



Managing Contract Problems - Information Sheet

Contract problems can arise for a wide variety of reasons. To minimise the chance of a minor problem escalating into a dispute, the issue needs to be identified, discussed and resolved quickly and efficiently at the lowest practical level. This can be achieved through open communication, co-operation, mutual understanding of the problem and a desire by all parties to achieve the contracted outcomes and avoid problems escalating into something more serious.

What is a contract problem?

A contract problem could be seen as, or caused by, an issue, conflict, disagreement, unexpected event, breach, variation, change, miscommunication, misinterpretation, failure, unrealised expectation, or similar situations relating to a contract.

Minimising the risk of contract problems arising

The following suggestions may assist to minimise the likelihood of contract problems arising.

At an agency level:

- Allow time for forward planning - sufficient time is required to develop and execute a well constructed, clear and comprehensive contract.
- Appropriately resource the contract management function – appoint a contract manager or management team with suitable skills, knowledge, time and support to undertake the role. Provide ongoing training as necessary.
- Ensure appropriate governance structures are in place to encourage and support good contract management i.e. policy, procedures, checklists, forms, systems and standards.

At a contract manager level:

- Establish a solid understanding of the contract and the contract management role.
- Encourage ongoing and open lines of communications between the parties. This includes having an initial meeting with the contractor once a contract is awarded.
- Ensure any agency obligations (under the contract) are met as required.

- Actively manage the contract. Promptly address and follow up on any problem (no matter how minor) and provide feedback as required.
- Keep comprehensive records of actions, discussions and decisions made during the contract term. Record keeping is a legislative requirement and it is useful for many other reasons, including providing evidence should problems reoccur, informs of changes during the contract term, assists with audit requirements and/or for planning future contracts as examples.
- Look for opportunities to enhance contract management skills (e.g. training sessions).
- Always seek advice, assistance and/or clarification when needed.

Working the problem

I have a contract problem, what should I do?

Even with a well-planned, clear and comprehensive contract, problems can still arise. If a problem is minor, having an informal discussion with the contractor is usually the most effective way of achieving a resolution.

In many cases, providing the opportunity to give/receive feedback will be sufficient to overcome a contract problem. It is always important to remember to document what was discussed and any agreed resolution for future reference.

When dealing with a contract problem, it is best practice to follow a structured process (as outlined by the flowchart on page 3) to help manage a more efficient and effective resolution. The process may also help provide evidence should the problem escalate. Should the problem be considered high risk, time sensitive or significantly serious then the appropriate course of action would be to seek advice before proceeding.

Depending on the type of problem this would generally be from your procurement or legal area.

Working with the contractor

Why is there a problem, why doesn't the contractor just do what they are contracted to do?

As previously mentioned, the reasons for contract problems arising are many and varied and while it may appear that a contractor is not doing what they are contracted to do, it is often not that simple. A problem could exist for any number of reasons. These could include situations such as:

- The requirements of the contract are not clear or are open to misinterpretation. For example, something such as “delivery is to be within 10 days” could mean 10 calendar days, 10 business days or even 9 days. In

these situations assumptions are often made which may lead to a problem arising.

- The expectations for the contract are not realistic or well defined. This may result in the specific requirements not being covered under the contract or the outcomes not being achieved. For example stating that the contract reporting is “as required” rather than specifying what reporting will be required.
- This can lead to frustration for all parties as the required data may not be available or additional costs may be incurred.
- Contractor performance is not monitored, discussed or documented. This may occur for many reasons such as the performance measures are not included in the contract, the measures are ambiguous or not relevant, and there may be issues with resourcing or communication. If a contractor is not made aware that there is a problem with its performance; and given the opportunity to rectify the situation, the problem will remain unresolved and potentially escalate.
- Establishing a contract, but not having suitable processes in place to support the management of the contract. For example, it would be good practice to put in place a communications book for a cleaning contract to document, monitor and resolve cleaning issues. Establishing sound processes assists to minimise the risk of miscommunication, unnecessary or unauthorised contract variations and budget blowout.
- Communication problems. Having limited, or poor communication, or even a personality clash between the parties may lead to communication difficulties. Selecting a suitable contract manager and having an appropriate communication strategy is an important factor in managing stakeholder relationships and minimising contract problems.

Having good communication with your contractor and ensuring that the roles, responsibilities and the requirements are understood by all parties will help to avoid problems and make for smoother contract management.

Terminating a contract

Why can't I just terminate the contract if I'm having problems?

Terminating a contract may seem like the quick and easy solution; however, just because a problem occurs it does not necessarily give you the right to terminate a contract. Terminating a contract can be a very complex and lengthy process which needs to be handled carefully, and with legal advice being sought before proceeding. The situation can be made much worse if the required course of action is not appropriately executed. Where a contract problem exists, following the process as outlined in the flowchart should help to resolve it and also assist with providing evidence should the problem escalate.

Please note, the flowchart on the following page is provided as a guide only. Should the problem be considered high risk, time sensitive or significantly serious then the appropriate course of action would be to seek advice before proceeding. Depending on the type of problem this would generally be from your procurement/legal area.

Managing a problem

**A problem occurs/identified. Gather any information and documentation related to the problem.
What happens next?**

