UNIVERSITY OF CAPE TOWN
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD

**FINANCE DEPARTMENT**
Unleashing finance expertise

# A quick guide to Pre Contract Management

A reference guide to planning the contract details and management thereof.

Unleash human potential for a fair and just society
UCT Vision 2030

www.uct.ac.za

## What is contract management?

Contract life cycle management is the process of systematically and efficiently managing contract creation, administration, execution and analysis for maximising operational and financial performance whilst minimising risk.

## What does successful contract management look like?

- Arrangements for service delivery continue to satisfy both parties.
- Expected university benefits and value for money are achieved.
- Supplier is co-operative and responsive.
- Supplier understands their obligations.
- There are no disputes.
- There are no surprises.
- Professional and objective debate can be had over changes and issues arising.
- Efficiencies are being realised.

## Why does it matter?

Adverse effects of poor contract management include but are not limited to:

- Poor supplier relations.
- Suppliers' failure to meet KPIs.
- Cost overruns.
- Deliveries outside of specification; and potential complete delivery failure.
- Missing opportunities to negotiate.
- Missing opportunities to receive rebate.
- Compliance risk.
- Protracted legal disputes.

Hence, good contract management is essential for good financial management and will contribute greatly to the effectiveness and efficiency of service delivery.

## Important contacts

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## High-level overview of activities

Contract management involves both pre-contract (upstream) and post contract activities (downstream). This is illustrated below:

**Upstream (pre contract)**

**Good planning**
Accurate assessment of development needs, and appropriate market research.

**Comprehensive specifications**
Good understanding and accurate description of requirements.

**Right contract selection**
Appropriate contractual mechanism, including T&Cs and allocaton of risk.

**Careful supplier selection**
With most appropriate attributes, capacities, and capabilities.

**AWARD OF CONTRACT**

**Downstream (post contract activities)**

**Sound contract management plan**
Practical, thorough plan that is proportional to the size, value, scope, and complexity of contract.

**Proactive delivery management**
Manage contract implementation systematically and with sufficient flexibility where required.

**Good relationships management**
Develop good communication, trust and understanding to ensure openness, accountability and trust.

**Systematic administration**
Full and accurate records to demonstrate efficient and effective delivery.

**Ongoing monitoring & evaluation**
Continuous objective assessment of effectiveness, efficiencies, impacts, risk, and value for money.

## Purchasing thresholds

The purpose of threshold values in purchasing is to ensure that:

- Procurement follows appropriate procedures in relation to the value of expenditure;
- The university obtains best value for money through a competitive process;
- The procurement process is transparent and fair;
- The risk to the university is managed;
- The interests of the university are protected;
- Procurement conforms to UCT B-BBEE procurement policy.

| Threshold | Requirements |
|---|---|
| Up to R25,000 | No quote required |
| R25,000 - R100,000 | 1 written quote |
| R100,001 - R500,000 | Min. 2 written quotes |
| R500,001 - R1,000,000 | 3 written quotes or *Closed Tender (min. 2 bidders) |
| R1,000,001 - R5,000,000 | *Closed (min.2 bidders) or **Open Tender |
| Above R5,000,000 | **Open Tender |

** Closed Tender require 80/20 B-BBEE scorecard*
*** Open Tender require 9/10 B-BBEE scorecard*

## Contracts Hierarchy

✓✓✓
Overriding Agreement (OA)/Master Service Agreement (MSA)

✓✓
Scope of Work Agreement (SOW)

✓
Purchase Order (PO)

✗
Oral Agreement

## Contracts Types

**Master Service Agreements (MSAs):** Long-term agreements between two parties outlining terms for future work. Can help streamline negotiations for individual transactions.

**Service Level Agreements (SLAs):** Contractual agreements between service provider and university customer outlining levels of service to be delivered. Typically levels of uptime, response times, and other.

**Operational Level Agreements (OLAs):** A contract between two internal university groups outlining levels of service one group will provide another. OLAs ensure all groups are working together to deliver the best possible service to customers.

**Non-Disclosure Agreements (NDAs):** A contract between two parties that prohibits one party from disclosing confidential information to third parties. NDAs protect trade secrets or sensitive information.

**Memorandum of Understanding (MOU)**: A non-binding agreement outlining terms of a future agreement. Often used when parties are still negotiating a formal agreement.

**Information Security Agreement (ISA)**: A contract outlining security requirements for handling confidential or sensitive information. Often used where one party is providing IT services to another party.

**Blanket Purchase Agreement (BPA):** A contract allowing a university customer to make multiple purchases over a period of time, without negotiating a new contract for each purchase. BPAs are often used to streamline the procurement process.

**Privacy Level Agreement (PLA):** A contract between service provider and university customer outlining levels of privacy provided by provider. Typically, how the provider will collect, store, and use university customer data, and may also outline measures the provider will take to protect university customer privacy.

**Sales contracts:** A legal agreement between a seller and a buyer outlining the terms of a transaction, including price, payment terms, delivery date, etc.

**Employment contracts:** A legal agreement between employer and employee outlining terms of employment, including salary, benefits, working hours, job responsibilities, and termination conditions.

**Service contracts:** A legal agreement between service provider and client outlining terms of a service, including scope of work, payment terms, etc.

**Partnership agreements:** A legal agreement between two or more individuals or entities outlining terms of their partnership, including profit sharing, decision-making processes, etc.

**Lease agreements:** A legal agreement between landlord and tenant outlining terms of a rental property, including rent, security deposit, etc.

**Construction contracts:** A legal agreement between contractor and client outlining terms of a construction project, including scope of work, payment terms, etc.

It's important to note that these are just a few examples of the many types of contracts and agreements that exist. The specific terms and conditions of each contract will depend on the needs of the parties involved and the nature of the relationship or transaction.

## Purchase Orders (PO)

All payments via SAP require a PO - the university's most common contract. The MM010 form needs to be completed and the details will be captured on the system. The PO is then issued to the vendor. The PO references UCT's standard T&Cs which is able on the website.

## Standardised Contracts

We prefer to utilise standard industry contracts where appropriate or those that have been vetted by legal. However, the university is also flexible to using supplier T&C's. This flexibility generally serves to speed up the contracting process as contract negotiations can typically take upwards of three months in negotiating the details with the supplier.

## Delegations and signatories

This is specified in GEN002, available on the intranet, this is regularly reviewed so it's important that the document is consulted prior to signing a contract.

Where documents require the Registrar to sign, the standard contract review form needs to be attached and this includes the signatures of the contract owner, the head of department, Dean and Legal.

## Contract clauses

Contracts typically include generic clauses (AKA boilerplate clauses) which are used in many agreements. Other conditions are generally tailored depending on the goods or services the supplier provides. Written contracts always contain basic information for all parties, including their legal names and registered addresses, as well as a list of definitions for key terms used within the document. A contract may also include some or all the following elements:

- Scope: Overview of services or activities the agreement covers.
- Terms of payment: Amount, and potential price variation formula used, terms that stipulate when and how the buying organisation should make payment.
- SLAs: The minimum service level requirements and consequences if not met.
- Subcontractors: A list of supplier subcontractors used.
- Data security and confidentiality: Outline of supplier's responsibility to meet the buyers' data security objectives.
- Limitation of liability clauses: Terms that limit value and types of compensation one party may recover from the other.
- Delivery and acceptance: The process, including resolving disputes.
- Escalation: Processes for escalating issues that cannot be resolved through normal channels.
- Penalties: Provisions if obligations are not met.
- Health and safety: To ensure compliance with all applicable laws and regulations, and to protect workers involved.
- Anti-bribery and corruption: Provisions by both parties to comply with all applicable laws and regulations, and to report any suspicious activities.
- Whistleblowing: To protect whistle blowers who report misconduct or illegal activities related to the project.

- Terms of termination: The length and duration of the contract and the circumstances that could result in one of the parties ending the relationship.

## Developing a Scope of Work

Developing a comprehensive scope of work is critical to the success of the pre-contract stage. Here are some key steps to help develop a clear and detailed scope of work before testing the market for vendor selection:

- Identify project goals including expected outcomes, timelines, and budget.
- Define the project requirements including the deliverables, expected quality standards, and any constraints.
- Develop a project plan outlining the specific activities, timelines, and resource requirements.
- Identify any factors that may impact the project, such as regulatory compliance or the availability of resources.
- Define the roles and responsibilities of all parties, including the vendor and any internal stakeholders.
- Develop a clear communication plan outlining the frequency and type of communication between parties.
- Identify key performance indicators used to measure the success of the project and ensure that they are included in the scope of work.

**Pitfalls to avoid:**

- Overlooking key requirements or dependencies can lead to delays or additional costs down the line.
- Being too rigid with the scope of work can lead to missed opportunities or failure to adapt to changing circumstances.

**Best practices:**

- Involve all relevant stakeholders in the development of the scope of work to ensure that all requirements and dependencies are identified.
- Continuously review and update the scope of work as the project progresses to ensure that it remains relevant and achievable.

## Pricing and payment mechanisms

The pricing and payment approach is central to the relationship between university customer and supplier. It should be considered right at the start of the preparation and planning phase, and informed by meaningful market engagement.

If procuring services from a framework, the terms agreed with suppliers on that framework should always be considered.

A useful starting point is considering whether the model should be one of the following:

- Time and Materials (T&M), where the supplier will charge the university customer for actual time worked, based on a pre-agreed rate card (typically day rates by consultant grade, which cover staff costs, other overheads, and profit)
- Fixed price, where the supplier will charge a set amount to deliver the services to the agreed specification/timeframe, regardless of actual time worked. Suppliers are typically able to provide a fixed price by estimating how long the work will take and adding some contingency.
- Payment by results, where the amount the supplier will charge varies by the outcome achieved, incentivising performance. Suppliers will typically charge a portion of their fees based on T&M or fixed price, with the remaining portion dependent on the results they deliver.
- This decision should be guided by the scope of the contract, notably the deliverables in the specification, and our understanding of the desired outcomes.

## How payments are made?

- Avoid advanced payments.
- Try and back load payments to the end of a project.
- Net 30 days

## Before Signing Checklist

**Administration – PECA system**

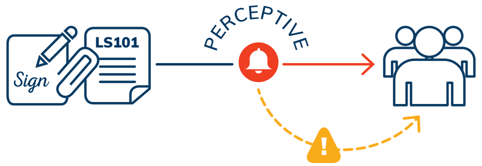
Perceptive Content is used to upload the signed contract, however the following requirements are needed in order to load a contract successfully:

1. Electronic copy of contract signed by all.
2. Location of original hard copy
3. Staff numbers of UCT signatories and person responsible for contract execution.
4. Names of external contractual parties
5. Purpose and type of contract
6. Short,concise description of contract
7. Financial information (value; currency)
8. Start and expiry dates
9. Renewal information
10. Contract number of related contract/s

## Process flow in Perceptive

The process flow in Perceptive is simple:

- The final, signed contract is submitted using the LS101 form.
- On submission all UCT parties indicated on the form receives a notification.
- Perceptive will send at least one expiry reminder to these parties, but there might also be additional reminders based on the options the capturer selected.




## CONTRACT BASICS CHECKLIST

*This is not everything to consider at the start of a project, but a basic minimum.*

1. Do you have a complete original of the contract signed by the other party?
2. Have you and the other party initialled any changes to a pre-printed form?
3. If there was a proposal and response, do you have a final agreement on what is included?
4. Are there any Addenda, "side" agreements or amending letters that need to be incorporated?
5. Have you reviewed any other documents referred to in the contract as being "incorporated by reference?" Exhibits, Riders, Attachments etc.
6. Are there any last-minute amendments to the Contract?
7. Have you included the same terms in contracts with subcontractors?
8. If manufacturer's warranties are called for, are they available from the manufacturer?
9. Do you have bonds, if needed?
10. Has Contract been qualified to meet bond limitations, e.g. warranties, alternates?
11. Do you have bonds from subcontractors?
12. Have you sent the insurance requirements to Insurance/Risk Management for review.
13. Do you need a special insurance certificate?
14. Do you have an insurance certificate from each subcontractor?
15. Do you know what payment requests are needed?
16. Do you know what the time limits are for claims, changes, and time extensions?
17. Are their BBBEE requirements?
18. Have you read the document you are signing?
19. Have you sent this contract to Legal for review?