

# Contract Management Procedure

## Section 1 - Purpose

(1) This Procedure documents the activities required to manage contracts and Memoranda of Understanding (MOUs) in order to minimise risks to, and maximise benefits for, the University.

### Scope

(2) This Procedure covers contracts and MOUs for the supply of goods and services to the University.

(3) This Procedure does not cover employment of staff, which is addressed separately under the Macquarie University [Enterprise Agreements](#) and Human Resources policies.

## Section 2 - Policy

(4) Refer to the [Supplier Contracts Policy](#).

## Section 3 - Procedures

### Responsibilities and Required Actions

(5) This Procedure requires actions by the following:

- a. Contract Manager / MOU Manager; and
- b. Delegated Authority.

(6) Procedural advice is provided on:

- a. negotiation;
- b. checklist;
- c. advice;
- d. risks;
- e. performance;
- f. records; and
- g. contract reporting.

### Delegated Authority

(7) Appoint a Contract Manager / MOU Manager.

(8) Authorise the contract / MOU.

(9) Sign-off the contract / MOU.

## **Contract Manager / Memorandum of Understanding Manager**

### **Negotiate A Contract / MOU**

(10) Consider the following when negotiating an agreement:

- a. the purpose of the document;
- b. whether the document links to the University's strategic plan or faculty plans;
- c. the benefits to the University;
- d. whether the contract / MOU has the required senior officer support;
- e. whether the contract / MOU complies with all required legal formalities;
- f. the resources / commitment required;
- g. who has delegated authority to authorise, sign and commit funds for the contract / MOU;
- h. the main risks and whether they are insurable;
- i. whether legal opinion is required;
- j. what level is the signatory of the other party signing the document;
- k. what would be the consequences of not signing the contract / MOU;
- l. how will the University's reputation be enhanced by the association established under the contract / MOU; and
- m. what other partners will be excluded as a result of this contract / MOU i.e. is it the best result the University can achieve.

### **Complete a Contract Checklist**

(11) Complete a [Contract Checklist](#) to ensure that all aspects of a contract are considered and retain this checklist as part of the Purchasing record.

### **Seek Advice**

(12) Consult, seek advice and refer as needed:

- a. adequacy of the University's insurance provisions, including coverage for indemnities, to the Insurance Manager;
- b. research commercialisation implications to the Manager, Enterprise Partnerships and Commercialisation;
- c. academic matters to the Deputy Vice-Chancellor (Academic);
- d. research matters to the Deputy Vice-Chancellor (Research);
- e. international activities to the Pro Vice-Chancellor (International) ;
- f. financial considerations to the Vice-President, Finance and Resources;
- g. intellectual property implications to the Deputy Vice-Chancellor (Research);
- h. space implications to the Director, Property;
- i. human resources implications to the Director, Human Resources
- j. Marketing implications to the Director, Marketing;
- k. General Counsel when:
  - i. significant legal issues are involved: for example, where a guarantee is given, there is an exclusion / limitation / liability by the other party in respect of breaches of the contract / MOU, or negligence;
  - ii. the contract is complex or high risk, for example, relating to intellectual property, research commercialisation or consultancy, international contracts or non-University standard clauses;
  - iii. it is not clear whether the proposed contract is legally binding or requires higher execution formalities, for example, under seal;
  - iv. the contract / MOU terms and conditions have been developed by the other party;

- v. the contract / MOU requires the granting of an indemnity or guarantee or limiting the liability of other parties; or
- vi. legal issues require clarification.

## **Assess Risks**

(13) Analyse the risks and benefits prior to entering into a contract / MOU, including:

- a. whether the nature of the contract / MOU is clear and unambiguous. For example, if an arrangement is intended to be legally binding it must never be referred to as an MOU. If it is strategic only, it must always be referred to as a MOU and contain a clause or specific statement to that effect.
- b. whether the contract / MOU is necessary in order for the University to receive the benefits;
- c. the commitments this contract / MOU will require of the University and over what time period;
- d. whether the contract / MOU contains standard terms and conditions;
- e. what due diligence checks have been carried out on the other party or parties to the contract / MOU;
- f. the inclusion of performance management strategies within the terms of the contract / MOU: for example, using performance targets or milestones as triggers for payment;
- g. whether an expiry or termination clause is specified;
- h. whether a timeframe is specified in MOUs for a review of the arrangement;
- i. operational, workload, space or human resources impacts;
- j. any reputational risk if the contract / MOU fails for any reason;
- k. the need for due diligence checks in relation to the other parties to the contract / MOU; and
- l. whether the contract / MOUs to be signed are in an appropriate form and comply with any legal formalities.

## **Monitor Performance**

(14) Continuously monitor the contract / MOU and evaluate risks over its life. Review:

- a. the performance of suppliers against the agreed outcomes;
- b. the performance of the contract / MOU against the planned benefits;
- c. the supply of goods and services to ensure that the contracted goods and / or services are delivered in accordance with the terms of the contract;
- d. Service Level Agreement and or Key Performance Indicators negotiated at the time of the contract / MOU;
- e. payments to ensure that they are linked to performance as defined in the contract terms and conditions;
- f. whether the University and the other party comply with the terms of the contract / MOU; and
- g. the contract prior to finalisation or any planned extension.

## **Keep Records**

(15) Records are vital to ensure that the University is aware of its obligations, can protect its interest in any litigation, maintain corporate memory and for audit and compliance purposes.

(16) Retain:

- a. the original submissions / procurement plan / project business case or documents relating to the development phase of the MOU;
- b. successful tenders and basis of evaluation;
- c. the signed contract or MOU including terms, conditions, intellectual property rights, letters of intent or acceptance;

- d. the [Contract Checklist](#);
- e. the agreed Service Level Agreements and / or Key Performance Indicators;
- f. the agreed variations or amendments;
- g. performance review outcomes and minutes of meetings; and
- h. record of complaints.

(17) As appropriate, maintain a register of your contracts to meet business needs, legal requirements and other compliance required by University policy and procedures.

(18) Register the following details of the contract on the Contracts Register:

- a. specific reference number;
- b. names of the parties involved;
- c. contract / manager name, position and contract details;
- d. contractee internal organisational unit code;
- e. description of the goods and services provided for University business (where applicable);
- f. known or estimated value;
- g. period of the contract including review and extension options;
- h. date of commencement;
- i. specified outcomes; and
- j. contract end date.

(19) Provide original (via delivery) or copies of documents to Macquarie Memory using the records declaration website.

(20) Copy each contract that requires a payment by the University to Accounts Payable. No payment will be made to a supplier until an approved and signed contract has been received.

### **GIPA Contract Reporting**

(21) Division 5 of the NSW [Government Information \(Public Access\) Act 2009](#) requires the University to maintain a publicly available Register of Contracts to which it is a party and which has, or is likely to have, a value of \$150,000 or more. This Register is required to be published on the University's website.

(22) The contracts that are required to be reported are those in which a party agrees to:

- a. undertake a project, (for example: construction, infrastructure or property development);
- b. the provision of specific goods or services, (for example: information technology services);
- c. transfer real property to another party in the contract; or
- d. a lease of real property.

(23) Note that contracts of employment are not required to be reported.

### **Classes of Contracts**

(24) The [Government Information \(Public Access\) Act 2009](#) identifies three classes of contracts. Most contracts entered into by the University following the usual tendering process will be Class 1 contracts. Class 2 contracts are generally those where there has not been a tender process and have a value of less than \$5 million. Class 3 contracts are those with a value of more than \$5 million.

(25) The detail required to be reported varies with each Class of contract. A copy of Class 3 contracts must be made available on the Register. For full details of the requirements refer to Division 5 of the [Government Information \(Public](#)

[Access\) Act 2009](#).

(26) Some confidential information is not required to be included in the Register of Contracts, as set out in section 32 of the [Government Information \(Public Access\) Act 2009](#).

(27) Your Contract is “Class 1 contract” if the contract –

- a. Is valued at more than \$150,000;
- b. has at least one private entity (i.e. a non-Government body or an individual person) as a contractual party; or
- c. varies an existing contract in a way that means that it is now worth more than \$150,000 and is with one of more private entities

(28) Your Contract is “Class 2 contract” if the contract –

- a. is a procurement contract and there was no public tender process; or
- b. is a procurement contract and either there was a public tender process but the agreed contract terms are quite different to those made public or a draft contract was not published with the tender; or
- c. provides for maintenance or operation of infrastructure or assets and the term of the contract could be ten or more years (e.g. is for five (5) years with a possible extension of five (5) years); or
- d. relates to a privately financed project as per the [NSW Treasury - Public Private Partnerships](#) guidelines; or
- e. involves a transfer of a significant University asset to a party in exchange for another asset.

(29) Your Contract is “Class 3 contract” if the contract is a Class 2 contract of greater than \$5,000,000 in value.

## Section 4 - Guidelines

(30) Nil.

## Section 5 - Definitions

(31) Commonly defined terms are located in the University [Glossary](#). Definitions specific to this Procedure are contained in the [Supplier Contracts Policy](#).

## Status and Details

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