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# Contract Management - The Commercial Role

## Our Policy

- You must include specific contract management terms and conditions in the draft contract.
- You, in conjunction with key internal and external stakeholders, must proactively monitor and manage contracts to ensure they are performed and delivered in accordance with the terms and conditions, and that the Ministry of Defence (MOD) gains maximum benefit and value from the contractor.
- Where performance falls short of the levels required in the contract, or conversely, is delivered in such a way that additional benefit to the MOD is gained, you must act promptly and use the relevant remedy or reward provisions in the contract.

## Purpose and Scope

1. The purpose of this Commercial Policy Statement (CPS) is to provide you with guidance on the commercial policy on planning, preparation and implementation of contract management arrangements. It also helps you to identify the best contract management approach for your requirement.
2. This CPS is a generic guide, as all contracts require different levels of management. Where a contract or an amendment to contract is a Qualifying Defence Contract (QDC), there will be specific management or reporting requirements under the Single Source Contract Regulations (SSCR). . If your contract is a QDC, you must read the [Single Source Contract Regulations \(SSCR\) guidance](#) in conjunction with this CPS.
3. Contract Management is a team activity involving project, finance and commercial staff. However, this CPS is created as definitive policy on the role of MOD Commercial Officers. "You" indicates an action on the Commercial Officer.

## Background

4. For contracts to deliver successful outcomes, on time and to budget, they have to be actively managed from inception through to conclusion. Contracts need to be carefully thought through, planned and constructed and then awarded. You have to understand the terms and conditions, monitor the performance of the contractor against them, and use the rights and provisions that have been built into the contract to ensure that the goods, works and / or services are delivered as specified. Commercial staff have a key management role during the life of the contract, ensuring that both the MOD and the contractor deliver their contract obligations.

5. Evidence from both the public and private sectors demonstrates that proactive contract management improves the chances of successful contract delivery. In some cases, proactive contract management also improves the efficiency and effectiveness with which the requirements are delivered, resulting in better value for money (VFM). The MOD undertakes a diverse range of acquisition, from simple commodity purchasing to cutting edge complex contracting. Managing the commercial aspects in all of these contracts is fundamental to the MOD achieving VFM.

## Introduction

6. Contract management is the proactive monitoring, control and management of all activities necessary to ensure a contractor delivers the goods, works and / or services required by the customer as defined in the contract. Contract management consists of three core areas:

- a. Managing Performance and Service Delivery. This covers those activities used to ensure the contractor performs and delivers what is contracted, including:
  - (1) managing the contractor to deliver its obligations;
  - (2) ensuring the MOD meets its obligations and ensuring internal stakeholders do not do anything that effectively relieves the contractor of their responsibilities, or inadvertently commits the MOD to additional contractual commitments;
  - (3) using information generated by the contract as evidence of output being achieved;
  - (4) For QDCs, ensuring the contractor delivers the SSCR mandated reports, and that the data within the reports conforms to the statutory requirements;
  - (5) reviewing and examining cost and associated information related to the performance of the contract; and
  - (6) using the contract to get what the MOD is paying for.

These are covered in more detail in paragraph 27.

- b. Contract Administration. This includes all of the tasks involved in keeping accurate records, for example of performance, payments and changes to the contract. It also covers activities such as ensuring we pay promptly for goods or services received, and meet the Government target for payment turnaround. Paragraph 39 covers Contract Administration.

- c. Managing Relationships. This covers all of the activities needed to create and maintain effective behaviours and relationships, and is key to success. An effective relationship between the contract manager, project manager and finance manager is essential for good contract management. The [MOD Partnering Handbook](#), and the [Partnering topic](#) on the Commercial Toolkit identify the areas and activities which underpin strong business relationships. Open communication is one of the key areas that promotes co-operative relationships and acquisition teams should practice it both

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internally and with the contractor. Managing relationships is covered in more detail in paragraph 40.

7. The contract management activities within these three areas are interlinked. For example, performance meetings help manage performance, need contract administration and, the communication at regular meetings helps to build and improve relationships. Similarly, recording delivery as part of contract administration also generates data used to manage performance.

8. For clarity, we have explained the terminology used in this CPS in Annex A.

## Aim of Contract Management

9. The aim of contract management is to ensure that all parties to the contract are delivering against their obligations, so that ultimately the contract outputs are delivered without unnecessary difficulties or delays, and the MOD gets what it is paying for. Where either party is not delivering or meeting its obligations against the contract, proactive contract management will help you to restore the required level of performance. Where the contractor is not meeting their obligations you should consider applying the remedies available under the contract. If the contractor's poor performance results from the MOD failing to meet its contract responsibilities, you may find you have no recourse to legal remedies. Effective management of the MOD's contract obligations is therefore of equal importance as monitoring contractor performance.

## The Role of Commercial in Contract Management

10. Within the MOD the day-to-day operational or technical delivery of contract requirements are primarily managed by Project Managers or Designated Officers. They have a key role in contract management, including:

- a. evaluating operational or technical performance against the contract requirement;
- b. managing the day to day relationship with the contractor; and
- c. advising you on the acceptability and impact of alternative solutions and proposals from the contractor.

11. You own the contract, and only you have the authority through your commercial delegation to accept anything contractually. In making your decisions whether to accept the contractor deliverables or whether performance meets the requirement, you must draw on the expertise of the acquisition team, usually the Project Manager or Designated Officers. Key commercial activities in Contract Management are:

- a. ensuring the MOD delivers **its** obligations to the contractor;
- b. negotiating and issuing contract amendments;
- c. issuing any letters to the contractor regarding failure of performance;
- d. ensuring any contract remedies for performance failures are applied promptly (if appropriate);
- e. authorising any performance incentives contained in the contract; and

- f. ensuring contractors are paid promptly on satisfactory delivery or performance, in accordance with the contract payment mechanism.
- g. where there is a formal acceptance process, formally accepting a contractor has performed and delivered their contractual obligations (in accordance with the contract acceptance procedure);
- h. ensuring contract administration and final closure activities are carried out promptly, and in line with policy. For QDCs this includes final cost adjustments and Post Costing.

12. You may have to manage contracts that will be placed by others<sup>1</sup>. It is therefore critical that you engage with those responsible for developing and awarding the contracts as early as possible. This allows you to ensure the contract includes all of the appropriate Terms and Conditions necessary for you to effectively manage performance and delivery.

13. Ensuring a full and accurate contract history is maintained is one of your key responsibilities. To avoid future issues and confusion arising, you need to record all decisions and their justification. For example, in some contracts, communications or decisions may need to be made within specified timescales to enable timely performance at a future point in the contract; or for QDCs you may have obligations under the [SSCR](#), so it is important that you record compliance with these.

14. You must ensure everyone knows what responsibilities they have. This will vary in each acquisition team depending on the skills and experience of individuals. This is covered in greater detail in paragraph 27.

15. To ensure success you need to form effective working relationships with your key internal stakeholders as well as with the contractor. This ensures the MOD acts effectively as one team, and reduces the risk of the acquisition team giving conflicting information to the contractor.

## Skills Required for Contract Management

16. You will require a broad range of competences, skills, knowledge and capability to be an effective contract manager. In addition to competence in the three core areas detailed in the introduction, and commercial functional competences (such as legal awareness, negotiation skills etc.) you will need an understanding of:

- a. project management tools and techniques; and
- b. finance issues, for example balance sheets and pricing structures.

17. Awareness and understanding in these non-commercial disciplines enables you to manage the contract more holistically, and helps you understand the roles and contribution of other team members to Contract Management. The [Commercial Skills Strategy](#) provides more details on skills required.

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<sup>1</sup> For example, where contract sourcing and contract management roles are separate.

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## Assessing the Appropriate Level of Contract Management

18. The level of contract management you use should be appropriate and proportionate to your contract requirements. Contracts differ in value, length and complexity, and therefore involve different degrees of risk. What constitutes complexity or higher risk will be different in each contract, but as a guide some of the things you should consider are:

- a. service, product or delivery failure risk. Some deliverables may be more at risk of failure due to the difficulty of provision or where they come from. You should also consider the impact of a failure in this area;
- b. reputational risks. If failures would be high profile and result in adverse publicity to the MOD;
- c. dependency risks. How reliant is the MOD on the outcomes, or if other contracts are dependent on them;
- d. the supplier's work with the MOD as a whole, e.g. if the supplier has many contracts with the MOD, and if they are complex or high value for example. There may be a need to try and coordinate or standardise Contract Management approaches;
- e. interoperability risks. Whether the effectiveness of other equipment relies on accurate delivery or performance;
- f. technological complexity. If the requirement contains high technical risks or is cutting edge development;
- g. pricing complexity e.g. if Variation of Price, Target Cost Incentives or Gainshare are used; and
- h. supply chain complexity. If supply chains are large, complex and may present security of supply issues.

19. To help you determine the arrangements to put in place three levels of Contract Management have been defined. These provide the criteria you can use to help decide the appropriate Contract Management arrangements. [Annex B](#) gives an indication of what level may be appropriate. You should objectively assess each contract for aspects that may require closer management, and bear in mind that circumstances can change.

20. Annex C details the Level 1 Standard for contract management. Level 1 is a 'light touch' approach, which might typically be used for contracts below £10M and which are less than four years in duration. As a minimum, you should apply Level 1 to all contracts. Annexes D and E detail Levels 2 and 3, which build on Level 1 to give enhanced management for more complex and valuable contracts. Levels 2 and 3 introduce some different arrangements (e.g. Earned Value Management, Relationship Management tools), as well as suggesting things that you may need to include for example in progress meetings, over and above what would be appropriate to Level 1 type arrangements.

21. You may inherit contracts where arrangements and levels are already in place. How to assess existing contracts is covered from paragraph 34.

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## Planning for Contract Management

22. You will only be able to enforce specific contract management rights if they are stated in the contract, or for QDCs, provided for by the SSCR. To ensure you are able to manage your contract effectively and through its life, you need to begin planning for contract management when developing your Commercial Strategy. This will normally require you to develop a Contract Management Plan (CMP) as part of, and to inform, the Commercial Strategy.

23. Commercial staff own the Commercial Strategy and should produce it, so ensuring it covers all of the rights needed to manage a contract should be a normal part of the development of the Strategy. However, depending on how business areas are organised, the commercial staff responsible for placing new contracts may be different from those who will manage them. Under this circumstance, it is essential that you engage with those commercial colleagues and involve yourself in developing the Commercial Strategy from the outset. For higher risk, more complex contracts you may have a separate CMP that informs the Commercial Strategy.

### Contract Management Plans

24. Your CMP is the document in which you bring together and detail all of the contract arrangements for managing the contract. The depth to which the CMP goes depends on the level of management required. The CMP will need to be refined and detail added for operational use, once the contract is agreed. The CMP must always be an explicitly non-contractual document, but must remain consistent with the contract. Although it is internal, you can include the CMP in the tender documentation.

25. Areas that you will need to address in developing your [CMP](#) include:
- a. identifying key stakeholders and any potential obligations those stakeholders may have. Before including anything such as [Government Furnished Assets](#) in the contract you must ensure that the responsible stakeholders provide written confirmation that they are able to make those assets available;
  - b. identifying the main commercial risks. You should record these in your [Commercial Risk Allocation Matrix](#) (and ensure they are included in the project risk register and Risk Management Plan). Agree with the key stakeholders the risk mitigation / management or migration strategies. Identify those terms and conditions that will deliver the agreed strategies;
  - c. discussing with internal stakeholders the outcomes and behaviours required during the performance and delivery of the contract;
  - d. agreeing with internal stakeholders the level of contract management required. You should capture this in your CMP as part of your commercial strategy. If you are procuring via the single source route you may involve the contractor at this stage;
  - e. identifying the contract terms and conditions needed to undertake contract management effectively, such as contract incentives;

- f. for QDCs, ensuring that the statutory contract management requirements are covered. For Non-qualifying contracts DEFCON 813 replicates the reporting regime under the SSCR; and
- g. identifying formal relationship management tools. These will vary from contract to contract depending on the individual requirements.

26. You can assess a supplier's ability or willingness to meet the contract management requirements included in your tender documents during tender evaluation. Examples of this include the supplier's acceptance of the frequency and attendance of review meetings, access to contractor personnel, and the provision of specified information within certain time scales.

## Preparing for Contract Management

27. Preparing for Contract Management is primarily concerned with Tender preparation activities. It is critical that where roles are separate and a team approach is taken to developing the Tender. When conducting [Tender Preparation](#) you will need to include in the tender documentation the contract terms and conditions setting out the obligations of both parties. In conjunction with the rest of the acquisition team you will need to consider the following contract management issues:

- a. The minimum requirements for contract management. For low value contracts, the necessary rights and obligations will usually be obtained through the use of the relevant DEFCONs or Standardised Contracting (SC) equivalents. Higher value and / or more complex tenders are also likely to include more bespoke narrative conditions, Earned Value Management, more complex pricing structures and Key Performance Indicators.
- b. The process for reviewing performance. This may be through the use of DEFCON 604 (Progress Reports) or 642 (Progress Meetings) (or SC equivalents), or for a complex requirement this could be incentive schemes and contract review meetings.
- c. Performance indicators. These are the minimum standards that are required to meet the contract obligations. The tender documents need to clearly state what successful delivery looks like, how performance indicators measure this and the remedies applicable if success is not achieved. You must also clearly articulate any incentive payments, including the use of reward fees, profit or gain share which the contractor can achieve for delivering added benefit to the MOD.
- d. Relationship management tools / techniques. For low value contracts in competitive markets relationships would normally be managed without specific terms and conditions [for relationship management](#). For longer term high value contracts you might include examples of how the contractor would work to the principles of the BS11000-1 Collaborative Business Relationships – Framework Specification, in addition to the production of a Relationship Management Plan showing commitment to collaborative working. Specific contract conditions might cover:
  - (1) identification of the value added through collaborative working,
  - (2) achievement of shared strategic business objectives,

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- (3) joint governance,
  - (4) aligned organisational structures,
  - (5) joint risk management,
  - (6) joint knowledge and communication management,
  - (7) aligned business processes as well as periodic assessment of the business relationship; and
  - (8) the use of issues resolution procedures.<sup>2</sup>
- e. The acceptance and rejection process. This is so that you can assess whether the deliverables or services meet the agreed standard. Learning from Experience (LFE) shows the process runs smoothly where it is clear how contractor deliverables or services are assessed, standards of achievement are clear, and the consequences of meeting or not meeting the standards are understood.
- f. The change process. For low value simple requirements you must include DEFCON 503 – [Amendments to Contract](#) (or SC equivalent). For more complex requirements you should include a detailed change control notice procedure.
- g. The Dispute Resolution process (including Alternative Dispute Resolution [Alternative Dispute Resolution \(ADR\)](#) using DEFCON 530 or SC equivalent). Where dispute resolution provisions are included in the contract it is essential that you identify a mediator, a third party that will have the skills and experience to identify what can be done or to settle a disagreement. Many contracts include local issue resolution or escalation procedures aimed at avoiding formal dispute.
- h. Cost recovery mechanism(s). You should consider whether you need to include Liquidated Damages in respect of goods / works that are time critical, or some other form of arrangement in the contract for the contractor to repay monies to the MOD should they fail to perform / deliver.
- i. For service contracts the inclusion of a service credits mechanism. A service credit mechanism is a means by which amounts are deducted from a contractors fees if performance fails to meet the standards set in the service levels.

## **QDCs Subject to SSCR**

28. QDCs, by their nature, will demand a higher level of contract management due to the Regulatory requirements. In preparing for such contracts you will need to consider for example:

- a. the role of the Contract Pricing Statement;
- b. how you will use the Statutory contract and supplier reports to review performance;
- c. how incentive adjustments will be applied;

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<sup>2</sup> See the [Partnering Handbook](#).



- d. the contract change and periodic update process;
- e. the process for contract referrals to the Single Source Regulations Office.

Full details for QDCs are contained within the [SSCR guidance](#).

## Managing Performance and Service Delivery

29. This is the operational phase of the contract and covers those activities involved in implementing the CMP and managing goods and service delivery. The focus of activity is ensuring delivery and performance. The acquisition team should support the contractor in delivering their obligations where required. This could mean facilitating stakeholder meetings, or ensuring decisions are taken on time. Any support must be related to the contract subject matter and must not affect our contractual rights. You should:

- a. have identified all of the contract actions and obligations, including those not routinely monitored / measured and have developed a compliance matrix to manage them. The compliance matrix should form an annex to the CMP. To save time ASPECT can produce this automatically. You should make sure everyone with an identified delivery, receipt or decision taking responsibility has a copy;
- b. have identified in the CMP all of the contract liabilities and remedies, and be clear on the circumstances in which they will apply;
- c. hold an internal key stakeholder Contract Initiation Meeting ideally after contract award and before the contract start date. This must cover as a minimum:
  - (1) recording of the roles and responsibilities of each individual;
  - (2) identifying and clarifying the MOD's obligations;
  - (3) referenced documents (for example Defence Standards) where the MOD has responsibilities, but it is unclear with whom exactly they sit. The individuals, or at least the posts need to be identified;
  - (4) confirming the acceptance of the roles and responsibilities by the stakeholders concerned. You should confirm the agreement in writing (such as an e-mail);
  - (5) confirming that the individuals have the right skills, experience and knowledge that their roles and responsibilities demand, enabling them to advise you effectively on the technical and financial aspects of the contractors performance.
- d. hold a Contract Start Up Meeting with the contractor and stakeholders after the internal initiation meeting. Explain to the contractor:
  - (1) how the team plan to manage the contract, including collection of key information from the contract. For QDCs this may include information from the contract and supplier reports;
  - (2) how progress will be communicated;

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- (3) confirm that the contractor understands the aims of the procurement, including:
    - a) the impact of failure or poor performance on end users;
    - b) that the contractor understands any constraints (such as EU Regulations on contract change);
    - c) that there is a clear understanding between the MOD and the contractor of each others' obligations;
  - (4) confirm that the content of the Contract Compliance Matrix and the CMP is agreed;
  - e. make sure everyone understands the key contract processes and provisions / key terms (e.g. change management, risk, pricing, invoicing and payment) and how they should be used;
  - f. hold regular performance reviews according to how they are scheduled in the contract. As a minimum, this should be quarterly. However, for complex requirements and where there are a lot of changes you may want to hold them monthly. For the Standardised Contracting Templates, this is one of the fields to be completed on the contract data sheet;
  - g. make sure your communications with suppliers are open, honest and objective;
  - h. measure performance against the contract. You can measure:
    - (1) contractor performance against the hard measures of performance such as achievement of milestones on target, or the acceptability of deliverables;
    - (2) how flexible or responsive the contractor is in delivering their obligations;
    - (3) the ease of obtaining information;
    - (4) whether they are constantly striving to improve the quality of service and ease of use for end users; and
    - (5) how the contractor behaves in delivering their performance. This is important in single source / complex contracts as poor behaviours introduce risks which affect time and cost as well as performance.
  - i. deal promptly with poor performance, in accordance with the processes stated in the contract. Where available you must apply contractual remedies promptly if it is appropriate to do so, otherwise you risk waiving your right to apply those remedies;
  - j. ensure you have a process in place for monitoring the contractor's invoices for accuracy, and against any payment schedule. You must ensure the contractor is paid promptly and in accordance with the contract terms;
  - k. encourage process and performance improvement and apply any incentive mechanisms promptly, honestly and fairly and in accordance with the contract;
  - l. carry out annual contract reviews of the contract and the Key Performance Indicators (KPIs). The acquisition team should review the
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contract to see if changes are required (but be aware that such changes may be treated as a contract change and attract a cost); and

### **Post Award Reviews**

30. In some circumstances you may find it beneficial to carry out a Post Award Review (PAR) (see [Chapter 6 of the SSCR Guidance](#)). These are conducted after the contract has been awarded. The purpose of the PAR is to ensure the Contract is correctly set up and on target to deliver. Usually you would carry out a PAR within 12 months of Contract Award. For QDCs MOD has a right to request a PAR within 2 years of Contract Award.

### **Annual Contract Reviews**

31. Annual contract reviews are part of the programme of routine and more regular progress and performance reviews. They are a comprehensive assessment of the contractor's performance in delivering the contract requirements during the preceding twelve months. They should include a comparison with previous years.

32. In conjunction with the Project Manager / Designated Officer, Finance Manager, other stakeholders, and the contractor, you should conduct annual contract reviews for any contract over 18 months in duration.

33. The purpose of an annual contract review is to:

- a. Review performance and delivery over the past year;
- b. Confirm that the requirement, contract and CMP remain fit for purpose, and that the contract remains on track for delivery as planned;
- c. Ensure that the organisation and structure of the contract management arrangements is or remains effective;
- d. Review the Risk Management Plan, including any changes in the market that may have an impact.

34. Annual contract reviews must be consistent with the Level of contract management being applied to the contract. For example, for Level 1 this might be as simple as a review of invoicing and payment. Ensuring invoicing triggers and payment processes are being monitored effectively and that they are providing a transparent means of cost tracking and audit.

35. For example, during Level 2 annual contract reviews you may check Key Performance Indicators (KPIs). Has the contractor achieved the KPIs? Are they valid, focussed and challenging (i.e. are the outputs still meeting the requirement?)? Do they need to be adjusted, and if so is there a risk / cost impact.

36. For example, during Level 3 annual contract reviews, you may check wider areas to ensure they are still relevant. This may include areas such as transformational improvement activities. Have these progressed as planned? Is resource planning still adequate, and how well is the relationship with the contractor developing?

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## Existing Contracts

37. While this policy looks at Contract Management from a 'cradle to grave' perspective, you may manage contracts that you did not plan, prepare, or influence, particularly during the transition from sourcing to management. The general principles<sup>3</sup> of contract management still apply. However, you can only implement arrangements as covered in the contract.

38. To develop an approach to managing existing contracts you must assess each contract (or group of similar contracts – such as those let under a Standardised Contracting template) to identify the:

- a. contractor's obligations. What is the contractor obliged to deliver? If they fail to deliver what is the effect of such failure?
- b. MOD's obligations. What are the MOD's responsibilities and obligations under the contract? If the acquisition team or other internal stakeholders fail to deliver what is the effect of such failure?
- c. contractual measures. How is the contract measured? Is it against delivery or performance or both? If one measure is not met does that constitute a failure of the obligation or not?
- d. contractual incentives. What rewards are there in the contract for performance over and above the requirement? How can the contractor and / or the MOD exploit opportunities?
- e. contractual remedies. What are the MOD's or contractor's rights should either party fail to deliver or perform?

39. There will be some things that are not written into the contract, such as custom and practice, or that might be implied by the environment we are procuring in. You must consider all the factors that affect contract delivery / performance, the associated risks, and how that will impact the end user.

40. Once you have completed your assessment you should consider whether you need to consult CLS before taking any action, if it is unclear whether the contract gives you the right to take action.

41. Remember to feed any LFE from existing contracts into the planning contract management phase.

## Contract Administration

42. Good Contract Administration is a key enabler to good Contract Management. It is essential that you accurately record details in the contract file, and you must ensure you follow the [Contract Administration](#) CPS.

43. In addition to keeping accurate records in the contract file, you must update the relevant electronic systems. Such systems include the DBS Oracle payment system, ASPECT, Purchase To Payment (P2P) and any others that may be relevant. Where contracts transfer to other teams, or the team name changes as a result of reorganisation, you must ensure that you promptly notify DBS of

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<sup>3</sup> General principles being: Manage Performance and Service Delivery, Manage the Relationships, and Administer the Contract.

the new details, via a DEFFORM 57A. Failure to do so creates difficulties when DBS need to contract the contract owner; if for example, there is a query over payment. You must close contracts on all electronic systems once they are completed, in accordance with the Contract Administration CPS.

## Managing the Relationship

44. Managing contracts effectively depends heavily on relationships that are built on open, honest communications, enabling all parties to focus on delivery. Relationships in contract management are both internal and external:

- a. Internal relationships include:
  - (1) Contract Manager to Project Manager / Designated Officer, Finance Manager. This is the key top level relationship within a team;
  - (2) Project Manager / Designated Officer to end users;
  - (3) Contract Manager to other MOD stakeholders (including end users);
  - (4) Project Manager / Designated Officer to other MOD stakeholders (e.g. safety);
- b. External relationships include:
  - (1) Contract Manager to contractor;
  - (2) Project Manager / Designated Officer to contractor.

45. While you will often need a strong relationship with the contractor, it is also important that you form close relationships with internal stakeholders, especially the Project Manager or Designated Officer, and the Finance Manager, so that the MOD acts effectively as one team. Developing such relationships reduces the risks that arise as a result of the necessarily close relationship between the contractor and Project Manager / Designated Officer.

46. Market structure will contribute to the type of relationship and tools needed to manage the relationship. For example, in highly competitive markets, and especially for short duration, commodity type contracts, you might expect the relationship with a contractor to be more transactional and straightforward in nature.

47. Where the requirement is such that the satisfactory performance of the obligations are more open to interpretation (such as in service contracts) the relationship can be more challenging. LFE shows relationships are improved where the service levels are clearly defined in the contract. Where your contract and relationship management seeks to monitor and improve performance levels that may be more subjective value and benefits are obtained by the MOD in the form of a better service.

48. A good working relationship helps to ensure that everyone works together to achieve the end result. Establishing and sustaining the right culture and associated behaviours from the outset is critical to success. Strong commitment from both parties is required to develop a more co-operative approach, and emphasising the achievement of, among other things, clarity of purpose, joint problem solving, openness and flexibility helps to gain that commitment. You

need to manage relationships with internal and external stakeholders. To encourage good relations you should:

- a. ensure communications with the supplier are regular, open and honest;
- b. communicate by both formal and informal means;
- c. manage stakeholder expectations and ensure a clear understanding of the contract; and
- d. address complaints and issues promptly and fairly.

## Warning Signs

49. Warning signs occur where changes in the contractor's behaviour or communication cause concern for potential performance. Such warning signs include:

- a. indication that the current work might take longer and / or performance will fall short of the contract requirement, or that the supplier wants to increase the price;
- b. a request to accelerate payments against the contract with requests to split partially achieved milestones;
- c. notification from subcontractors of late payment by the Prime Contractor;
- d. a request to negotiate payment plans with unjustified front loading to the profile;
- e. the supplier eager to undertake work ahead of contract award or order confirmation (although a supplier may be prepared to work at risk in the interests of the programme);
- f. requests for marketing. A noticeable increase in supplier "marketing" activity may move resources from your contract and also increase the risk of inadvertent contractual commitment;
- g. confirmation that contractors are taking a harder line than usual in interpretation of the terms of the contract;
- h. notification of significant and unexplained changes to the suppliers' subcontractors.

50. For QDCs, the regular contract reports submitted by the contractor should provide indication of the above signs.

51. The contractor is not formally in breach of their contract obligations at this point, but their actions indicate that it may happen. You should consider sending an initial letter stating that the MOD is concerned, asking the contractor to confirm that performance and delivery levels will continue to meet the contract requirement. Where there is evidence of declining performance you should ask the contractor to submit a rectification plan.

52. You must discuss the situation with contractors, making it clear you expect them to deliver the contract requirement as specified in the contract. Formal notification of the MOD's concerns, or subsequent formal notices stating that you

consider them to be in breach of contract should not come as a surprise to a contractor. Ensure you record any discussions with the contractor in your contract file minute.

## Poor Performance / Breach of Contract

53. A contractor is only obliged to perform the obligations set out in the contract. If they do not perform them they will be in breach of contract. Different breaches have different consequences. Some breaches will have little consequence to the general performance of the contractor, but others may have far more serious consequences. You must investigate all breaches.

54. A contractor breach of contract occurs where the contractor, without lawful excuse, fails to perform a contractual obligation. You should consider consulting CLS-CL and they will assist you in determining whether the contractor is in material breach of the contract.

55. Failure to act promptly may result in you waiving the MOD's remedies and rights, including claiming damages for breach and / or terminating the contract.

56. Contract remedies for breach of contract can be either expressly set out in the contract, or implied under statute or common law. Express remedies may include [Liquidated Damages](#), or service credits under a service credit mechanism. Implied remedies include damages. The remedy of damages aims to restore the MOD to the position it would have been in had there been no breach. They may also act as an incentive for better performance in the future, but only if you invoke them.

57. Addressing poor performance is fundamental to the MOD getting value for money, and getting what we are paying for. You should bear in mind that instigating contract breach procedures and issuing breach notices is often viewed emotively by contractors, and can signal a change in the relationship. Your focus needs to be on restoring performance and limiting the impact of any failure on end users. You can try to limit the impact of formal contract action on relationships by treating poor performance fairly and openly.

58. Certain breaches may give rise to the right to terminate. This is a serious step and you must read the [Termination of Contract](#) topic for detailed guidance.

59. For QDCs, the SSCR includes a legally enforceable compliance regime in the event that either the Contractor of the MOD contravenes the Regulations. See [Chapter 10 of the SSCR Guidance](#).

## Contacts, Training and Further Information

60. The [Web Access Page](#) for this topic contains a summary of the topic, details of who you can speak to for advice, and what training is available. It also contains links to other relevant topics and information.

## Annex A

# Contract Management Terminology

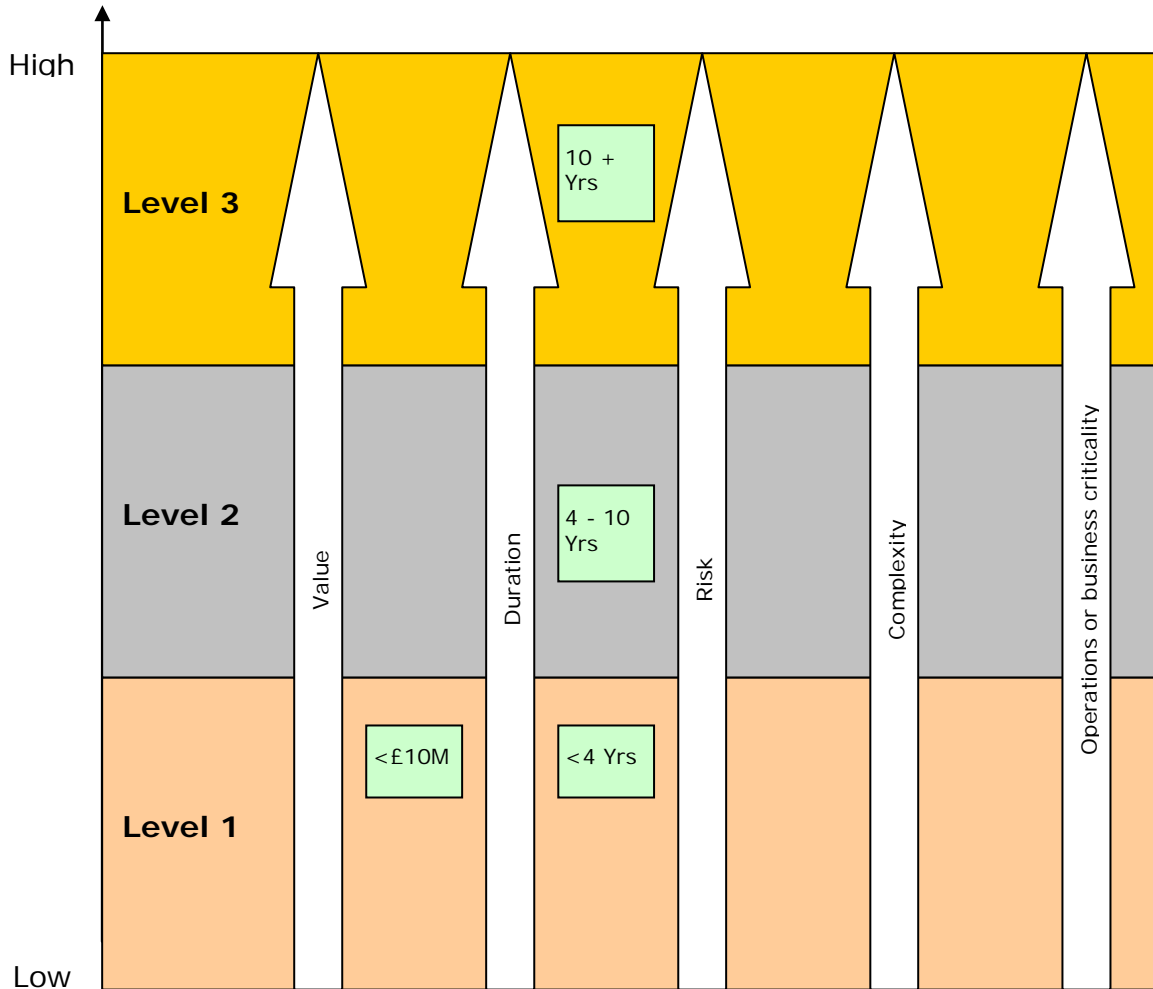
Contract Management Plan (CMP)	<p>The document that details how the contract will be managed, including roles and responsibilities, performance indicators, review meetings and all other aspects.</p> <p>The CMP is included in the tender documentation, but it does not form part of the contract and is included for information only.</p>
Contract Initiation Meeting	<p>The meeting held with key internal stakeholders to ensure common understanding of roles, responsibilities and boundaries of authority for managing the contract.</p> <p>There may be a need for non-commercial staff to undertake commercial awareness training.</p>
Contract Start up Meeting	<p>The meeting the acquisition team hold with the contractor and key internal stakeholders to ensure clear understanding of the contract requirement, management arrangements and the roles and responsibilities of key individuals.</p>
Contract Compliance Matrix	<p>This is a consolidated list of all the contract obligations and deliverables of both parties under a contract, including who is responsible for them, by when and any other key data.</p> <p>It can be used as a quick reference or check list to monitor progress. It does not form part of the contract.</p>
Contract Review Meetings	<p>Scheduled formal reviews of contractor performance against the contract deliverables and performance indicators. The meetings should also cover the MOD's obligations. The frequency will be set within the contract conditions.</p>
Contract Register	<p>A list or spreadsheet of all contracts currently being managed by a Contract Manager or team. It summarises key details such as start and end dates, total value, and spend to date and provides 'at a glance' information, and aids planning and resource allocation. You can also use it to record known requirements on the horizon.</p>



Designated Officer	The MOD officer having responsibility for the day to day operational management of a contract, and often performing the role of a Contract Manager. Often found managing service type contracts (e.g. MACs) on military bases.
Earned Value Management (EVM)	"A project control process based on a structured approach to planning, cost collection and performance measurement. It facilitates the integration of project scope, time and cost objectives and establishment of a baseline plan for performance measurement." (Association of Project Managers).
Key Performance Indicator (KPI)	An objective measure of contractor performance, often against a significant contract deliverable. It may comprise of a number of lesser (but contributory) Performance Indicators.

## Annex B

# Level of Contract Management Decision Guide



## Annex C

# Contract Management – Level 1 Standard – Considerations

1. Does your contract use a SC Template, or include the necessary DEFCONS or narrative conditions that enable you to manage it effectively? Each DEFCON or SC equivalent defines the contractor's and the MOD's obligations or gives the MOD and the contractor certain rights. The [DEFCON Guide](#) details their use and applicability. The main DEFCONS (or SC equivalent) for Contract Management are:

- a. DEFCON 92 - Failure of Performance
- b. DEFCON 530 - Dispute Resolution
- c. DEFCON 566 - Change of Control
- d. DEFCON 604 - Progress Reports
- e. DEFCON 605 - Finance Reports
- f. DEFCON 606 - Change and Configuration Control Procedure
- g. DEFCON 608 - Access and Facilities to be Provided by the Contractor
- h. DEFCON 609 - Contractors Records
- i. DEFCON 614 – Default or DEFCON 514 (Material Breach)
- j. DEFCON 625 - Co-operation on Expiry of Contract
- k. DEFCON 642 - Progress Meetings
- l. DEFCON 648 - Availability of Information
- m. DEFCON 653 - Pricing on Ascertained Costs
- n. DEFCON 656 - Break

2. Have you created a Contract Compliance Matrix? If you have used Rules Based Drafting you can create one on ASPECT.

3. Have you created a Contract Register? You can create this by running a report on ASPECT. You and the team will be able to see details such as the start / end dates, value, progress or status and other information. It aids future planning and overall visibility of work.

4. Have you identified the performance indicators by which you will monitor the contractor's performance, and included them in the Contract Compliance Matrix?

5. Have you scheduled regular progress reports under DEFCON 604 (or SC equivalent)? The occurrence is most likely to be quarterly, however you may want to receive reports more frequently at the beginning of the contract. You must state the minimum requirements in the contract. For Level 1 these are:

- a. Achievement of obligations against the Contract Compliance Matrix.
- b. Achievement of performance against Performance Indicators.

- c. Update of the risk register including identification of any new risks.
- 6. Have you agreed and implemented contract processes and procedures? Apart from examples such as delivery and acceptance or payment, for longer duration contracts these could include issue resolution, contract change management and control and poor performance. For the latter, you must have the appropriate terms and conditions of contract in place to be able to use such a procedure effectively.
- 7. Have you implemented an invoice sampling / audit regime?
- 8. Have you created and agreed a contract exit / service transfer plan with the contractor?

### **Qualifying Defence Contracts**

- 9. Level 1 standard of contract management is not suitable in itself for QDCs. However, as Level 1 sets the foundation for wider arrangements under Levels 2 and 3, you will need to take the above considerations into account when forming the CMP for a QDC.

## Annex D

# Contract Management – Level 2 Standard – Considerations

In addition to Level 1:

1. The SSCR cover reporting and contract management related obligations for QDCs.
2. Have you clarified what is needed in the Progress Reports? These are likely to be monthly, or for QDCs, the Contract Reporting Plan will set the frequency. For Level 2 level this will include:
  - a. identification of opportunities and proposals on how the MOD can benefit;
  - b. confirmation of skills transfer to the MOD (where appropriate);
  - c. confirmation of any risks associated with the loss of suitably experience and qualified personnel;
  - d. provision of contractor self monitored performance data and statistics, e.g. on quality, response times, document or data updates.
3. Have you scheduled regular Progress Meetings under DEFCON 642 (or SC equivalent)? The occurrence will most likely be monthly, however initially you may want to have meetings every 2 weeks. You must state the minimum requirements in the tender documentation. For Level 2 this may be:
  - a. discussions about Commercial Exploitation Levy;
  - b. discussions around the loss of suitably experienced and qualified personnel and any mitigation strategies;
  - c. benefits analysis and Earned Value Management;
  - d. delivery of MOD obligations; and
  - e. discussion of issues escalated above working level.
4. Have you identified the Key Performance Indicators by which you will monitor the contractor's performance, and included them in the Contract Compliance Matrix? Achievement of KPIs are often a trigger for something else, such as:
  - a. payment;
  - b. termination; or
  - c. transfer to the next procurement phase.
5. KPIs often comprise of several performance indicators. Can you answer whether the KPIs have been met with a yes or no answer? If not then you may need to break them down into performance indicators or measure performance in a different manner.
6. Have you included an annual contract review in the contract, with a defined mechanism for adjusting KPIs at no cost to the contract price?

7. Have you defined an incentive scheme? An incentive is a payment over and above the deliverables stated in the contract. They are often used to drive certain behaviours such as improve communication within the supply chain. You need to identify the behaviours you want to improve and then measure those behaviours in an objective manner. Incentives must not be paid against subjective measures and their payment must be in line with Treasury policy.
8. Have you defined a gain share mechanism to benefit from savings and / or opportunities?
9. Have you defined how you will manage the impact of inflation? If a Variation of Price clause has been included what review points are in place to ensure that the index remains appropriate through the lifetime of the contract?
10. Have you defined the Liquidated Damages (LDs) that may apply if the supplier fails to deliver? If LDs are inappropriate have you defined other remedies?
11. Have you agreed an independent third party for use under the Dispute Resolution process? It is very difficult to get agreement on who should mediate once you have got to the stage of a disagreement.
12. Depending on the complexity of your requirement you may want a low level of the following Level 3 Standard contract management measures:
  - a. relationship models;
  - b. behaviours agreement from partnering handbook;
  - c. exit strategy;
  - d. transfer clause; and
  - e. step in rights.

## Annex E

# Contract Management – Level 3 Standard – Considerations

In addition to Levels 1 and 2:

1. Have you clarified what is needed in the Progress Reports? These are likely to be monthly. For Level 3 level this will include:
  - a. health of the supply chain;
  - b. benefits analysis and Earned Value Management;
  - c. may include cost breakdowns if awarded under the Negotiated procedure; and
  - d. risks to the supply chain.
2. Have you scheduled regular Progress Meetings under DEFCON 642 (or SC equivalent)? The occurrence is will most likely be monthly, however initially you may want to have meetings every 2 weeks. You must state the minimum requirements in the tender documentation. For Level 3 this may be:
  - a. profitability and possible income generation opportunities;
  - b. strategy for ensuring skills are maintained in the supply chain and are fed into the education system;
  - c. marketing and communication of benefits;
  - d. Earned Value Management.
3. Have you created a relationship model? This is not only to drive behaviours but is to continuously improve the supply chain.
4. Have you agreed a behaviours charter with the supplier? See the [Partnering Handbook](#).
5. Have you determined how you will assess the subjective performance indicators against objective criteria?
6. Have you created a Service Level Agreement (SLA) containing specified times and standards? You need to communicate SLA to end users, and have a feedback mechanism in place to enable reporting of unsatisfactory performance. In many cases the contractor may also be required to self monitor and report.
7. Have you created an [exit strategy](#)?
8. Have you defined the goods / services / facilities / information that will transfer at the end of the service?
9. Have you defined the step in rights? These are the rights for the MOD to take over the goods / works / services if the supplier is unable to deliver at the levels required.

## Annex F

# Contract Management Plan Template

1. Your Contract Management Plan (CMP) is the document in which you detail your rationale and approach to managing a contract throughout its life. The CMP progresses through several stages of development which align with planning (i.e. the commercial strategy), preparing (the tendering process), and managing (implementing the plan) phases of contract management. As these stages are passed you will need to update the CMP as more of the details are established. The CMP develops from being a strategic level plan at the beginning, to one that is effectively a handbook for the day to day management of the contract during the operational phase.
2. Once the contract is awarded and you are managing performance and delivery, the CMP should provide anyone who reads it with a one-stop shop of who does what, when and sometimes how, under the contract. It needs to detail all of the key processes and procedures, instructions and the standards of performance. The CMP does not replace the contract (which always has primacy) but is the tool by which the contract requirement is managed and delivered. In some circumstances the CMP may set out how the end users are to use the services provided by the contract.
3. This template provides a walk through of subject areas you will need to populate in a CMP. Where applicable the relevant stage at which detail may be added is indicated. In many cases the contractor will also be managing the contract from their perspective, so the CMP is likely to be used by the contractor as well as you, and some of the detail will require agreement between you.



## **Contract Management Plan For [.....]**

### **Introduction**

Provide a brief introduction describing the purpose of the contract. The aim is to give enough information to provide the reader with the context and understanding of the contract, you should cover:

- Key objectives and outputs
- Contract duration
- Contract approach and model
- Key dependencies / interfaces / criticalities

### **Organisation and Governance Structures**

This section needs to give the reader a clear picture of how the key areas for the contract are organised. You should include:

#### **Planning / Preparation Stage**

- Structure diagrams for the key stakeholders and end users
- Structure diagrams for the Contract Manager / Contract Management team
- A description of the responsibilities of the above, and where applicable, the limits to authority under the contract
- Governance arrangements of the above including the Senior Responsible Owner, assurance responsibilities
- Details of the level at which key contract decisions will be made

#### **Implementation Stage**

The contractor should provide equivalent details of their organisational structure and governance arrangements as part of their tender. You should include these here. Where there is a large subcontracting element, the contractor must also give details of those subcontractors.

### **Risks, Opportunities and Benefits**

#### **Planning / Preparation Stage**

This section needs to cover the key risks that contract management will manage, along with the anticipated benefits and any opportunities identified.

#### **Implementation Stage**

Post implementation you should be tracking the benefits. You should outline the methodology for doing this here, including how the contract management arrangements will facilitate this.

## **Contract Management Reviews and Reporting**

This section should cover the frequency and content for all contract review meetings and reports or data provision, as called for in the contract. For QDCs this will be in addition to the requirements of the SSCR. You should include:

- The required attendance at meetings for both the MOD and the contractor
- The nominated chair person
- The Terms of Reference and any standing agenda

## **Communication Protocols**

In this section you should detail the protocols for formal and informal communications, making the distinction between day to day contract management communications, and other communication required by the contract (e.g. notices, consents or confirmation of acceptance). You should also describe:

- The authoritative points of contact for various subject matters
- Any shared working / data environments and the rules of use
- The processes for handling public disclosure requests where these involve data belonging to or impacting one or other of the parties

## **Key dates, Milestones and Decision Points**

This section needs to detail those key dates, actions or trigger points in the contract that may be buried in the contract and may not be included in a performance matrix. You should include:

- Obligations on the MOD to provide decisions, data, reports or any other deliverable (e.g. GFA) to the contractor
- Obligations on the Contractor to provide deliverables or outputs (these may be specified as KPIs / PIs)
- Obligations on either party to provide notices, confirmations or proposals
- Financial reporting dates

A simple tool for populating this section would be to create a Compliance Matrix, which would give an 'at a glance' reference of what has to be done, by whom, to whom, and when.

## **Delivery, Performance and Compliance Monitoring**

### **Planning / Preparation Stage**

You should use this section to detail how the delivery of the contract requirements by the contractor will be monitored and measured. You need to make reference to the Specification and the KPIs and PIs, along with the performance criteria that will determine acceptable levels of service.

Where KPIs are related to a service credit regime, you must explain the process for applying this.

Where Liquidated Damages are set against performance failure (or breaches), you must explain how these are to be applied.

### **Implementation Stage**

At the implementation stage you should update the section to include details of the contractor contacts responsible for providing routine performance data and any ad-hoc requests, if these are not previously established.

### **Processes and Procedures**

The CMP should set out any processes and procedures referred to in the contract and developed for either routine transactions or specific circumstances requiring consistent handling. These include:

- invoicing and payment process
- contract change and amendment process
- project and risk management process
- issue escalation and ADR processes
- document and software configuration control processes
- processes for request and provision of ad-hoc data and information

### **Contract Change, Amendment and Innovation**

In this section you should detail the arrangements for handling contract amendments and change (which may simply be reference to the process in the section above for smaller contracts). The method and process by which innovation and improved efficiency will be encouraged, assessed and rewarded needs to be detailed here.

### **Stakeholder Management, Liaison and Contact**

In many cases the contractor will be required to have direct contact with end users and possibly other stakeholders. This section should outline the protocols and forums for any such contact, and should cover the limits to levels of authority of those stakeholders and end users.

You should also cover how you intend to communicate the contract arrangements to end users and other stakeholders so that they understand the contractors responsibilities (and the limits to them), and their own responsibilities necessary for the contractor to provide a satisfactory service.

### **Relationships and Behaviour Management**

#### **Planning / Preparation Stage**

Your [Commercial Strategy](#) should identify the type of relationship and behaviours required to manage the contract effectively. In this section you should identify

the actions that will be undertaken to encourage and embed the desired behaviours.

### **Implementation Stage**

Relationships and behaviours require reciprocal commitment and actions, so there will be an element of agreement and fine tuning when the CMP is implemented. This may include:

- joint agreement and dissemination of relationship charters
- establishing contractor staff responsible for different areas of relationship management
- establishing a programme of joint inductions
- agreeing the relationship measurement methods and criteria

### **Administration of the Contract**

In this section you should outline the arrangements for administering the contract itself, which may include the processes for amendment and change, planning for known events such as the exercise of options or exit and closure.

You should include a planned periodic review of the contract and associated documentation to ensure records are being kept properly.

### **Knowledge Management and LFE**

#### **Planning / Preparation Stage**

You should outline proposals for capturing key data and lessons learned from the contract management processes you put in place, and from other, wider and external sources. You will need to periodically review the processes to ensure they are still effective during the life of the contract.