the primary objective of the process. Risk analysis for a SC project should include identification, assessment and classification. The classification of risks enables minor risks to be accepted (if appropriate) and major risks to be managed. Risks also need to be allocated to the appropriate party in the SC process.

**Be based on a whole-of-government impact assessment**

The decision to adopt a SC approach must be based on the costs and benefits to the whole-of-government rather than an isolated assessment for one agency. It will be necessary to liaise with other agencies in an attempt to identify possible impacts in other agencies or on the wider government policies.

# 5 Implementation

Procurement is a complex task that draws on a wide range of expertise, including people and project management as well as more technical skills. A number of matters need to be considered once an agency has decided that SC is the best way to improve an activity's performance. Sound planning will ensure that the objectives of SC are clear, that the implementation strategy addresses all issues that need to be managed during and after the tender process, and that the process will be consistent with government policy.

In planning procurement using service contracting, the following steps need to be taken:

- determine the overall objectives and reasons for using a service contract
- understand the market so as to derive the best approach to the market
- be aware of the opportunities for industry development
- identify, analyse and evaluate the risks and incorporate risk management into the process
- incorporate accountability responsibilities
- identify clear outcomes and quantifiable measures and targets for these outcomes
- examine the need to have in-house bids
- ensure competitive neutrality between internal and external bids for services
- any impacts of service contracts on existing staff need to be managed appropriately
- legal issues associated with service contracting can be complex and need to be adequately addressed
- ensure the procurement process is in accordance with government policy.

Having addressed these matters, the agency has to confirm that service contracting is still the best means of achieving the required outcomes. The process of service contracting is outlined in [Section 7](#). A checklist of the service contracting process is at [Appendix A](#).

## 6 Benefits, costs and risks

Service contracting is concerned with bringing the discipline of competition to the delivery of public sector services. If properly implemented, services will be provided by the most efficient and effective suppliers. This approach can realise significant benefits including:

- better value for money outcomes
- improved accountability and transparency in delivery of public sector activities
- improved quality
- faster innovation
- increased competition
- improved relationships between agencies and the private sector
- clearer outcomes and measures
- reduced costs
- improved performance management of an agency
- demand management
- improved access to expertise
- optimization of economies of scale.

In undertaking service contracting, managers need to recognise various matters associated with this form of service provision which could lead to increased costs:

- inadequate costing and scoping of services presently provided in-house
- inadequate definition of services to be provided by SC
- lack of adequate control over the performance of the contractor and poor quality control

- management of staffing
- costs of contract specification, tendering and contract management.

## Risks

### Risk management

Early in the planning process, agencies need to identify, analyse and evaluate risk and plan for its management. Effective risk management can reduce overall costs and uncertainty, and improve the management of the whole SC process, benefiting the agency, the provider and any client stakeholder. Risks can be economic or political in nature. They can be related to the loss of agency skills, control, security, fraud, procurement and contracting or contract management. While responsibility and liability for some risks may be allocated to the service provider, many other risks will need to remain with the agency, and a suitable response plan must be developed to deal with these risks.

The Government's [Total Asset Management Manual](#) contains [Risk Management Guidelines](#) that can be applied to SC. The Guidelines provide detailed procedures and include case studies to assist in identification of potential risks, analysis of their consequences and the preparation and monitoring of responses to potential risks.

As a guide, agencies should prepare a formal risk management plan for all SC initiatives valued at greater than \$5 million and for any other such contracts of a lesser value which appear to be 'high risk'.

### Risks associated with supplier selection process

Risks can be minimised through a rigorous selection process that includes checking the service provider's record of past performance, quality assurance procedures and corporate capacity. The tender evaluation committee should have a mix of skills, and have access to legal and financial expertise. Agencies may utilise the experience and resources of the [SCCB](#) to reduce their risk where appropriate. The SCCB can organise the entire supplier selection process for an agency to maximise the benefits to the agency while minimising the risk.

[The Independent Commission Against Corruption](#) (ICAC) provides views on the processes that should be followed to ensure the integrity of procurement. Agencies should be aware of these views. They are documented in the ICAC publication [Pitfalls or Probity: Tendering and Purchasing Case Studies](#), June 1993.

### Risks associated with contract administration

Contract administration preferably requires a detailed appreciation of contract law and the rights of the principal and service provider.

There are numerous government legislation, policies, guidelines, memoranda and manuals that specify the requirements for contract administration, and strict adherence to these is necessary.

Risks can be minimised by:

- obtaining appropriate advice or utilising services of expert agencies, eg [SCCB](#) or external consultants
- having suitably trained and experienced staff for contract administration
- implementing appropriate corporate structure and strategies to enable suitable quality assurance, auditing and performance review.

### **Managing risks based on changing expectations**

Agencies need to take account of a provider's ability to adapt to changes in government policy and in client needs. SC can mean that agencies are further removed from direct service delivery and from interaction with clients. Agencies could therefore find it difficult to anticipate the need for policy changes.

Strategies for overcoming these risks include:

- understand the limits of the market's capacity to change
- limit the length of contracts to stable policy periods or have a contract with provision for policy changes
- build flexibility into the contract
- have client feedback mechanisms, either directly to the agency, or indirectly through the service provider (feedback mechanisms should be negotiated up front and be part of the contract design)
- ensure the service provider has insurance cover to protect the Government's interests

### **Managing risks based on knowledge and skills**

Agencies managing SC projects need to consider how they will manage the risk of loss of critical knowledge, skills and expertise which are required to manage properly the relationship with a service provider. Agencies should consider strategies to maintain the critical attributes needed to remain a smart customer after SC is implemented.

Strategies to manage these risks include:

- maintain in-house capacity able to perform critical aspects of the service if failure of the service provider cannot be addressed contractually
- seek the appropriate advice or assistance to perform critical aspects of the activity
- working on critical areas with the provider in partnership or on temporary exchange
- request regular meetings and reports about critical matters and agree clearly defined lines of communication with the provider
- require the provider to undergo regular audits of critical skills as part of agreed assurance mechanisms.

### **Managing other risks**

SC may involve transfers of significant intellectual property historically owned by government; for example, software or data management systems, and scientific or other innovative products. Agencies need to consider carefully the value of that property for both the Government and the provider, and ensure that they have legal access to any such intellectual property if required.

Agencies should also consider how much it would cost to re-acquire the intellectual property either at scheduled contract completion or if the contract relationship fails. The value of the intellectual property should be reflected in the tender documentation and in bid prices received from tenderers, and acquisitions costs may be obtained during the tender process.

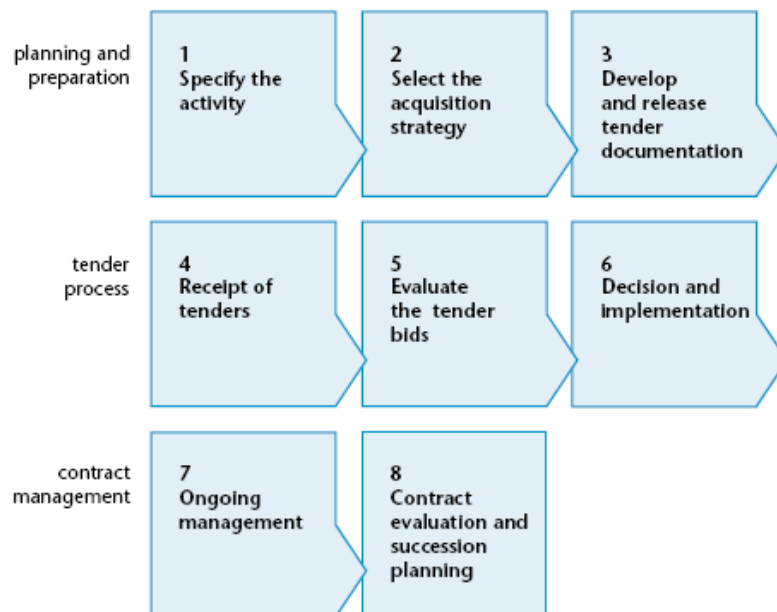
Contract renewal can introduce other risks, such as familiarisation costs, client confusion resulting from a different service provider taking over the service, and a reduced commitment to achieve agreed outcomes by an outgoing provider during any transition period.

# 7 Service contracting process

## Overview

Agencies should consider the skills and resources needed by the team managing the tender process, including the design of the tender strategy, the development of specifications and evaluation criteria. A different profile of skills may be required to manage the contract when it has been awarded. While [Schedule 1](#) agencies under the [Public Sector Management Act 2002](#) must work through the [SCCB](#) when undertaking the SC process, other agencies should consider supplementing shortages in necessary skills with external expertise such as the SCCB. (Figure 2 below illustrates the process.)

*Figure 2 Service Contracting Process*



Throughout the SC process (Figure 2 illustrates the process) agencies should review results against the business case that led to the original SC decision. For example, the procurement strategy being adopted should be reassessed when bidders' prices are beyond expectations or where the service standards required are not being achieved, either through unsatisfactory tender offers, or subsequent to contract award. Application of formal techniques such as [Value Management](#) can play an important and beneficial role in such an exercise.

The review may result in adoption of necessary scope changes and/or adjustments to the mix of performance indicators, functional and technical requirements.

Senior management should be involved in the decisions required to proceed to the next step.

The SC process begins after the implementation strategy has been developed. The implementation strategy will address and plan for issues such as calculating current costs, the objectives of the SC process, risk assessment, the approach to in-house bids, knowledge of the market and which contract strategy to use. Reference should be made to the [Service Competition Guidelines](#).

All steps in the SC process must conform to government procurement policy, as outlined in the [NSW Government Procurement Policy](#) and the [NSW Government Code of Practice for Procurement](#).

## 1 Specify the activity

The team managing the tender process will need to define the activity and its objectives, specify required outcomes and determine expected performance levels.

Tender documents should, where reasonably possible, specify activities in terms of outputs or outcomes, rather than processes or inputs. This enables tenderers to develop innovative approaches to deliver the outcomes. Requirements should incorporate performance targets, as well as any assumptions or constraints. They should also draw attention to any mandatory Human Resource Management or Industrial Relations strategy and whether an in-house team will be submitting a bid. Application of risk management techniques and consideration of process re-engineering strategies are essential to identify systemic inadequacies and to deal with them.

The tender evaluation and selection criteria should be closely linked to the required outcomes.

### Important considerations

Where an activity has not previously been subject to SC, agencies should ensure that potential providers are aware of all the considerations affecting the activity. These may include performance measures and criteria, legal and administrative constraints, key assumptions, risk and quality issues, accountability requirements, intellectual property requirements, special client needs, care of government assets and relevant policies.

Performance criteria to monitor the contract need to be established. The criteria should reflect stakeholders' expectations and the wider policy and strategic aims of the Government, as well as more conventional internal and operational issues such as the achievement

of milestones. Measures and indicators should be few in number, visible at all levels of the SC process and should reflect key performance indicators.

The contract size and duration should be decided on a case-by-case basis. The size or value of a contract may reflect the status of the market. For example, an agency may decide against a large contract or a single supplier where there are few large service providers available, in order to secure the competitive advantages of a larger bidding market. Conversely, a large number of small providers can generate greater tendering and contract management costs, which could offset the possible savings generated through encouraging a larger number of eligible tenderers. Contract size and duration will also be influenced by considerations such as administrative, transaction and investment costs, the need for continuity in relationships with clients and the likelihood of policy changes.

The form and type of contract (standing offer, period, fixed price, lump sum, schedule of rates, cost plus and so on) should be appropriate to the circumstances and the amount of flexibility and control required. The contract structure will need to be carefully planned and specifically drafted.

Where a high degree of control is needed over the way a service is required to be delivered, but the activity is highly decentralised, franchising can be a viable process. For example, Australia Post has successfully established postal service through franchised outlets.

Other matters that may need to be considered include ownership of assets, such as intellectual property, and access for auditors to accounting and administrative records at the premises of contractors. Intellectual property in particular is a critical issue. Access to information derived in service provision may be critical for the agency's government-designated role. If the service provider owns the intellectual property in this data, then acquisition costs could be exorbitant, or worse still, the data could be withheld, with potential for major dislocation to services on changeover of providers.

In certain circumstances, however, it may not be cost effective or necessary to acquire all intellectual property which originates from the SC process. In such situations, consideration to the service provider retaining ownership and, if necessary, the agency being licensed to use this intellectual property for its own purposes could provide an effective outcome.

## 2 Select the acquisition strategy

A number of acquisition strategies can be used. Decisions need to be made about whether the tender process will be selective or open, single-staged or multi-staged. The acquisition strategy chosen will vary according to the type of services to be provided, the complexity

of the service, the size of expenditure involved and the characteristics of the market. The strategy selected must ensure that the key principles are being met.

### **Acquisition considerations**

Factors to be considered in selection of the acquisition strategy are:

- the requirements of government policy and regulations
- the estimated cost of the service to be provided
- the complexity of defining the service
- the associated levels of risk
- the urgency for implementing the SC process
- how well defined the service requirement is
- the need for an innovative approach
- the availability of a suitable procurement solution through existing contracts
- details of information sought from respondents, divided into separate schedules for specific requirements
- the availability of detailed statement of service requirements, including specifications, plans and drawings, etc as appropriate
- the proposed terms and conditions of contract
- copies of other documents relevant to the procurement.

### **Tendering approach**

A single-staged tender process, where tender assessment is conducted in one step, can be effective in the following situations:

- the market is known and it is possible to identify selected providers. This approach can help reduce costs to both government and industry. However, it may reduce competition between providers and reduce access for new providers
- the market is small so a public request for tenders would elicit a small response. A multi-staged tendering process, where tender assessment involves several stages, with unsuccessful tenderers dropping out at each stage, may be necessary in the following situations

- there are many possible providers and tendering costs are high
- assistance from industry is needed to develop the final outcomes or other tender documents
- there is little competition and extensive negotiation may be needed. SC can also enable agencies to utilise new and innovative market-based solutions. A staged process could include the following documents:

#### **Invitations to Register an Expression of Interest**

These help to establish the level and source of interest.

#### **Requests for Information and Requests for Proposal**

These are used to seek information on providers and their capabilities, or to find solutions to meet problems or needs. They help to remove unsuitable proposals before incurring significant tendering costs.

#### **Requests for Tender**

These are used to obtain bids for clearly specified requirements and may be derived from earlier responses and industry consultation. Approaches to the market will generally incur costs to industry.

When developing the acquisition strategy agencies should recognise that Tender preparation costs can act as a disincentive unless there is a reasonable prospect of success by a tenderer

Businesses may be reluctant to submit innovative proposals if they involve intellectual property or commercial-in-confidence information or if, in providing the solution, it may become available to other bidders (including in-house bidders), thereby removing their competitive edge. The quality of bids is often improved when tender documents contain:

Clear specifications, focused on the desired outputs and outcomes rather than process and details of the evaluation criteria and methodology.

### **3 Develop and release tender documentation**

Information obtained during the first stages of the SC process will help in the final development of the tender documentation. The tender documentation must include the required outcomes, instructions to bidders, contractual terms and conditions, evaluation or selection criteria methodology and a nominated contact person.

The tender documents also should identify any supporting information required from tenderers and provide positive encouragement for submission of alternative tenders in addition to a conforming tender where greater value for money can be demonstrated.

The selection or evaluation criteria should cover such aspects as past performance and experience, ability to provide the required outputs, available resources and financial viability. A value-for-money judgement can be made balancing the relative importance of each of these criteria against the costs and risks involved. Other criteria may be delivery times, innovation, OH&S performance, environmental record and workplace and industrial relational practices. The specification for the service will have to be one of three types, viz: functional, performance or technical.

### **Important considerations**

Performance and functional specifications should be used, unless the specific tender demands detailed technical specifications. This is because they:

- encourage alternative and innovative solutions
- discourage bias
- reduce the effort required to prepare detailed responses
- minimise resources and effort to prepare the specification
- minimize the impact of suppliers' marketing pressures
- focus on outputs, not input or technical characteristics
- encourage improved environmental performance, products, or solutions.

Providing an adequate description of requirements is essential, because:

- clarity and explicitness enhance the quality of the offers submitted and reduce problems
- clear and precise specifications allow the agency to establish sound evaluation criteria
- delays, administrative effort, and the chances of criticism by unsuccessful offers are reduced.

When preparing procurements, specifications should:

- promote full and open competition

- meet the minimum needs of the Government
- only include restrictive conditions when necessary.

All specifications should:

- state the requirement clearly, concisely, logically and unambiguously
- contain enough information for tenderers to decide on and cost their offers
- permit the offered procurement solutions to be evaluated against defined criteria by examination, trial, test or documentation
- not over-specify requirements
- contain only the essential features or characteristics of the requirement
- provide equal opportunity for all potential contractors to offer products that satisfy the user's needs, including products incorporating alternative technical solutions
- not directly or indirectly discriminate against Australian and New Zealand suppliers

Pursuing value for money requires that the process is properly conducted to ensure that all relevant price and non-price factors are considered at every stage, including tender planning and seeking of offers.

#### **Documentation requirements**

- compare the tender request to attract offers that are fit for purpose, cost effective, and affordable, including the use of value management techniques where appropriate
- prefer functional or performance specifications. This encourages innovative and price-competitive proposals, and does not discriminate against capable contractors
- ensure that the evaluation criteria logically follow from requirements, and are readily apparent to tenderers.

#### **Seeking offers**

- seek offers in a way that attracts innovative solutions at competitive prices and on reasonable terms
- remove all internal barriers to attracting and obtaining the best possible offers available from the market,

- seek offers so that effective competition is maximised, including the pre-qualification of contractors to reduce tendering, evaluation, and negotiation costs while enhancing competitive efforts by tenderers,
- prepare advertisements which carry sufficient information regarding the tender and contain all relevant government procurement policy statements;
- ensure tenderers have sufficient time to respond, and enough information about the agency's requirements to prepare their most attractive and competitive offers or tenders;
- provide appropriate ways for tenderers to understand requirements and clarify any concerns, so they can concentrate on developing their most cost-effective offers.

Agencies should allow sufficient time for potential providers to produce their best proposal. Consideration may need to be given to extending tender periods if significant changes to the tender document are made during the period, or if a significant number of tenderers legitimately complain about its brevity.

Agencies need to consider how to ensure that all bidders have access to the same information without compromising any commercial-in-confidence information. One means is providing only a single point of contact.

The process should be carefully documented and meet audit requirements. Agencies must be able to account for their decisions.

Unsuccessful bidders also have a right to be advised as to the reason(s) their bids were unsuccessful. This must be restricted to comparing the unsuccessful bids to the evaluation criteria. No information on other unsuccessful tenderers is to be provided in this instance.

## 4 Receipt of tenders

The receipt of tenders has to be undertaken in a manner that is practicable, open and fair to all tenderers. Arrangements must be made to safeguard the security and confidentiality of all tenders received. There must also be full compliance with the [NSW Government Code of Practice for Procurement](#) and the [NSW Government Tendering Guidelines](#).

### **Important considerations**

Protocols need to be established for actions such as:

- tender lodgement procedures

- location of tender box
- acceptance of electronic and facsimile tenders
- tender closing conditions
- tender opening procedures
- late tenders
- records of tender opening meeting
- release of details of tenders received.

## 5 Evaluate the tender bids

The quality of bids, in part, will reflect the ability of the agency to specify clearly the requirements of the contract and client needs. Agencies should also ensure that bidders have enough background information to prepare informed bids.

Tender evaluation should conform to the following principles:

### **Fairness**

Equal opportunities are provided for all tenderers to present their offers.

### **Impartiality**

Evaluation is free from any bias towards achieving any particular decision.

### **Objectivity**

Subjective judgement and opinion is minimised to obtain the decision.

### **Repeatability**

Repeated evaluation of the same tender to the same criteria by the same evaluation team will yield the same decision.

### **Reproducibility**

Evaluation of the same tender to the same criteria by a different evaluation team will yield the same decision.

### **Reasonableness**

Decisions are based on information reasonably knowable by evaluators and mediated by rational and logical argument.

## **Thoroughness**

Decisions are based on competent and comprehensive analysis of all relevant information.

### **Important considerations**

Price alone is not the only indicator of value for money. Other factors may need to be considered, such as:

- the financial stability, competency and experience of the provider
- quality of service
- affordable public access to the service
- costs over the whole contract (net present value)
- the likely market status at the end of the contract period
- an assessment of the risk associated with any tender and the acceptability of that risk and the action required to manage the risk; overall compliance with tender requirements
- managerial capability of tenderers
- human resource management
- financial and commercial considerations
- the extent to which the tenderer has offered to facilitate local industry, workforce development, environmental and government social objectives, relative to other tenderers.

Bids should be evaluated against established selection criteria with weightings applied according to agency needs and levels of risk already identified. The selection process needs to be consistent and fair. Selection criteria must be decided before tenders are opened.

A tender evaluation plan should be prepared during the tender preparation to ensure suitable information is obtained from tenderers and the evaluation is suitably structured.

The tender process and selection criteria should not be structured in a way that would favour a particular bidder over others.

Before selecting a provider, time may be needed for post-offer negotiations and due diligence checks with the preferred tenderer(s). The primary purpose of these is to make sure that both parties have a common understanding of the project. Agencies should consider negotiations when:

- there are reasonable prospects for improving outcomes (without adding to tenderer's costs)
- alternative proposals are made within the parameters of the tender process which will improve the outcome for the Government
- offer prices are unfair and unreasonable
- unusual or complex requirements or circumstances exist
- there are substantial risks for either party warranting clarification.

The short-listed tenderer(s) may also wish to perform due diligence checks on information provided to them by the agency.

Post-offer negotiations provide an opportunity to achieve optimum value for money. After any post-offer negotiations and the due diligence period, recommendations are put to the appropriate decision-maker on which bid offers the best value for money, or whether any bids meet the criteria. Such negotiations should, however, only be conducted with the tenderer(s) assessed as best value as measured against the selection criteria. Otherwise an element of 'bidshopping' can result and the fairness of the process compromised. [NSW Government Code of Practice for Procurement](#) provides guidelines relevant to the tendering process, including advice on the conduct of tender negotiations.

If the tendering process does not produce a bidder capable of meeting the requirements, agencies should maintain the right to suspend or halt a SC process. While good planning and market testing should prevent this eventuality, it is better to stop the process until the difficulty is resolved rather than proceed with a contract that does not fully meet the agency's requirements.

These assessments will help in improving future tendering processes and in debriefing bidders. The selection documentation must demonstrate that the process was conducted with probity, and ensured open competition, fair dealing, public visibility, separation of relevant staff where necessary, commercial confidentiality and a clear audit trail.

No one involved in evaluating tenders should have a conflict of interest and there should be processes to deal with this during the evaluation stage. For example, agencies should locate in-house bid teams away from the evaluation team and general operations staff to ensure confidentiality of all tenderers is not only preserved, but also seen to be preserved. To avoid any potential for gaining an unfair competitive advantage and compromising the tender process. Staff from in-house units with a commercial interest in the tender outcome

should not be involved in the tendering process, including property tender documentation or specification.

In house bids should be treated in the same way as external bids; that is, competitive neutrality principles must be observed.

A winning in-house bid should be awarded to the staff's organisation unit using a quasi-contractual agreement which obliges the in-house unit to meet the terms of its bid. Such contracts are commonly referred to as Service Level Agreements. The final documented arrangements should be treated as though they were a binding contract.

The performance of in-house staff should be monitored using the same criteria as for external providers. The processes used will need to take into account other departmental performance management processes such as appraisals and work planning.

## 6 Decision and implementation

The designated decision-maker makes a decision on the recommendations of the project management team. In considering the recommendation, the decision-maker must ensure that:

- the recommended tenderer has been properly evaluated according to the selection criteria
- scores or ratings of the competing proposals were arrived at according to the evaluation plan
- all legislative and policy requirements and applicable procedures are met
- the tenderer selected for award represents the best value for money for the client and government
- the processes involved had due regard for probity
- sufficient funds are available (if appropriate).

Agencies may consider advising bidders, staff and their representatives of the final decision before it is announced publicly. A letter of acceptance will be required addressing the appropriate aspects and legal requirements.

Unsuccessful bidders should be notified as soon as possible and offered a debriefing if requested, having due regard for any commercial-in-confidence items.

The contract must clearly define the rights and obligations of each party. Legal and contracting skills such as those of the [SCCB](#) and the

[Department of Commerce](#) may be enlisted from the start of the SC process.

A management plan for the transition of work to the successful provider should be established.

In dealing with information provided by tenderers and related commercial-in-confidence issues, the following data is considered suitable for public access:

- the full identity of the successful proponents, including details of cross ownership of relevant companies
- the duration of the contract, including details of future transfers of assets of significant value to government at no or nominal cost, and details of the right to receive the asset and the date of the future transfer
- the identification and timing of any assets transferred to the contractor by the public sector
- all maintenance provisions in the contract
- the price payable by the public, and the basis for future changes in this payable price
- provisions for negotiation
- the results of cost-benefit analyses
- the risk sharing arrangements
- significant guarantees or undertakings, including loans, entered into or agreed to be entered into
- to the extent not covered above, the remaining key elements of the contractual arrangements. Information provided by tenderers, which can be considered commercial-in-confidence and hence restricted, includes:
  - a tenderer's cost structure or profit margin
  - matters having an intellectual property characteristic
  - any other matters where disclosure would substantially disadvantage the tenderer commercially with its competition.

## 7 Management and monitoring

Monitoring and managing performance is crucial to the success of a contract and of future contracting activities. Considerable effort

needs to be made to develop and maintain good business relations where the requirements are complex, or where the activity may not have been subject to SC previously. For less complex requirements, where the risks are low, or where the agency has some experience in this area, the resources needed will not be as high.

The following points will promote successful contract management:

- the manager of the project team is given full support from senior management and the resources to do the job
- the manager is as familiar as possible with the activity and the process from which the contract arose
- the manager has the requisite skills or is being trained in contract management and any specialist skills required
- the manager has sufficient authority for day-to-day management
- the agency has a relationship of trust with the provider
- a flexible attitude is taken to contract management but care is taken to stay within the limits of the contract requirements
- there is a point of contact for both the agency and the contractor
- agencies obtain expert advice from the [SCCB](#) or the [Department of Commerce](#) when they do not have the requisite skills or experience in SC.

Agencies should consider establishing arrangements for monitoring and for centralised reporting to management of performance and of actual savings against bid savings. This is to ensure the expected benefits of SC are realised, to help to incorporate lessons learned and to provide a basis for evaluation and succession planning.

### **Building relationships**

A co-operative relationship is essential to the successful performance of a contract. Benefits from such a relationship include achieving reduced costs because there is more flexibility in finding innovative solutions to issues as they arise, and dealing with concerns before they become long-term problems.

Factors that will help develop a good relationship between parties to ensure delivery of the service at the standard required include the following:

- ensuring good information flows between both parties

- ensuring that all parties have a clear understanding of each other's responsibilities, capabilities and expectations, including:
  - the provider understanding the importance of information flows between clients and the agency, particularly where client expectations are outside the tender specification
  - both parties establishing clear and agreed arrangements to handle complaints from clients (complaint mechanisms should be established in consultation with clients and clients should be made aware of how complaint mechanisms operate)
- ensuring that standards are met by regular and formal monitoring of the provider's performance. This can be particularly important for contracts for service delivery where the agency makes decisions (for example, on eligibility), but the provider interfaces with the client and delivers the service
- having agreed provisions in the contract covering provider non-performance, dispute resolution, termination and the smooth hand-over of the activity to another provider.

Partnering has been successfully employed by NSW government construction agencies to achieve an improved commitment and performance from all parties, resulting in improved outcomes in the provision of construction services.

Agencies should be prepared to take action if the provider's performance does not meet the requirements of the contract. Agencies should intervene early to prevent the problem escalating, and should ensure that the provider is informed and that a period for resolution is set. They should also be prepared to use the agreed dispute resolution mechanisms to resolve the difficulty.

Where poor performance cannot be resolved, agencies need to consider terminating the contract. Agencies should ensure that they have contingency plans which address service migration, including ensuring that there is no, or minimal, disruption to services for clients.

## 8 Contract evaluation and succession planning

This stage of the SC process deals with:

- evaluating the outputs and outcomes of the contracted activity against tender requirements
- assessing the effectiveness of SC in achieving agency objectives

- assessing effectiveness through advice from clients and other stakeholders
- considering how to manage the possible transition to an alternative provider
- considering necessary actions in the event the service provider defaults or is terminated prematurely or the agency is no longer required by government or other circumstances to provide the service
- considering different approaches to providing the service at the completion of the current contract.

### **Important considerations**

Developing a succession plan will help agencies attend to such matters as when a review of the contract arrangements is necessary and how that activity is to be reviewed. The review would look at the activities being performed and whether they are achieving the desired service outcomes. A review would also look at cost-effectiveness and efficiency.

Succession planning must continue throughout the life of the contract to ensure that the agency:

- maintains knowledge of the contract status and can be an intelligent and informed buyer
- can deal with changes in the market or the service provider
- can accommodate changes in government policy or needs
- allows for changes in community expectations (this might be monitored through client surveys, client complaint resolution or appeal processes).

Succession planning also involves an analysis of matters that could arise when the contract is due for re tendering either as scheduled or unexpectedly, and the strategies agencies need to use to deal with those matters. Considerations include:

- whether there are alternative means to perform the activity; for example, fostering of a competitive environment during and after the contract
- how to encourage fair and open competition to ensure that all bidders have a reasonable chance of success. Incumbent providers have a natural advantage in a renewal process due to their 'direct' knowledge of the service being provided unless detailed information is made available to competitors.

Intellectual property ownership may also need to be addressed in securing such detailed information

- how to ensure that the agency retains the knowledge and capacity to re-specify requirements and manage contracts
- how to maintain the flexibility to respond to changes in policy direction of the agency; for example, if client needs have changed
- ownership and transfer of assets, including intellectual property and data in general
- allowing for corporatisation, aggregation, and sale, including a management buy-out by a previously successful in-house team.

# Appendix A – Service contracting process checklist

Service contracts can be defined as being primarily performance-based agreements with external providers which specify required service outcomes, outputs and standards and incorporate key performance indicators as a primary method of assessing whether the contract requirements have been achieved.

This checklist is prepared to assist agencies in understanding the general requirements of service contracting. Adherence to the checklist does not relieve agencies of the responsibility of properly managing service contracts.

[Schedule 1](#) agencies under the [Public Sector Management Act 2002](#) must work through the [State Contracts Control Board](#) when undertaking the service contracting process.

## Overview

Agency possesses the following skills and knowledge to manage the SC process:

- ❑ [National Competition Policy](#)
- ❑ [Service Competition Guidelines](#)
- ❑ [NSW Government Procurement Policy](#)
- ❑ Role of [State Contracts Control Board](#)
- ❑ Probity
- ❑ Accountability
- ❑ Benefits and costs
- ❑ Risk allocation and management
- ❑ Contract management and dispute resolution
- ❑ Performance evaluation of service providers
- ❑ Workplace relations issues

Agency may seek assistance from the [SCCB](#) if it does not possess the required skills

## 1 Specify activity

Agency has the capacity to determine appropriate:

- ❑ size of contract (*eg \$ and length of contract period*)
- ❑ contracting system (*eg standing offer, period, one-off*)
- ❑ tendering system (*eg open, selective, invited*)
- ❑ terms and conditions of contract (*eg Australian Standards, specially developed*)
- ❑ payment method (*eg lump sum, schedule of rates, cost plus*)

Agency has the expertise to manage the preparation of tender documents which specify:

- ❑ project outputs or outcomes
- ❑ performance targets to reflect stakeholders' expectations and government procurement policy and strategies
- ❑ quality requirements
- ❑ legal, accountability and administrative constraints
- ❑ mandatory systems such as HR, OH&S and IR
- ❑ intellectual property and ownership
- ❑ evaluation criteria and methodology
- ❑ instructions to bidders
- ❑ details of information required from respondents reflecting the evaluation criteria
- ❑ compliance with [NSW Government Code of Practice for Procurement](#).

## 2 Select acquisition strategy

Agency can establish:

- ❑ a cost estimate of the service required
- ❑ a cost estimate of the management required
- ❑ tender evaluation criteria

Agency is able to select a suitable acquisition strategy with regard to:

- requirements of government policy and regulations
- risk level of project
- market competitiveness
- cost of tendering especially for projects with a design component
- number of available bidders
- urgency of service required
- completeness and complexity of service requirements
- need for innovation

### 3 Develop and release tender documentation

Agency is able to:

- develop tender documentation which specifies performance or functional requirements instead of prescriptive specification except where necessary to exercise appropriate controls
- determine suitable tender period which allows tenderers to prepare their best and competitive offers

### 4 Receipt of tenders

Agency has tender lodgement procedures for:

- tender closing conditions
- location and security of tender box (or use of eTendering service)
- tender opening procedures and records
- late tenders
- release of details of tenders received

### 5 Evaluate tender bids

Agency has evaluation procedures to ensure:

- equal opportunities are provided for all tenderers to present their offers
- in-house bids are treated the same as external bids

- tenders are evaluated fairly and consistently against established evaluation criteria:
  - managerial capability of tenderers
  - financial stability, quality of service, competency and experience of the potential winner
  - costs over the whole contract (eg net present value)
  - risk associated with any tender, the acceptability of that risk and the action required to manage the risk
  - overall compliance with tender requirements
  - financial and commercial considerations which may affect the successful running of the contract
  - benefits to local industry, workforce development, environmental and government procurement objectives
  - likely market status at the end of contract period (eg availability of other service providers)
- if there is a need to have post-offer negotiations (bid-shopping is not allowed), negotiations are to be conducted only with the tenderer(s) assessed as best value against the evaluation criteria
- if there is a need to suspend the tendering process because the process does not produce a bidder capable of providing value for money, the reasons for suspension are to be clearly documented in the project file and concurred by the relevant authority as necessary

## 6 Decision and implementation

Agency has capacity to consider the following:

- recommended tenderer is properly evaluated according to the evaluation criteria
- tenderer selected for award represents the best value for money for the client and government
- scores or ratings of the competing proposals are arrived at according to the evaluation plan
- all legislative and policy requirements and applicable procedures are met
- processes involved have due regard for probity

- ❑ funds are available for contract award
- ❑ contract clearly defines the rights and obligations of each party
- ❑ 'commercial in-confidence' information which cannot be provided to the public can be identified
- ❑ letter of acceptance addresses the appropriate aspects and legal requirements
- ❑ unsuccessful tenderers will be notified and offered a debriefing as requested
- ❑ information, if requested by unsuccessful tenderers, is restricted to comparing the unsuccessful tenders to the evaluation criteria

## 7 Contract management

Agency has expertise to ensure:

- ❑ provisions in the contract to cover provider's non-performance, dispute resolution, termination and the smooth hand-over of the activity to another provider
- ❑ all parties have a clear understanding of each other's responsibilities, capabilities and expectations
- ❑ standards are met by regular and formal monitoring
- ❑ information flows properly and effectively between contracting parties

## 8 Contract evaluation and succession planning

Agency has expertise to develop a succession plan which captures:

- ❑ changes in the market or the service providers
- ❑ changes in government policy or needs
- ❑ changes in community expectations
- ❑ issues related to re-tendering either as scheduled or unexpectedly.