

## Contract Extensions and Variations Guideline

### Purpose

The purpose of this Guideline<sup>1</sup> is to provide public authorities with practical advice and guidance on how to manage contract extensions and variations.

### Contract Extensions (with options)

A contract renewal or extension is when all parties agree to exercise an (unused) option to extend the contract for a further period specified in the contract. Discussions to exercise an extension option should commence well before the expiry date in case the extension is not taken up and a new procurement process is required.

Before exercising an extension option, the public authority should consider whether extending the contract would continue to deliver the contract outcomes and achieve value for money.

Where there is funding certainty, a minimum of six months' notice should be provided to not-for-profit organisations regarding whether contracts are to be renewed. This notice will assist to prevent unnecessary loss of staff and reduce the impact on individuals who rely on these services.

The public authority should also consider taking the opportunity to negotiate a better value position during the extension term. Once necessary approvals have been obtained, the *Contract Extension Letter Template* can be used.

### Contract Extensions (without options)

If the contract does not have any extension options available but the goods/services are required beyond the contract expiry date, the parties may agree to vary the contract to extend the end date. In such situations, where the supplier/s are willing to continue supply under the same terms and conditions, procurement approval for the extended arrangements may be obtained via the same process used for variations (see the section below for further details on contract variations). Although an acquisition plan may not be required, the public authority still needs to consider the key principles of the South Australian Procurement Framework (including value for money outcomes, probity, transparency and accountability).

Public authorities cannot extend a contract that has expired. Where a contract has expired without an approved variation to extend but the supply of goods and/or

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<sup>1</sup> The guideline has been derived from the documents listed below:

1. '[Australian Government Contract Management Guide](#)', Commonwealth of Australia 2019
2. '[Contract management framework](#)', State of Queensland (Department of Housing and Public Works) 2019

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services under the expired contract is required to continue for a short time after the expiration, a new interim contract should be executed. This option should be utilised only as an interim measure on the condition that a new procurement process is undertaken within a reasonable timeframe. For longer-term extensions and/or those requiring more complex negotiations, an acquisition plan should be used.

**Note:** It is not considered good practice to establish a new contract, extend a contract, or put an interim contract in place, primarily because the public authority did not commence the procurement process early enough. Public authorities should commence planning for a new procurement process with enough time to give sufficient notice to suppliers and for effective transition to occur with minimal disruption to service delivery, noting a procurement process can take between three to six months on average or longer for complex procurements.

### Contract Variations

Making changes to an established contract is called a contract variation. Variations usually refer to adding, removing or changing an existing contract provision and may include a change to the:

- scope of the contract;
- value of the contract;
- contract extension options to be exercised;
- contract prices; and
- quantity purchased.

Variations do not change the original objectives of the contract.

Variations are generally only sought by the public authority; however, a supplier may also request a variation. Procedures for varying and amending contracts are included in the contract and managed by the contract manager. Where a contract is varied, this variation should be formally agreed in writing between the parties.

Contract variations can be minor administrative changes such as a change of address or they can be major changes that affect the term, price or deliverables under the contract.

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An assessment of the proposed variation and the need for any approvals should be made in terms of its impact on the contract deliverables, price, timeframes, value for money outcomes, probity, transparency and accountability. For example:

Impact	Description	Approval requirements <sup>2</sup>
Insignificant	No potential to impact the contract deliverables, price, timeframes, value for money outcomes, probity, transparency and accountability.	A note is recorded in the relevant file.
Minor	Limited potential to impact the contract deliverables, price, timeframes and value for money outcomes, probity, transparency and accountability	A note is recorded in the relevant file.
Moderate	Moderate potential to impact the contract deliverables, price, timeframes, value for money outcomes, probity, transparency and accountability.	Approval is sought from the approving delegate of the acquisition plan.
Major	High potential to impact the contract deliverables, price, timeframes value for money outcomes, probity, transparency and accountability.	Approval is sought from the approving delegate of the acquisition plan.

Public authorities should not seek or approve a contract variation where it would significantly vary the scope, value or complexity of the contract if it could reasonably be determined that:

- other potential suppliers may have responded differently to the amended contract scope in the tendering process which may have produced a different value for money outcome; or
- the variation may compromise the original procurement's value for money assessment.

In high risk or complex procurements, it is recommended that advice from the Crown Solicitor's Office is sought before approval is given to vary the contract.

### Variations to Industry Participation Plans

A variation to an Industry Participation Plan should be approved in line with standard contract variation processes. Office of the Industry Advocate (OIA) approval is not

<sup>2</sup> Public authorities should consider their own internal procurement framework to determine necessary approvals for contract extensions and variations

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required in these instances, however public authorities should consult with and notify the OIA of the approved variation to the IPP.

### Unintentional variation or waiver through conduct

Public authorities should ensure that all contractual obligations are carried out in accordance with the terms of the contract, as there is a risk that failing to do so could have negative implications in future, for example:

- Not following an acceptance process upon delivery of goods could result in goods being deemed to have been accepted.
- Not addressing supplier underperformance when identified/reported may establish new reduced performance levels within the contract.

When talking with the supplier, in some circumstances, this communication can result in a variation of the contract or a waiving of the public authority's rights under the contract. Therefore, when discussing what the public authority expects from the supplier, the contract manager should ensure their comments are always in line with the contract.

If discussing a possible contract variation with a supplier, contract managers should be careful not to imply agreement until all aspects have been finalised, including any approvals from public authority delegates. Contract managers should maintain a written record of any outcomes of discussions with suppliers and email these to the supplier to avoid uncertainty regarding the discussion, minimise the risk of dispute and ensure both parties have a record of any agreed actions or decisions.

If the public authority chooses not to enforce obligations in the contract, the decision needs to be clearly documented and the supplier notified.

If both parties agree to a contract variation, this should be clearly documented in writing, in accordance with the terms set out in the contract.

If the contract manager is at all unsure about anything relating to variations or waivers, they should contact their public authority's procurement unit or seek legal advice from the Crown Solicitor's Office.