CONTRACT MANAGEMENT PROCEDURES

Section	Procurement and Contracts Group
Contact	Strategic Sourcing Manager
Last Review	July 2019
Next Review	December 2022
Approval	SLT 19/07/113

Scope

The following are excluded from these Procedures:

- Construction contracts that are managed through tiered supplier panels (these contracts incorporate KPIs and performance management in accordance with a Performance Evaluation Framework through Project Governance);
- Employment contracts;
- Research contracts;
- Non-binding Memoranda of Understanding (NB – advice should be sort from the Procurement and Contracts Group if there is uncertainty as to the legal status of the Memoranda).

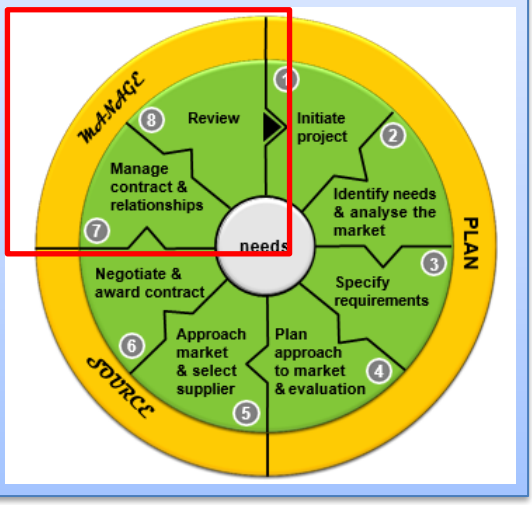
Other than listed above, these procedures applies to all contracts, and other documents, which create legally binding obligations on Massey University (Massey) including, but not limited to, procurement contracts for the supply of goods and services. This Policy will apply to a contract until contractual obligations have concluded.

These procedures relate to a subset of the Massey Procurement Guidelines documented in the Procurement and Contracts Governance Board's Terms of Reference. They relate to the "Manage" Sections 7 - Manage Contract and Relationships, and 8 - Review.

The Procurement Lifecycle

This quick reference guide is based on the procurement lifecycle which separates procurement into three phases: planning, sourcing and managing. These phases are further divided into eight distinct, but interrelated stages which are:

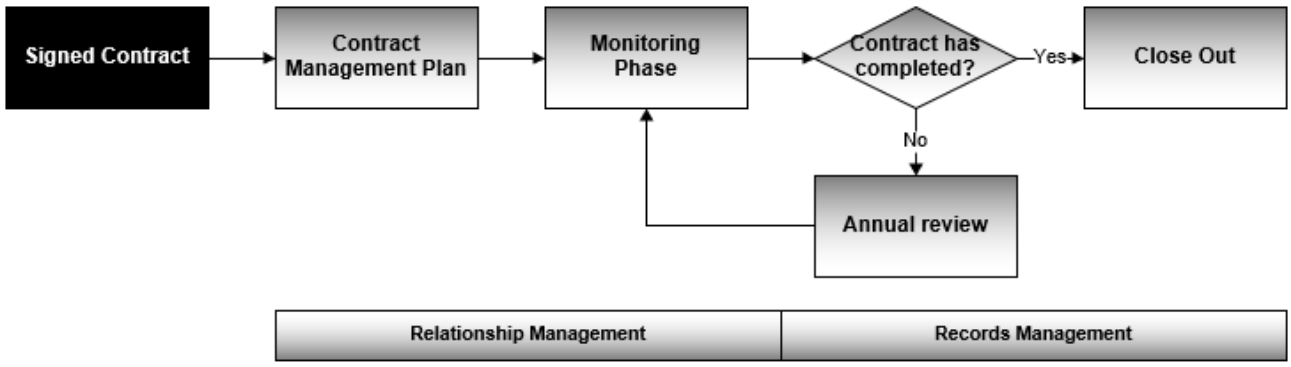
1. Initiate project
2. Identify needs and analyse the market
3. Specify requirements
4. Plan approach to market and evaluation
5. Approach market and select supplier
6. Negotiate and award contract
7. ***Manage contract and relationships***
8. ***Review***



© This Policy is the property of Massey University

Process

The process for these procedures is documented in the following diagram.



Signed Contract

These procedures commence once a contract has been signed. The contract is to be recorded in the Massey contracts register.

Scope

These procedures come into force once a new contract (within the scope of Massey's Contract Management Policy) has been signed. In addition, existing contracts that have been in operation prior to these procedures coming into force, become subject to them at the first contract review.

Contract Management Plan

A high-level Contract Management Plan must be created to guide focus and activity for the life of the contract. A Contract Management Plan enables the Contract Manager to:

- Ensure continuity of the supply or services.
- Develop a good understanding of the contract and the responsibilities of the parties involved.
- Understand key risks and their management.
- Understand the framework in which the performance of both parties will be monitored.

The level of detail included in your Contract Management Plan will vary, depending on the nature of the goods or services being purchased. It is expected many of the required aspects will have been identified as part of the procurement process. A template to assist the planning is available on the Procurement and Contracts Intranet site.

Monitoring and Reporting

Monitoring of service delivery ensures that the service is being delivered as agreed, to the required level of performance and quality.

- The Contract Manager and the Other Party must agree a timeline and process for implementation/ delivery and review. This is important for large and complex contracts. The process may be set out in the contract itself, or in the Contract Management Plan.
- The Contract Manager must note key performance indicators and arrange to ensure that performance is being measured and monitored. All meetings should be minuted.

© This Policy is the property of Massey University

- Considerations should/may also include:
  - Deliverables against specification;
  - Charges against contract price;
  - Quality against KPIs and/or agreed standards;
  - Identifying opportunities for cost or efficiency gains;
  - Supplier's overall performance;
  - Identification of lessons learned;
  - Massey's performance in meeting its obligations under the contract.

Contract Managers will be required to report annually on contract performance for contracts valued at greater than $100,000 per annum to the Procurement and Contracts Governance Board (PCGB). Standardised reports will be supplied to facilitate this activity.

Annual Review, Contract Renewal or Variation

The Contract Manager is responsible for ensuring an annual review of the contract is carried out. It is recognised these reviews may lead to a contract renewal or variation.

Where contracts are registered as critical, the Contract Manager must seek guidance from the relevant Contract Specialist assigned from the Procurement and Contracts Group.

This is advisably done as a two-step process:

- **Initial review conducted internally with key stakeholders.** This allows the Contract Manager to gain an appreciation for contract delivery, contract performance and opportunities for contract enhancement.
- **Formal review with the Contracted Party.** This is a key part of the Contract Management Procedures and the opportunity to ensure the core focus areas of the Massey contract framework can be discussed and advanced.
  - Value for money - Contracts supply value for money for Massey.
  - Win/win - Contract management is win/win fostering mutually beneficial long-term relationships with suppliers.
  - Effective management - Contracts are managed effectively.

Close Out

If a contract is being terminated or been completed a contract close out process is to be followed. The Contract Manager performs this process and the close out process needs to be commensurate with the nature (size, criticality) of the contract. A formal record should be kept. Key aspects that should be checked include:

- Have all the required contract outcomes and obligations been delivered?
- Have Massey's materials, equipment or other resources used or generated during the life of the contract been returned?
- Have access arrangements been terminated?
- Has an evaluation of the contract been undertaken and any lessons learned documented and shared?
- Has the contractor's performance been evaluated, properly documented and feedback provided to the contractor?

© This Policy is the property of Massey University

Relationship Management

The Contract Manager is responsible for building an effective relationship with the contracted party. The Contract Manager may appoint a liaison person to act as their delegate.

Contract Managers' should ensure they hold regular meetings with the Other Party to discuss overall performance, achievement of objectives and key performance indicators and each party's adherence to the contractual terms. The format, frequency and venue of these meetings will be dependent upon the nature of the contract and should be documented in the Contract Management Plan. Minutes and file notes of such meetings must be kept and added to the contract file.

If a material issue arises that has potential to create risk of any type for Massey, the Contract Manager must advise their manager and review the matter with the applicable Responsible Area to ascertain what action (if any) needs to be taken.

If disputes arise, they should be dealt with proactively and in accordance with the dispute resolution clauses included in the contract. The initial responsibility for dispute resolution is with the Contract Manager and the appointed representative of the Other Party. If resolution is not possible and a dispute is likely to escalate, this must be advised immediately to the Contract Owner. The Director of Risk and Assurance must be advised of any contract dispute that may involve the chance of legal action between the parties as soon as this is considered a possibility.

Records Management

Contracts and all associated documents are classified as Vital Records. Storage, archival and retention of contracts and associated documents must be in accordance with the record keeping requirements of Massey, as detailed in the Records Management intranet site.

Disposal of Contracts and Contract related records must be undertaken in accordance with Massey's General Disposal Authority (GDA). See the Records Management intranet site for specific information.

General Contract Management Guidelines

It is recognised that each contract and its management is idiosyncratic and it is not possible, or desirable, to create procedures that can be blindly followed. It is expected that Contract Owners, Contract Managers and Contract Specialists exercise professional judgement, allowing Massey to reap the intended benefits from managing contracts well.

The following are guidelines

- Do not make any verbal agreements with suppliers. Only written contracts should be entered into.
- Contracts can be complex and raise different issues, therefore it is important that staff seek advice and help where needed.
- Do not assume that there is a shared understanding after a discussion. It is always best to discuss and back it up in writing to confirm.
- Formal directions, approvals, requests for variation etc., should be in writing to create a physical trail.
- Commence contract management in a formal manner with the Contracted Party. It is easier to allow a level of informality if a win-win relationship is developed based on high performance.
- Address concerns or performance issues as soon as they are known. Make formal notes for discussion and recordkeeping purposes.

© This Policy is the property of Massey University

- Contract Managers should be suitably experienced. Formal qualifications are not essential but Managers of Contract Managers should ensure training is provided to Contract Managers to ensure their knowledge and skills are up to date and commensurate with the level of contract being managed.
- All pertinent Massey policies must be complied with. Contract Managers should be familiar with all relevant Massey policies.

Indexes

A. Related Policy and Procedures Compliance

- All Contracts must be managed in accordance with the Contract Management Procedures. Operational monitoring of contracts is vested in the appointed Contract Manager; both for the purposes of compliance and for making business decisions based on the performance of contracts.
- Contracts for research and consultancy must comply with the Research and Consultancy Contracts Policy.
- Contracts for teaching activity must comply with the Subcontracting of Teaching Activity Policy.
- Contracts for procurement must comply with the Procurement Policy.
- Conflicts of Interest arising in the contracting process will be managed in accordance with the Conflict of Commitment and Interest Policy.
- Contracts and MOU's with international institutions must follow the Procedures for Establishing a Memorandum of Understanding and/or International Partnership Agreement.
- Contractors Procedures are to be followed in respect to making the Contractor vs. Employee assessment and for establishing contracts with contractors to Massey.
- Contracts for sponsorship must comply with the Sponsorship Policy.

B. Audit

The Contract Management process may be periodically audited to ensure compliance with Massey's policies and procedures.

As required, all Contract Managers will be required to report on contract performance for contracts valued at greater than $100,000 per annum to the PCGB. Standardised reports will be supplied to facilitate this activity.

C. Standard Definitions

- **Confidentiality Agreement:** means an agreement designed to prevent disclosure of commercially sensitive information to a third party, or into the public domain;
- **Contract:** means an agreement that commits Massey in legal or financial terms and for the purposes of this policy includes **Pre-contractual Agreements** not intended to be legally binding;
- **Contract Manager:** the Massey staff member with responsibility for ensuring that the rights and obligations under the contract are met;
- **Contract Register:** the centralised online, digital repository holding all Massey contracts.
- **Pre-contractual Agreements**; written agreements not intended to be legally binding which may include letters of intent, memorandums of understanding (MOU), or other similar documents;

© This Policy is the property of Massey University

D. Audience

All Staff.

E. Relevant Legislation

- Public Records Act 2005: Provides for the selection of public records and archives for creation, maintenance and retention. The Act directs that public records and archives can only be destroyed and disposed of with the authority of the Chief Archivist. Contracts are deemed Vital Records under the Act.
- Contract and Commercial Law Act 2017.
- Employment Relations Act 2000: Defines "employee" and "employment contract". Should a contractor be deemed to be an employee then the employer will be liable to provide and pay for any benefits associated with being an employee e.g. sick leave, holiday pay, redundancy payments for unjustifiable dismissals or disadvantage.

F. Related Documents and Procedures

- Contractors Procedures
- Contract Management Procedures Contract Templates
- Delegations Document Procurement Policy
- Procurement Procedures (including Massey's Tender Process)
- Subcontracting of Teaching Activity Policy
- Research and Consultancy Activity Policy Records Management Policy
- Records Management Procedure
- Procedures for Establishing a Memorandum of Understanding and/or International Partnership Agreement

G. Document Management Control

Prepared by:	Strategic Sourcing Manager
Owned by:	Deputy Vice Chancellor, Finance and Technology
Date issued:	August 2019
Last review:	July 2019
Next review:	December 2022

© This Policy is the property of Massey University