



Contract Variations - Information Sheet

What is a variation?

A variation is a change to a contract. A variation to a contract could include, but not be limited to, a change to the service level or type, product, delivery, timeframe, personnel, contractor or price. As a contract constitutes a legal agreement between the parties, there are both legal and cost considerations to be considered prior to executing any change.

How can you vary a contract?

Contracts usually contain specific clauses that outline the variations or changes allowable under the contract. These clauses may also detail the process or procedure to follow, often specifying the need for variations to be executed in writing. Whilst it is best practice for any variation to be in writing, it must be noted that a change can inadvertently be made to a contract by verbal agreement or conduct even when there are clauses expressly stating variations are to be in writing.

When executing a variation it is important that any agency specific policy, procedure and delegation is taken into consideration as there are usually only a limited number of people, within an agency, who have the delegated authority to approve variations to contracts (refer to your agency's Procurement Delegation Schedule). Being aware of agency and contractual requirements should help to minimise the risk of informal contract variations. Refer also to the Contract Variation Flowchart on page three.

What happens if there isn't a variation clause in the contract?

Variation clauses are not always expressly called "variation clauses". When considering any proposed variation it is important to first review all of the documents that make up the contract. If it is still unclear whether or not there is a clause covering a particular variation, seek appropriate advice.

Why should variations be in writing?

If a contract is varied based on a verbal agreement it can be difficult to determine exactly what was agreed, particularly if things go wrong. It is always best practice to ensure that any variations are well thought out, formally approved and executed in writing. Reasons for variations to be executed in writing include:

- It minimises the chance of misunderstanding as expectations and requirements are documented.
- There is evidence referencing what was agreed and who is responsible for what.
- It minimises the risk of unwanted surprises associated with “agreed changes”.
- It formalises the process by providing a mechanism for an official approval or signoff.
- It will be useful if/when planning future procurements.

What are some of the key issues that need to be considered?

Before considering any potential contract variation:

- Ensure that the variation is allowable under the contract (be familiar with all the contract documents and what the contract covers).
- Consider any agency specific policies, procedures, templates or forms relating to variations.
- Determine who has the authority to negotiate and approve contract variations.
- Ensure that the full impact of the proposed variation has been assessed (e.g. budget, scope, risk).
- Consider the total cumulative effect of all variations that have occurred since the commencement of the
- Contract as it is important that the contract continues to reflect the original scope and cost.
- Ensure appropriate stakeholders are consulted regarding the change (where applicable).
- If unsure with any aspect of a variation, seek appropriate advice, assistance and/or clarification.

Remember, any variation to a contract should be fully considered (including the impact and risks), appropriately documented, be formally approved and filed with the contract documents.

Contract Variations Flowchart

A potential contract variation (change) is identified. This may arise from a problem, an agency requirement or a contractor request (e.g. policy change, price variation due, product superseded).
What happens next?

