



*Our Vision*

Nambucca Valley ~ Living at its best

*Our Mission Statement*

'The Nambucca Valley will value and protect its natural environment, maintain its assets and infrastructure and develop opportunities for its people.'

**1.0 Policy objectives**

The purpose of this Contract Management Policy is to provide a clear and standardised approach to managing and administering contracts for goods and services purchased from suppliers.

The effective management of Contracts with suppliers is essential to Council in maximising the benefits and achieving its corporate objectives. These benefits can be summarised as follows:

<b>Benefits of Contract Management</b>	
Business Benefits	Maximises outcomes to the Council and our customers (i.e. the Council "gets what it is paying for") by managing supplier performance, maintaining quality, improving productivity and identifying opportunities for improvement and innovation.
Value for Money	Enables savings and benefits opportunities identified during the procurement or contract management process to be realised, whilst also ensuring the achievement of expected procurement outcomes.  Enables further benefits through ongoing performance reviews, service improvements, supply chain improvements, innovation, etc.
Risk Management	Reduces contractual risks through robust contract management practices.  Ensures the Council is also aware of, and complies with, its own contractual and legislated obligations.

Specific policy objectives are to ensure;

- Contracts are managed in a manner that facilitates business delivery while minimising risk;
- Contracts are managed maximising financial and operational performance;
- A standard approach and framework is adopted to managing contracts;
- Consistency in Council's procurement activities;

- Staff are adequately skilled and trained, and understand their roles and responsibilities under a contract;
- The principles of probity are adhered to; and
- Compliance with legislative and administrative arrangements.

## 2.0 Definitions

<b>Contract</b>	Means any contract, agreement or lease entered into by Council with a third party.
<b>Contractor</b>	The supplier or the service provider (the other party) under a contract.
<b>Contract Manager</b>	The Council staff member responsible for the management and administration of the contract.
<b>Contracts Register</b>	A register maintained for all procurements valued at \$150,000 or more.
<b>Contract Variation</b>	Is an addition or alteration to the original contract and may include a change to the scope of the contract, value of the contract, the contract options to be exercised, contract prices and quantity purchased.
<b>Senior Staff</b>	Either the General Manager or the two Assistant General Managers
<b>Value of a Contract</b>	The value of a contract is whichever of the following values (excluding GST) is appropriate to the kind of contract concerned: <ul style="list-style-type: none"> <li>• The total estimated value of the project, or</li> <li>• The total estimated value of the goods or services over the term of the contract, or</li> <li>• The value of the real property transferred</li> </ul>

## 3.0 Related legislation/documents

- Code of Conduct Policy No G 4
- Procurement of Goods and Services Policy No G 12
- Procurement Procedures Manual No ES 6
- Councils GC21, MW21 and MWW21 tender documentation suite
- Statement of Business Ethics Policy No G 7
- Risk Management Policy No G 11
- Fraud Management Strategy Policy No CS 19
- Fraud and Corruption Prevention Policy No CS 20
- Purchasing (Credit) Card Policy No CS 23
- Buy Local Procurement Policy No CS 27
- Local Government Act 1993
- Local Government Regulations 2005.
- Local Government Code of Accounting Practice and Financial Reporting (Guidelines)
- Government Information (Public Access) Act 2009

## 4.0 Scope

The Policy applies to all Council Officers responsible for the management of contracts on behalf of Council and is linked to Council's Procurement Procedures Manual No ES 6 and Procurement of Goods and Services Policy No G 12

This Policy commences in the Post-Contract-Award stage of the Procurement Life-Cycle.

The Pre-Contract Award stage is covered by Council's Procurement of Goods and Services Policy No G12.

This Policy applies to all Contracts and any other documents that create legally binding obligations on the Council for the procurement of goods, services and works.

The following are excluded from this Policy:

- Employment contracts,
- Non-binding Memoranda of Understanding,
- Partnering and collaborative contracts with other Local or State organisations.

## **5.0 Policy Content**

### **5.1 Contract Management**

5.1.1 The function of contract management is the management of Contracts to ensure delivery of goods, services and works as agreed over the life of the Contract.

5.1.2. The management of a Contract may extend beyond the term of the contract when there are ongoing obligations associated with maintenance agreements, warranties and guarantees.

### **5.2 Stages in the Contract Management Life Cycle**

#### 5.2.1 Tender stage

The General Manager shall provide authority to go to tender under their delegated authority. A report is to be prepared to the General Manger outlining the intent of the tender, the value, and the contractual terms.

The contractual terms, conditions and specification will come directly from the tender process and will form the basis for what is to be monitored. At minimum initial priorities and measurable outcomes will be identified and encapsulated in the tender documents. However, it is recognised that providing tenderers with details of the anticipated frequency and level of detail likely to be required throughout the life of the contract can manage expectations and offer support in preparing a bid

#### 5.2.2 Pre-contract meeting

A 'pre-contract' meeting between representatives of both the Council and potential tenderers will be conducted during the period of advertising and before the closure of the tender. At this point in time the Council and potential tenderers will discuss the monitoring arrangements and a regular meeting schedule. The frequency of meetings is relative to the complexity of the contract or service to be delivered.

#### 5.2.3 Contract Commencement (Stage 1) – starts before a contract is signed.

Successful Contract Management is highly influenced by activities performed prior to awarding of a contract, ensuring that appropriate contract terms, conditions, scope and deliverables, KPI reporting and relationship management are clearly established in the signed contract and understood by all parties.

Project Managers are not to award contracts for works that are specifically funded by grants until the signed grant agreement (or funding deed) has been received by Council.

#### 5.2.4 Contract Management (Stage 2) – runs until formal closure.

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.

#### 5.2.5 Contract Closure (Stage 3) – the formal conclusion.

The contract close-out is the stage for closing-out Contract obligations and liabilities with suppliers. It may also include transitioning to another supplier for the goods/services.

### **5.3 Mandatory Requirements applying to contracts**

5.3.1 The following minimum requirements apply to all Council Contracts **valued at \$150,000 or more**:

- a) Staff must adhere to Council's procurement policies, procedures and processes.
- b) Each tender for a contract must be registered and identified with a Contract Number issued by Council's records officer.
- c) When the contract is awarded the specific contract details must be entered into Council's Contracts Register.
- d) A Contract Manager must be formally appointed by Senior Staff (under the appropriate directorate) for a contract in excess of \$150,000.

The Contract Manager may manage a contract valued at more than their level of financial delegation. However, the Contract Manager must not approve or incur expenditure on goods, services or a project valued at more than their level of financial delegation. Note, this also applies to any changes (variations) to the original price of procurement for amounts totalling above their delegation.

- e) All Contracts should consider appropriate Sustainability clauses in the areas of:  
  
Work Health & Safety; Quality Assurance; Environmental; Financial Capability; Insurance; Industrial Relations; Performance; Code of Conduct; Business Ethics; Exchange; and Disclosure of Information and that allow and support contract compliance and risk management, having regard to project value, requirements and complexity.
- f) All Contracts should consider appropriate Commercial clauses in the areas of:  
  
Payments and Retentions (or security); Price Adjustments; Delay to Completion (or delivery); and Processes to Resolve Claims and Disputes and that allow managing or regulating variations to the original Contract, having regard to project value, Contract requirements and complexity
- g) All contracts should consider the relevant approvals and licences required prior to commencement.
- h) Contract performance is to be monitored and evaluated by the Project Manager. This is required over the term of the Contract, and at the completion of a Contract. Any unsatisfactory performance shall be documented and placed into Council's records management system CM9.

## **5.4 Contract Variations**

All Contract Variations must be approved in writing in accordance with the Contract documentation and be approved by the appropriate delegate. Any contract variations that will cause the project to exceed budget will require a Council officer who is a Responsible Officer in BIS (Council's budgeting system) to process a budget variation at the time that the contract variation is approved.

If the contract variation is related to capital expenditure then the reasons for the contract variation and the impact of the variation on the budget/scope/timeframe of the project must be reported to Council through the monthly Capital Works report

## **5.5 Ethics and Probity**

Council's Code of Conduct must always be adhered to in the management of Contracts on behalf of Council, in particular ensuring responsible decision making, declaring and appropriately managing any conflicts of Interest and appropriate decline of any offered gifts or benefits.

## **5.6 Role of Contract Manager**

5.6.1 The Contract Manager has many and varied responsibilities in undertaking the day to day management of a contract. Some key responsibilities are outlined in the Responsibilities table below.

5.6.2 For the purpose of this Policy, staff that are responsible for managing procurement that is simple in nature and low risk managed under the Procurement of Goods and Services Policy No G 12 and Procurement Procedures Manual No ES 6. Therefore, staff must manage all related legally binding obligations on the Council in an appropriate manner in accordance with the Policies.

5.6.3 Contract managers that are resigning from Council are required to brief their successors, or other appropriate staff if not available, on all the requirements of current contracts during the handover process.

## **5.7 Contract Disclosures**

5.7.1 In accordance with Part 3, Division 5 of the Government Information (Public Access) Act 2009 (GIPA Act), Council will maintain and publish a register of all Council contracts that records key information about each contract Council enters into with the private sector which has or is likely to have a value of \$150,000 (including GST) or more.

5.7.2 In accordance with the GIPA Act the following types of procurements will be disclosed on Council's public website.

**CLASS 1 CONTRACTS** - A government contract where the estimated value of the project, goods and services, property or lease is likely to be over \$150,000.

**CLASS 2 CONTRACTS** - Being a 'Class 1' contract where:

- there has not been a tender process and the Crown has been engaged; or
- the terms and conditions of the contract have been substantially negotiated with the successful tenderer; or
- obligations include maintaining or operating infrastructure or assets that could continue for 10 years or more; or
- it involves a wholly privately financed project; or
- it involves a transfer of a significant asset of the Council to another party to the contract in exchange for transfer of an asset to the Council.

CLASS 3 CONTRACTS - Being a 'Class 2' contract with a value of \$5 million or more.

## **6.0 Performance Assessment**

### **6.1 Introduction**

Performance assessment is a major component of contract management and performance assessment requirements shall be written into the contract specification.

Ongoing performance assessment should be based on the mechanisms for performance assessment included in the contract.

Where applicable, performance assessment shall be based on, but not limited to, contractor reports, inspections, performance review meetings, customer complaints and surveys.

### **6.2 Contractor Reports**

Contractor reports are the method by which a contractor certifies that the products, works or services comply with the specification. If required, the type and frequency of Contractor reports shall be clearly described in the specification.

The Contract Manager shall ensure that the contractor submits the reports on time and shall review the reports carefully. The Contract Manager shall discuss matters of serious concern with the relevant Senior Staff Manager.

### **6.3 Inspections**

Inspections should incorporate an assessment that compares actual performance to the performance requirements specified in the contract. Inspections shall be the responsibility of the Contract Manager.

If required, an inspection regime shall be clearly described in the specification and shall stipulate:

- who will inspect
- when inspections will occur (at a minimum a post completion inspection will be undertaken); and
- what will be inspected

### **6.4 Performance Review Meetings with Contractor**

Performance review meetings provide a forum to discuss and assess the contractor's performance. Generally, a performance review meeting shall be based on the most recent contractor report (refer clause 6.2).

If required, the type and frequency of performance review meetings shall be clearly described in the specification or held at a frequency determined by the Project Manager.

The conduct of performance review meetings shall be the responsibility of the Contract Manager. The contract should authorise the Contract Manager to nominate the time, date and place of performance review meetings. The contract should require the contractor or an appropriate representative and any other person nominated by the Contract Manager to attend performance review meetings.

### **6.5 Analysis of Customer Complaints**

Receipt and analysis of customer complaints shall be the responsibility of the Contract Manager.

## **6.6 Unsatisfactory Performance**

When contractor performance does not meet the contract requirements, the Contract Manager shall contact the Contractor and:

- define the problem
- specify the unsatisfactory performance in terms of a comparison with the requirements of the contract; and
- specify the implications of the problem

If the Contract Manager considers that the problem can be rectified without resorting to formal breach of contract procedures, the Contract Manager and Contractor shall:

- identify the cause of the problem; and
- decide upon corrective action

If required, the Senior Staff Manager shall participate in the meeting.

The contractor shall implement the corrective action as agreed upon and the Contract Manager shall monitor and assess the outcome to ensure that the unsatisfactory performance is rectified on a permanent basis.

The Contract Manager shall ensure that any informal problem resolution process does not prejudice Council's rights under the contract with respect to any breach of the contract.

The Contract Manager shall document the discussions with the contractor pertaining to unsatisfactory performance and ensure they are placed into CM9.

## **6.7 Council's Responsibilities**

If Council is to be able to enforce the contract, it must ensure that Council itself complies with the contract. The Contract Manager should ensure that Council complies with all contract timelines, gives all required notices and otherwise meets its obligations under the contract. Even if the Contract Manager employs informal processes to address particular problems, the formal requirements of the contract should still be followed.

## **6.8 Termination for Failure to Achieve Performance Standards**

Any formal process for termination of the contract must be conducted strictly in accordance with the requirements of the contract. Generally, this will require a "show cause" notice to first be issued to the contractor. Legal advice should be obtained before such a process is instigated.

If a contractor has breached a contract with Council, then (whether or not the contract has been terminated), Council may take into account the breach in considering subsequent tenders from the contractor.

## **7.0 Performance Reporting**

### **7.1 Contractor Performance Evaluation Report**

A performance evaluation report on the contractor's compliance with its obligations under the contract will be completed at the end of the contract by the Project Manager. The report will be used as an "internal" document to monitor and improve any operational performances.

## **8.0 Risks**

Management of risks is an inherent aspect of contract management. Risks may include:

- failure (of either party) to comply with the conditions of contract
- inadequate monitoring and supervision
- unauthorised changes to the contract, including failure to approve variations and extensions
- loss of intellectual property and breach of confidential information
- changes in scope, personnel and technology
- fraud and unethical behaviour, including failure to disclose conflicts of interest; and
- lack of properly maintained documentation

Contract management requirements increase as the value, risk and complexity of a contract increases.

The Contract Manager shall be responsible for managing risks and shall seek appropriate professional advice at an early stage where insurance, legal or governance issues arise.

It is critical that Council itself complies with the contract. Otherwise, Council may not be able to enforce the contract against the contractor.

## 9.0 Responsibilities

Position	Responsibility
<b>Employees</b>	Are responsible for managing contracts in accordance with Council's financial delegations (as amended from time to time) and in a manner that is appropriate for the complexity and risk of the procurement activity.
<b>GM and AGM's</b>	Development of the Policy and implementation
<b>Business Services Staff - Engineering</b>	Maintaining Council Contracts Registers and appropriate disclosure of Contracts valued at \$150,000 or more.
<b>Finance</b>	Are responsible in providing monthly year to date expenditure reports to Senior staff and Managers to monitor contractor payments and commitments.
<b>Senior Staff Managers</b>	<ul style="list-style-type: none"> <li>• Facilitation and oversight of contracts on the contracts register within their respective portfolio.</li> <li>• Appointment of a suitably qualified, capable and adequately skilled Contract Manager according to the level and complexity of a contract.</li> <li>• Ensuring the Contract Manager receives appropriate training and has adequate skills in managing contracts.</li> <li>• Assigning the day to day management of a contract to a Contract Manager.</li> </ul>
<b>Contract Manager</b>	<ul style="list-style-type: none"> <li>• Development, negotiation, execution and management of contracts in accordance with approved policies, procedures and processes.</li> <li>• Procurement of Goods and Services Policy No G 12</li> <li>• Procurement Procedures Manual No ES 6</li> <li>• Day to day management of assigned contracts.</li> <li>• Clearly defining in contracts the performance standards, review mechanisms and deliverables required from contractors.</li> </ul> <p>Ensuring contracts are managed in compliance with approved policies, procedures and processes and all client obligations contained in contracts are fully satisfied.</p> <ul style="list-style-type: none"> <li>• Managing risks as described below.</li> <li>• Maintenance of contract details and information in CM9.</li> </ul>



## 10.0 History

New policy.

<b>Department:</b>	Engineering	<b>Last Reviewed</b>	<b>Resolution Number</b>
<b>Policy Category</b>	Organisation		
<b>Endorsed By:</b>	AGMES		
<b>Approval Authority</b>	General Manager		
<b>Policy Owner</b>	AGMES		
<b>Contact Officer</b>	AGMES		
<b>Document No.</b>	8166/2021		
<b>First Adopted</b>	By ARIC 9/6/21 /Council 24/6/21		
<b>Resolution No:</b>	260/21		
<b>Review Date:</b>	July 2023		