

FMM 03.17 Contract Management

17.1 Authority and Prescribed Requirements

- Public Finances (Management) Act 1995 (PFMA)
 - Section 5 – Requires Departmental Heads to establish and maintain internal controls for the management of contracts and procurement.
 - Section 7 – Assigns the Secretary for Finance the responsibility to regulate financial controls, including contract management procedures.
- National Procurement Act 2018 – Provides the legal framework for tendering, contract award, and monitoring.
- PPP Act 2014 and associated Regulations

17.2 Standards and Supporting Documentation

- National Procurement Commission – Good Procurement Guide
- IPSAS 19 – Provisions, Contingent Liabilities, and Contingent Assets (refer to policy within this FMM Volume 3)
- IPSAS 17 – Property, Plant, and Equipment
- IPSAS 32 – Service Concession Arrangements
- PPP Guidelines 2024

17.3 Minimum Responsibilities

The Department of Finance is responsible for monitoring financial aspects of contract execution, ensuring funds are available, and enforcing compliance with PFMA and NPA.

The National Procurement Commission (NPC) oversees tendering and procurement compliance, ensuring contracts are awarded fairly and according to procurement laws.

Departmental heads must ensure that all contracts comply with procurement laws, financial instructions, and are properly executed. They must also maintain internal controls to monitor performance and financial reporting.

Contract Managers within agencies must track contract deliverables, ensure payments align with contract terms, and monitor risks.

Finance Officers must ensure contract payments are processed only after proper verification, and that contract obligations are recorded in IFMS.

Auditors must verify that contract management processes comply with financial and procurement regulations and report irregularities.

17.4 Mandated Policy

1. Agencies are required to maintain a contract register (electronic) which records at minimum:

1. Contract reference and title
2. Description of contract deliverables
3. Contract Manager (for State)
4. Supplier
5. APC (if applicable)
6. Fund source and appropriation code
7. Terms and conditions such as expiry date or enforcement requirements
8. Total original contract value
9. Value of variations
10. Total current contract value
11. Cumulative payments made to date
12. Claims lodged but not paid (ideally aged from 0-30 days, 30-90 days, over 90 days)
13. Balance of contract unpaid

2. All contracts must have standard clauses that enable the termination of the contract (or suspension) where there are insufficient appropriations made in the National Budget to meet the undischarged obligations of the contract in each of the fiscal years in respect of which contractual obligations would, if executed, fall due (as per Section 43 of the PFMA).

3. Contract amendments including variations must be approved by the appropriate financial delegate and procurement authority including the State Solicitor where the contract received Legal Clearance by the State Solicitor.

4. **Payments must align with contract terms, with appropriate verification of deliverables before payment approval.**
5. **Risk management processes must be embedded in contract execution to prevent financial loss and ensure timely service delivery.**
6. **Contracts can only be terminated by the authority that executed the contract (For major contracts this will normally be the relevant NPC Board Procurement Committee).**
7. **Where the Head of State is required to terminate the contract, he may only do so on written advice from the National Executive Council, supported by written advice from the relevant NPC Board Procurement Committee and State Solicitor.**
8. **A supplier cannot commit the State or commence mobilising on a major procurement contract without receipt of an APC, and all submitted claims for payment must be accompanied or reference the issued APC.**

17.4.1 Contract Variation

9. **Section 32 (2) of the Public Finances Management Act enables designated officers to approve variations to contract as regards to time, price, or other conditions within such limits except for major procurements (more than K1 million) where the executing authority to approve variations rests with the NPC Board or its delegated procurement committee, depending on the revised total value of the contract (including variations).**

Nature of Change	Limits	Designated Approval Officer	Form of Approval	Additional Requirements
<u>Price Changes</u>	Where the price change is less than a 10 % increase from the originally approved price **	Departmental head	In writing, with justification attached.	Once approved such changes must be reported to the relevant NPC Board procurement committee within 5 days of the approval.
	Where the price change is greater than a 10% increase from the originally approved	Original Contracting Authority (normally the Relevant NPC	Written approval, with justification	NPA S70(5) requires all proposed variations to a contract drawn, approved and cleared by

Nature of Change	Limits	Designated Approval Officer	Form of Approval	Additional Requirements
	price **	procurement committee, or Head of State)	attached	the State Solicitor is subject to the drafting, approval and clearance by the State Solicitor when the total of all variations to the contract, including variations to the scope of work of a contract, represent a change of 10 percent or more of the original contract value.
<u>Changes to scope or specification or timing</u>	<p>Where the changes do not materially effect the goods, works or services provided</p> <p>Where the changes do materially effect the goods, works or services</p>	<p>Departmental Head</p> <p>Original contracting authority (normally the relevant NPC procurement committee, or Head of State)</p>	In writing with justification attached	<p>Changes to scope or specification must be filed with the contract file and be available for independent audit.</p> <p>Refer to Section 70(5) of the NPA above on State Solicitor Clearances</p>

** 1. Where more than one price change occurs in relation to a contract the cumulative (total) of all the price changes must be less than a 10 % increase from the originally approved price, for the Departmental Head to be able to approve the variation.

** 2. In all instances the Section 32 Officer must also confirm that financial authority is available to vary the contract. This is in addition to the above requirements.

17.5 Non-Mandatory Guidance

The Contract Manager manages the implementation of the contract on behalf of the GoPNG and this person may be either a Public Servant and could be a third party managing contractor. Under the NPA, the NPC Board can assign or require a third party managing contractor on award and the appropriation that

has been authorised for this project/activity will be required to also pay for this third party managing contractor.

All GoPNG contracts must have a nominated Contract Manager (sometimes referred to as; Project Manager, or Superintendent, or Engineer) and contact details of this person provided to the Contractor.

17.5.1 Principles of Delivery and Performance

A number of key principles are embodied in good contract implementation.

17.5.1.1 Accountability and Responsibility

Once the contract is agreed and signed (in accordance with the law), both parties are legally accountable and responsible to carry out their respective responsibilities under the contract. The Contractor is responsible to carry out the works/goods/services as stated in the contract.

GoPNG and its Contract Manager are responsible for duties including; providing access to sites and information, responding to requests and timely payments.

17.5.1.2 Timeliness

Both parties are required to undertake duties in a timely manner. The contract will normally state the time within which these responsibilities are to be carried out. However regardless of whether stated in the contract or not, respective responsibilities must be actioned in a reasonable timeframe.

17.5.1.3 Knowledge of Contract Administration and Contract Documents

The Contract Manager must have a good working knowledge of contract administration within the relevant specialist field. The Contract Manager must have a comprehensive knowledge of the contract documents.

Contractors will take advantage of Contract Managers who either have inadequate skills or do not understand the contract documents. Both the Contract Manager and Contractor must have a properly executed copy of the agreement.

17.5.1.4 Good Documentation

The Contract Manager administering the contract must maintain documentation to ensure the Contractor delivers the works/goods/services as stated in the contract and that accounting and

payment details are clearly documented. During a contract disagreement or dispute, good documentation will assist with achieving a quick and fair solution.

17.5.2 Contractual Obligations

The following obligations are usually common to all contracts regardless of their scale and nature:

17.5.2.1 Government of PNG

- Appoint a Contract Manager and allow this person to administer the contract impartially, without influence and in accordance with the law.
- Provide unhindered access for the Contractor to implement the contract.
- Make timely payment for completed portion(s) in accordance with the contract agreement.
- Allow the Contractor to complete the whole contract, unless there has been mutual consent to change the scope of the contract or the Contractor is in breach of the contract.
- Provide information and directions in a timely manner.
- If provided for under the contract, provide work, equipment, materials and services in a timely manner.

17.5.2.2 Contractor

- Carry out and complete the works/goods/services under the contract
- Complete the works/goods/services to the required standard under the contract in a professional manner and with due care.
- To provide early notice of expected variations to the contract.
- To proceed at an appropriate rate and complete the contract either as specified under the contract or within a reasonable time, where detailed timings are not specified in the contract.

17.5.2.3 Contract Manager

- To act as the Government's agent to administer the contract to ensure timely and satisfactory completion of the contract.
- To implement the contract in accordance with its terms and conditions.
- To act impartially to make determinations that affects both parties, such as variations, latent conditions and liquidated damages.
- To supervise, make determinations, give instructions, exercise discretion and certify completed portions of the contract.
- To certify payment(s) for completed portion(s) of the contract.

- The Contract Manager must endeavour to promptly settle disagreements with the Contractor and the Government of PNG in a professional, impartial manner. The Contract Manager must maintain accurate records of the disputed issue, as these records will be critical to any possible legal determination.

17.5.3 Contract Administration

The Contract Manager administers the contract on behalf of the Government of PNG. Specific contract administration issues that must be considered by the Contract Manager are:

17.5.3.1 Documentation

Maintain an updated copy of the contract agreement. Maintain appropriately filed and documented records of; meetings and decisions, Trading Documents (bills of lading and invoices), insurance details, design information, quality control records, measurement and payment records and conditions and events affecting the contract: so to allow independent scrutiny or audit.

17.5.3.2 Variations

Variations where necessary and properly document and executed.

17.5.3.3 Quality Control

Maintain records of the quality of the works/goods/services provided and note either acceptance, rejection or rectification measures taken.

17.5.3.4 Measurement and Payment

To use means of measurement which is acceptable to the Contractor and GoPNG, as stated in the contract. All payments made must comply with the relevant sections of the Public Finance Management Act and associated instructions.

17.5.3.5 Financial Control

Maintain adequate financial records of payments including variations. Notify the relevant Executing Authority if contract value is to exceed the delegate authority for the Department to approve variations.

17.5.3.6 Project Completion

Upon physical and financial completion of the contract, advise the NPC that the contract is successfully completed, and the total amount of monies spent on the contract.

17.5.4 Suspension or Termination of Contract

If allowed for in the Contract Agreement, the Contract Manager can suspend the contract if either the Contractor or the Government of PNG substantially fails to perform their obligations.

Contract termination processes should only begin after all reasonable actions to end a dispute have been explored, and formal legal and other advice has been sought.

Further Information	frcd@finance.gov.pg
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