



RDTL—MINISTRY OF FINANCE

Procurement Service

BEST PRACTICE GUIDE 7: MANAGING CONTRACTS

RDTL—Procurement Guidelines

The Procurement Legal Regime—Decree Law sets out new procurement processes which must be carried out by government procurement officers for purchases on behalf of the Government of Timor Leste. The revised processes and documentation system is explained in this series of Guides. There are now ten new Guides available that broadly summarize the updated key procurement process set out within the new Decree Law. They are available on the Ministry of Finance website (www.mof.gov.tl) and from the Procurement Service of the Ministry of Finance to assist government officers in their work.

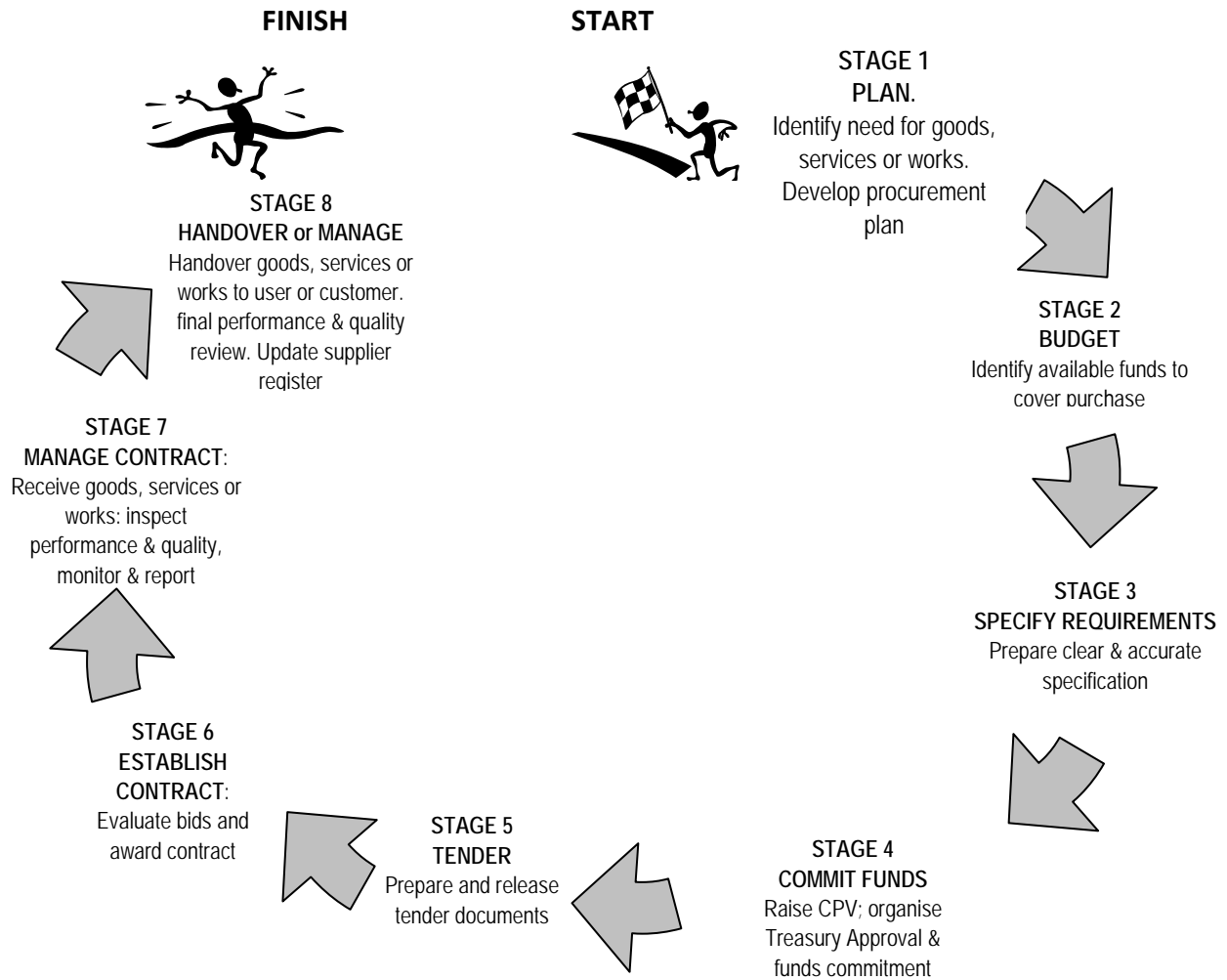
What is this Guide?

This **Guide** is for Government Procurement Managers and senior officers.

This **Guide** explains how to **manage contracts** when procuring goods, services and works for the Government of Timor-Leste.

Managing contracts is part of **STAGE 7** of the Cycle of Procurement detailed below.

Diagram: CYCLE of Procurement



IMPORTANT:

A Contract Management Plan (Annex B) should be prepared for contracts over \$250, 000 and it is also recommended for complex and critical contracts.

Quick overview of contract management

Contract management covers all activities that follow the establishment of a contract and include administration throughout the contract term.

Senior management oversight

Senior management overseeing procurement contracts involving delivery of goods, works or services should ensure that their contract managers:

- ✔ **are appointed as early as possible**, preferably at the planning stage but at least before the establishment of the contract (or execution of contract documents);
- ✔ **are appointed with appropriate responsibility and accountability**;
- ✔ **are adequately skilled or trained** so that they can perform and exercise the responsibility;
- ✔ **act with due care and diligence** and observe all accounting and legal requirements, including all *Procurement Service Guidelines*, during the course of the contract; and
- ✔ **meet the obligations of their position**: maintaining supply, ensure compliance with specified customer expectations and contract deliverables, and seek remedies when breaches of contract occur.

Senior management should also ensure that all contracts have:

- ✔ clearly defined:
 - ▣ deliverables,
 - ▣ performance measures and
 - ▣ standards or ‘benchmarks’ so the contract manager can easily
 - ▣ measure,
 - ▣ review and
 - ▣ report on the contract.

The contract manager

A contract manager should be named in the contract agreement and commit to the term of the contract. Contract administration arrangements should be identified and planned when the specification is prepared (including:

- ▣ who,
- ▣ how,
- ▣ delegations,
- ▣ reporting requirements and relationships,
- ▣ specific task responsibilities.

In general the contract manager will:

- ✔ **advise** government staff affected by the contract of
 - ▣ contract arrangements,
 - ▣ contract manager's appointment, and
 - ▣ arrangements for a replacement during absence;
- ✔ **seek ongoing feedback from users**
 - ▣ about satisfaction with goods, works or services and
 - ▣ **continuously review user requirements** to determine if they are being met;
- ✔ **review contracts regularly and formally** for achievement of objectives, process, outcomes and value for money;
- ✔ **review longer projects** at the end of each stage
 - ▣ if continued the review must determine whether to continue with the current provider or seek an alternative using appropriate tender processes;
- ✔ **maintain adequate documentation** for purposes of continuity and audit;
- ✔ **seek and enforce remedies for non-compliance or breach of contract.**

CONTRACT ADMINISTRATION

Contract management or administration is the second last stage in the procurement cycle (see Cycle of Procurement Diagram) and includes all administrative duties associated with a contract after establishment, including contract review and contract transition or closure as appropriate.

Importance of earlier steps in the procurement cycle

The effectiveness of contract administration will depend on how thoroughly the **earlier steps in the procurement cycle** were completed. Changes to specifications and management can be made far more readily early in the tendering cycle than after contract management has commenced. Some of the key early stages which influence the effectiveness of the contract and how it will be monitored and managed include:

- **accurately and clearly defining the aims, outputs or deliverables** (during the Specification Writing stage);
- **assessing risk** (done partly in the Specification Writing stage and further in the Contract Establishment stage);
- **researching the market place** (including conducting Pre-tender Briefings and Post-tender Negotiations);
- **actively creating competition** so the best possible suppliers tender for contracts (can be done during all tender processes and in Post-tender Negotiations);
- **evaluating tenders competently** to select the best contractor with a strong customer focus and good prospects of building a sound relationship (during Bid Evaluation and Post-tender Negotiations);
- **formulating appropriate terms and conditions of contract** (during the Contract Establishment stage); and
- **identifying appropriate performance measures and standard ‘benchmarks’** so that all parties know in advance what is expected, and how it will be tested (during the Contract Establishment stage).

3 levels of contract administration

Broadly there are **three levels of contract administration** and they generally relate to risk.

- 1) The first level is for **standard contracts** for goods, works and services. Day to day contract administration may be no more than monitoring, record keeping and payment authorisation. A standard contract which requires excessive administration may be the product of a failure in the contract preparation stages e.g. a stationery contract.
- 2) The second or intermediate level is for more **complex contracts for services**. This involves a more active role by the contract manager in developing the relationship between the government and contractor/supplier e.g. part of an organisation may rely on a supplier for a key service.
- 3) The third or strategic level is for contracts involving **complex partnerships and strategic alliances**. These need more active management of the business relationships between the supplier and the users to manage outputs rather than the process. Sufficient

resources need to be dedicated by everyone involved to managing these contractor relationships to ensure a successful outcome and, where feasible, to achieve partnership. A partnership is the result of mutual commitment to a continuing cooperative relationship, rather than working competitively like adversaries.

The contract manager

Ministries are responsible for ensuring that contract managers:

- ✔ are appointed with appropriate responsibility and accountability;
- ✔ are selected with a knowledge of the goods, services or works in the contract;
- ✔ are adequately trained so that they can perform and exercise the responsibility;
- ✔ contribute to the development of the Contract Management Plan;
- ✔ monitor the performance of the contractor(s); and
- ✔ act with due care and diligence and observe all accounting and legal requirements, including the other *Procurement Best Practice Guides*.

The contract manager should be appointed by the senior manager in charge of the project prior to the establishment or execution of the contract. Moreover, where it is practical to do so, the contract manager should be involved at the earliest stages of procurement, at the planning stage, or the time of writing the specification. Contract administration arrangements should be identified and planned including: who, how, delegations, reporting requirements and relationships and specific task responsibilities.

The contract manager's duties and powers are governed by the conditions of contract. In addition, she or he is expected to be impartial, fair and ethical in conduct with contractors.

ANNEX A: Checklist—Contract Manager: Tasks and Responsibilities' provides a description of the roles and responsibilities of a contract manager during the contract administration stage. This is not an exhaustive description of contract administration duties, and some tasks may not be carried out in the sequence presented, may be done concurrently with other tasks, or may not be necessary in some circumstances.

Contract Management Plans

High price (over \$250,000), strategic or complex contracts should generally have their own contract management plans for use by the contract manager, identifying matters such as key responsibilities, deliverables, performance measures and targets and dispute resolution arrangements. It is recommended that all complex contracts also have their own contract management plan, irrespective of the contract value.

A detailed Contract Management Plan template with instructions is attached in ANNEX B, to assist government officers in the preparation of their own documentation.

Contract Management Process

Care must be taken by the contract manager to protect government rights. To do this, the contract manager should ensure that a contractor fulfils its obligations and accepts its liabilities according to the contract. The manager is also responsible for ensuring contractors are treated fairly and honestly.

Adherence by both government and contractors to the agreed terms of the contract will result in:

- optimal contract performance;
- value for money;
- timeliness; and
- cost effectiveness.

Retention of documents

It is important to retain documents on a contract file for information and audit purposes.

ANNEX C: Checklist—Core Files sets out a list of core files that should be held for every contract and the key documents that should be found in each file.

Probity and transparency

It is important from an ethical and probity perspective that:

- adequate records are kept and contractor performance is monitored;
- regular reviews are undertaken to ensure the performance measurements are still relevant; and
- for high price contracts, in particular, there is independent auditing or sample auditing by internal audit.

Transition

Contracts should have a transition in/out plan in the event a service goes to tender, a new provider is selected and the new firm needs to access databases/files etc of the former provider who might have been providing the service to government for several years.

Contract variations

Once a contract is established and underway, it may be necessary to make changes to the contract. These changes can be minor administrative changes such as a change of address or they can be substantial changes that affect the price and deliverables.

1. Administrative Variation

Administrative variations are changes to the contract that are within the scope of the contract and do not affect or alter the right of either signatory. These variations are executed via a unilateral amendment. Administrative variations could include:

- Changes in payment instructions or address;
- Corrections to typographical error not affecting the substance of the contract;
- A change permitted by the specific contract clauses; or

- Changes in personnel assigned to the management of the contract.

Procedure: The contract manager or contractor can identify the need for an administrative variation. The contract manager executes the variation and notifies the contractor, and any other appropriate person or organisation, in writing. The contract manager should have the authority to oversee administrative variations.

2. Substantive variations

Substantive variations are changes to the contract that affect the rights of the government or contractor. Such changes require bilateral amendments, ie signed by both parties. Substantive variations could include:

- a change in the price of the contract;
- change in delivery schedule;
- change in the quantity;
- change or nature of deliverables set out in the specifications;
- change of key staff providing the deliverable;
- change of any terms and conditions;
- an extension of the contract not previously contemplated by the contract;
- change caused by legislative requirements and termination for non-performance.

Procedure: A substantive variation may be initiated by a customer, the contract manager or the contractor. Upon receipt of a proposal for a substantive variation, the contract manager needs to determine whether the proposal change is within the scope of the contract. This may require input from the customer and sometimes from a legal advisor.

The source of approval for the variation will be dependent on:

- who approved the original procurement process;
- the total cost of the original approval; and
- the nature of the proposed variation.

ANNEX D provides a template for a **Request for Approval: Variation to Existing Procurement or Contract Form**.

ANNEX A

CHECKLIST: Contract Manager: Tasks and Responsibilities

Planning

- ✔ contributing to the development and approval of the contract management plan;

Liaison & problem solving

- ✔ meet regularly with the contractor and maintain associated records;
- ✔ meet regularly with internal managers, users/customers about contract performance;
- ✔ be liaison between internal managers, users/customers and contractors to identify and resolve issues;
- ✔ provide contractors with advice and information regarding developments within government and how this might affect the goods and services they provide;
- ✔ seek remedies in the event of contract breach;
- ✔ resolve disputes as they arise;

Measure, Monitor & Check

- ✔ monitor contractor performance against contract obligations;
- ✔ check all goods and services provided are certified as meeting the specifications before the supplier is paid;
- ✔ check insurance terms and conditions provide adequate protection for the government and are maintained throughout the contract period;

Review

- ✔ review periodically the contract management process and plan;
- ✔ determine if staged projects should continue to next stage;
- ✔ conduct post contract reviews;

Report

- ✔ provide accurate and timely reporting to senior management with responsibility for the project, highlighting any significant performance issues or problems;
- ✔ maintain adequate records (paper and/or electronic) in sufficient detail on the contract file for the purposes of continuity and audit;

Managing Change

- ✔ manage contract change procedures;
- ✔ manage transition to new contract and/or supplier or termination/closure

ANNEX B

CONTRACT MANAGEMENT PLAN

[The purpose of this Contract Management Plan is to improve contract management in the Government of Timor Leste by providing a template to guide those involved in managing contracts for the provision of goods, services and works to government ministries and agencies. The Decree Law requires development of such a plan for all contracts in excess of \$250,000 over the life of the contract. The Procurement Service recommends development of a plan for all complex or critical projects or contracts including standard contracts, complex contracts and complex partnerships/ strategic alliances.]

The Plan should be used as a management tool to ensure key steps are recorded in a diary, planned, resourced and implemented. Plans will be working documents that require updating during the life of the contract.]

DATE: *[Insert]*

Ministry or Agency: *[insert name of Ministry/ Agency responsible for contract]*

Contact Person *[insert name of accredited officer responsible for contract]*

Contact Number *[insert phone number of accredited officer]*

Email address *[insert email address of accredited officer]*

PART 1—Analysis

1. Contract Summary

Contract No	<i>[insert unique contract number assigned to this contract]</i>
Contract Title	<i>[Insert the title of the contract.]</i>
Category (G, S, W)	Goods/Services/Works (circle correct)
Supplier Details	
Contract Timeline	
Value (\$)	

1.1 Documents

[List key procurement documents available]

- SPP
- Process and Tender Conduct Form
- Specifications
- Other

1.2 Background

[Summarise how and why this contract was developed.]

1.3 Objectives

[Detail objectives of the contract]

1.4 Key Deliverables or Outcomes (specification requirements); Milestones (price/time)

2. Contacts

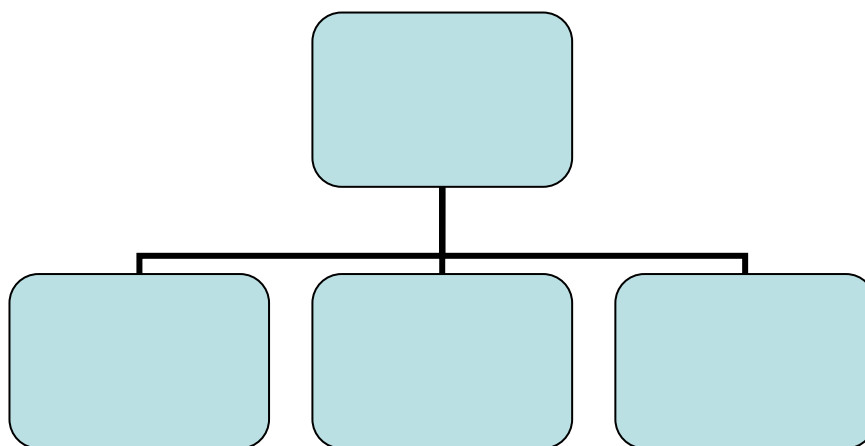
2.1 Contract Management Team

[List the names of key people]

[List their position and role in the contract]

2.2 Map of relationships

[Detail the reporting and functional links between the key people:]



Part 2—Preparation

3. Supplier Communication

[Identify key methods to be used for communication between government officers and the supplier including liaison, reporting, signalling problems, contract review meetings and internal review meetings]

4. Quality and Performance: Monitor, Measure, Evaluate and Report

[Describe methods to be used to monitor and measure performance (outputs) and quality outcomes (including user satisfaction surveys) along with evaluation and reporting on that data]

5. Variation Management

5.1 Disputes

[If no alternative dispute resolution process has been negotiated with the contractor it is recommended that the following procedure should be followed and inserted in the contract]

If a dispute arises between the government and its contractor then both must agree to undertake the following steps.

- a) The complainant shall raise the matter with the other party (individual or organisation) signatory to the contract, setting out the background and the issues in dispute, and the outcome desired.
- b) If the dispute is not resolved in accordance with clause (a) the complainant shall raise the matter with other party's representatives. Both parties shall make every effort to resolve the dispute fairly. In doing so each party agrees to use their best efforts to:
 - clearly communicate the background facts leading to or causing the dispute;
 - set out clearly what action is required to settle the dispute;
 - select a way of resolving the dispute and explain why that way of resolving the dispute can be said to be a fair resolution of the dispute;
 - identify, if the dispute is resolved, how the resolution of the dispute has or could enhance the business relationship between the parties or the future. In particular, by identifying specific means of avoiding such disputes arising between the parties in the future.

If the dispute is not resolved in accordance with clause (b) then the party may refer the matter to the Procurement Service, Ministry of Finance, Government of Timor Leste

5.2 Non-compliance or breach of contract

[List procedures and penalties to apply to non-compliance or breach of contract requirements.]

5.3 Under/over performance

[Outline penalties for non-performance; and bonuses for good performance.]

6. Risk Management

Strategies

[List procedures to be implemented to reduce risks and monitor and manage risks.]

PART 3 Implementation

7. Transition

[Note key transition tasks to be addressed including list of key documents contractor may required]

Transition-in to contract

Impact

[List any expected impact of the contract on those individuals and organisations concerned]

Action Plan

Agreed Targets

Transition out of contract

[List key documents required from current contractor]

Part 4 Completion

8 Final Report: review of specifications and contract

[When a contract is about to be renewed, or after delivery of the goods or services, review the original specifications to check if they accurately defined what was needed and what the user or customer needed.]

[Describe methods to be used to evaluate the contract and the contract management processes. Consider independent review of contractor feedback, and overall quality and performance review]

9. Closure

[Summarise outputs and outcomes expected from a successful rollover or re-tender. Describe process and timeline]















- Handover goods, services or works to user or customer.
- Asset Disposal
- Warranty and ongoing obligations (e.g. training, spares, support)
- Close contract.

ANNEX C





CHECKLIST: CORE DOCUMENTS

The following is a suggested list of core documents that should be held for every contract.








Tender Evaluation

-  Tender history
-  RFT (ITB OR RFP)
-  Notice of meetings
-  Users contacted
-  Tender Briefing (s) and Meeting(s)
-  Lodgement of tender
-  Conflict of interest declarations
-  Evaluation summary
-  Minutes of meetings
-  Unsuccessful notification
-  Shortlisted tenderer information
-  Successful notification
-  Post tender negotiation
-  Recommendation

Unsuccessful Tenderers

-  Non-shortlisted tenderers
-  Unsuccessful letters
-  Shortlisted tenderers
-  Meeting/interview documentation

Contract Management

-  RFT (ITB OR RFP)—
Successful tenderer(s)
-  Agreement/Contract
-  Guidelines
-  Performance measures and
targets
-  Contractor meetings: regular
and high level
-  Client
Meetings/Feedback/Minutes
-  Price Variations/Changes

Renewal/Re-tender Strategy for goods and services

Special Issues

Justification

*[Insert Reason or grounds for a variation.
Reasons may include price increases, legislative changes, non-compliance and reassignment of contract obligations.]*

Risk Management

*[Insert Have the associated risks with this variation been identified, analysed and addressed?
Where relevant, has the risk management plan been updated?
Did the original risk management plan identify the possibility of a variation?]*

Contract Management

Contract Manager: *[Insert Name]*

Administrative Unit: *[Insert Administrative unit]*

Telephone: *[Insert number]*

*[Insert Is the nature of the variation within the scope of the contract and do the current contract terms and conditions allow for such a variation?
Has the contract is modified accordingly?
Has legal advice been sought?
Where relevant, has the contract management plan been updated?]*

Approvals

REQUESTING MINISTRY/AGENCY

I certify that:

The procurement process set out here complies with all applicable Government procurement policy.

All relevant procurement documentation is attached or available on file

Name: *[Insert name]*

Position: *Insert position]*

Signature: *[Insert signature]*

Date: *[Insert date]*

PROCUREMENT SERVICE, MINISTRY OF FINANCE

Approved Noted

Name: *[Insert name]*

Position: *Insert position]*

Signature: *[Insert signature]*

Date: *[Insert date]*