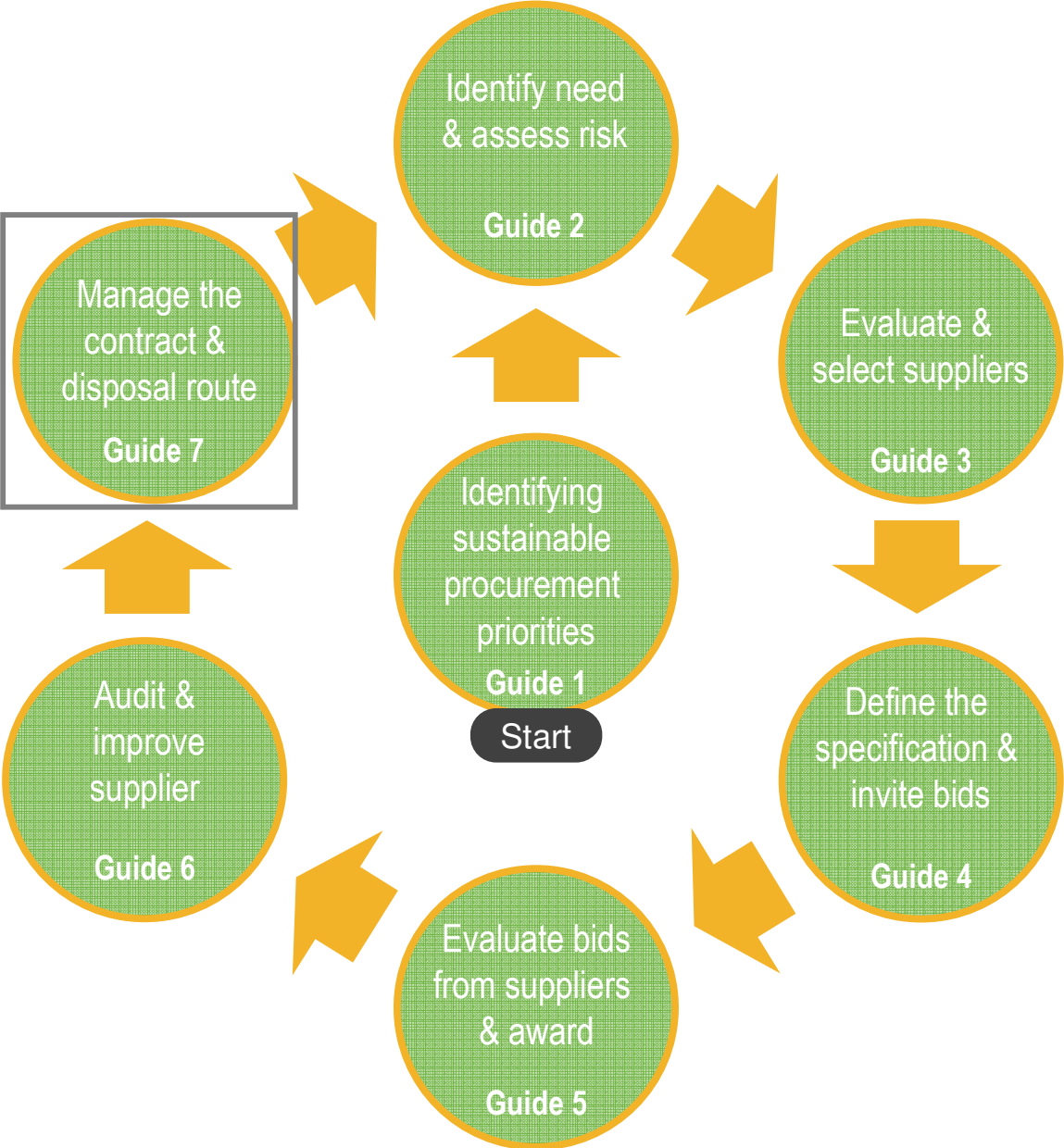




# Guide 7 to Sustainable Procurement

## Manage the contract and disposal route

This guide is part of a series of documents focussed on 'Integrating Sustainable Procurement into Practice'. This material was developed by Sustainable Procurement Limited for the United Nations Marrakech Taskforce for Sustainable Procurement of which the New Zealand government is a member. The series is based around a typical procurement process with a guide for each relevant stage as identified below:



Please see the separate guidance notes referenced for other stages of the procurement process.

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# TO WHAT EXTENT DOES YOUR AGENCY CONTINUE TO MANAGE CONTRACTS AFTER THEY HAVE BEEN AWARDED?

## Background

This guidance document details the key issues involved in contract management and the setting of supplier performance criteria. In particular, it details the common principles involved in contract management and how sustainability issues can be integrated into a contract management approach.

Whilst referencing inter-linked procurement stages, this guide focuses on contract management to manage sustainability impacts. This is primarily informed through a sustainability risk assessment and by the specification set for the particular contract need. See Guide 2 *Identify Need and Assess Risk* and Guide 4 *Define the Specification and Invite Bids*. Sustainability risks that are best managed by on-going supplier performance criteria applied after the contract has been awarded are illustrated as well as the principles of motivating the supplier to deliver continuous improvement over the life of the contract.

### Why is this Important?

Except for very routine procurements all contracts will need to be managed, mainly to ensure that the supplier keeps to the commitments they made in their bid. The supplier and procurer have legal contractual obligations, effective contract management ensures that commitments are met and that any problems are managed and dealt with quickly. From a sustainability perspective, contract management ensures suppliers meet their sustainability commitments, but also creates a mechanism to improve performance through use of performance indicators. If practiced successfully, procurers will be able to show continuous improvement and demonstrate successful delivery of sustainable procurement to all stakeholders.

### How to use this Guide

The guide is structured by subject, so it can either be read fully in order to obtain a complete overview of the issues in bid evaluation or the reader can jump to a specific subject area (see above). However, the guide does follow a logical order so it is recommended to start at the beginning and work through to avoid any confusion.

## Introduction

Having awarded the contract to the successful supplier it is important that the contract is managed to ensure that the supplier meets the commitments they gave in their bid proposal. Effective contract management is particularly important for longer-term contracts where the buying and supplying organisations will be working together for many years. Unfortunately contract management is an area of procurement that is often neglected and can lead to frustration for all parties. As with other guidance, the approach to contract management can be linked again to the category of the contract on the sustainable procurement matrix:

Critical contracts	-	High Value and High Sustainability Risk
Secure contracts	-	Low Value, but High Sustainability Risk
Drive contracts	-	High Value, but Low Sustainability Risk
Acquisition contracts	-	Low Value and Low Sustainability Risk

Whilst all contracts need to be managed, it is particularly important for high-risk contracts as the items being supplied have high sustainability impacts and are often essential purchases for the

buying agency. A key issue is ensuring that suppliers of “secure” items (low value, but high sustainability risk) are closely managed as the value of the business is relatively low so the supplier will need to be motivated by other factors to ensure a successful service.

Contract management normally begins with a face-to-face contract commencement meeting with the supplier. Thereafter, the way in which the supplier is managed (review meetings, progress reports etc) is influenced by the nature of the contract. Milestones should be established and reviewed, and performance assessed against pre-agreed performance measures. The performance criteria used to manage the contract will have been determined at the risk assessment and contract strategy stage. See Guide 2 Identify Need and Assess Risk.

Additionally, when determining the approach to contract management, it is suggested that procurers consider:

- The launch of the contract within the organisation
- Information for contract users
- Administration of the contract within any IT system
- The management of day to day queries
- The frequency of review meetings with internal users
- The frequency of review meetings with suppliers
- The documentation required for review meetings
- The Key Performance Indicators required for the contract
- Any risk/ reward mechanisms for the supplier based on performance

### Key contract management principles

- Keep a file for each contract with the original documents and all correspondence, plans, charts, calculations and anything else that passes between you and the supplier, or other involved parties.
- Keep a written log of all significant events that occur during the contract, at the time they occur. Note what happens, who was involved, why and any perceived cost implications. The importance of this information in time and trouble cannot be overestimated.
- Any instruction to the contractor must be in writing, dated and sequentially numbered.
- Do all that you can to keep changes to the basic contract to a minimum.
- You have contractual obligations under law as well as the supplier. Know what they are and make sure that you carry them out.
- Don't let a situation drift. Problems rarely solve themselves, but usually get worse and before you know it, particularly if the supplier has a claim for extra cost.
- If you have a contractual problem, don't keep things to yourself, seek advice and support.
- Don't let the suppliers' problems become your problems.
- The law of contract is usually commercial law and carries commercial penalties if you get it wrong. This usually involves extra costs and perhaps some embarrassing explanations.
- Don't accept less than the contract calls for in the interests of expediency. The contractor has costed for the whole contract. Your organisation is paying for the whole contract, make sure you get it.

- Take as much care in finishing a contract as you did in starting it. Contracts are a legal process that should not be left to chance.
- Remember you are spending tax-payers money, spend it wisely, sustainably and challenge everything.

## Determining the sustainability issues for contract management review

The sustainability issues that need to be examined as part of contract management are a function of the risks identified in the contract. When a contract is first being planned risks should be identified and documented. See Guide 2 Identify Need and Assess Risk. Example risks may include:

- High CO2 emissions due to poor energy efficiency/ travel management
- Supplier sub-contracts the work to an organisation with poor sustainability credentials
- Suppliers staff are not properly trained in the sustainability issues associated with this contract
- Unsustainable materials in the product
- Employees exploited by supplier
- Reputation damage to the organisation through poor sustainability practices by supplier etc

The risks identified then need to be managed, there are five options available:

- |           |   |
|-----------|---|
| Option 1: | The risk cannot be managed and is therefore not addressed (these risks need to be closely monitored)  |
| Option 2: | The risk is managed by the choice of supplier   |
| Option 3: | The risk can be addressed in the specification  |
| Option 4: | The supplier needs to provide proposals on their approach, so the requisitioner can evaluate how they propose to manage the risk              |
| Option 5: | The risk is managed either by targets to be delivered once the contract has been awarded or generally as part of contract management activity |

Each contract will typically employ a range of these management options. For risks that can only be managed by option 5, (targets to be delivered once the contract has been awarded or generally as part of contract management activity) a set of performance measures and a contract management approach needs to be determined. The measures used in contract management should relate directly back to the risk assessment undertaken at the start of the contract, the clauses/questions asked in the specification supplemented by any additional commitments made by the supplier in negotiation.

As highlighted in Guide 4 Define the Specification and Invite Bids B10, sustainability criteria can be applied at all stages of the procurement process. As an example, see below sustainability criteria to manage carbon-dioxide/particulate emissions from travel in a computer services contract. Pay particular attention to the way the criteria become more specific and more difficult between supplier selection and specification. Also note that the bid evaluation criteria highlighted have a direct link to clauses/questions in the specification. Similarly, contract management criteria also link back to both specification and bid evaluation criteria and provide the method by which compliance is monitored and continuous improvement encouraged.

**Table 1 – Example of possible sustainability criteria to manage Carbon-dioxide/ particulate emissions from travel associated with providing an IT Service**

Procurement Stage	Possible Sustainability Criteria/ Actions
<b>Supplier Selection</b>	<ul style="list-style-type: none"> <li>• Ensure service provider has a sustainable travel policy and has experience of sustainable travel planning &amp; control</li> </ul>
<b>Specification</b>	<ul style="list-style-type: none"> <li>• Set a target number of miles to be travelled to support this contract with yr on yr reduction targets, say 4,000 (if it is not feasible supplier will voice concerns in their proposals, negotiate total figure)</li> <li>• Supplier to produce a sustainable travel plan to minimise miles travelled by car and plane (should reflect principles below) and reduce carbon emissions from its vehicles</li> <li>• Require use of telephone conferencing/ VC conferencing wherever possible, all journeys must have a justification and be reported quarterly for review etc</li> <li>• Require train/ public transport where feasible, ask supplier how they will incentivise this with their employees</li> <li>• Ban use of domestic flights for journeys that can be undertaken in less than 5 hours by train</li> <li>• Proposals to reduce car/plane travel</li> <li>• Any proposals to carbon off set travel, by whom and to what level</li> </ul>
<b>Bid Evaluation</b>	<ul style="list-style-type: none"> <li>• Positive response to issues in specification (yes/no)</li> <li>• Robustness of sustainable travel plan</li> <li>• Incentives for low emission vehicles either as lease cars or through mileage rates or other staff incentivisation</li> <li>• Targets to reduce car/plane mileage beyond those in the specification</li> <li>• % target for carbon off set, value of fund, robustness of carbon off set fund/ mechanism proposed. 100% gets a maximum score.</li> </ul>
<b>Contract management</b>	<ul style="list-style-type: none"> <li>• Reduction in miles travelled to deliver and support the contract</li> <li>• Reduction in carbon emissions from transport</li> <li>• Continuous improvement against the sustainable travel plan, with financial incentives for the supplier</li> <li>• % carbon off set against miles travelled against the target agreed</li> <li>• Financial penalties for non-essential/ unjustified journeys when phone conferencing/ video conferencing could have been used</li> </ul>

See Appendix 1 for a detailed sustainability risk assessment document showing sustainability criteria and specifically the contract management criteria. This appendix shows the range of sustainability criteria that can be applied and clearly demonstrates how criteria build-up through the procurement process.

When considering contract management targets it suggested that procurers categorise performance criteria as follows:

- Essential** - Mandatory performance criteria which a supplier must meet. These will usually have serious consequences for the supplier if they fail, possibly even termination of the contract.

<b>Preferred</b> -	If the supplier fails these, it does not necessarily have major consequences, but is indicative of a lack of commitment to sustainability principles.
<b>Leading</b> -	Limit these to as few issues as possible. These issues will really differentiate suppliers' performance and separate the exceptional suppliers from the ordinary. These targets are usually difficult to achieve and are often linked to some form of bonus payment for a supplier.

By categorising measures, procurers are in effect setting the boundaries by which the suppliers overall performance will be judged. This gives a very clear structure and allows decisions to be made about a suppliers continued use within an organisation depending on their performance.

### Example performance measures

A key element of effective contract management is the application of performance measures to assess the suppliers' performance in the contract. This ensures that contract management is robust, systematic and has measures to show success and failure. The example below details possible performance measures that could be applied to key sustainability risks in a contract. The measures below could be applied and adapted for a number of contracts, but were specifically developed for a computer hardware and support service contract.

**Table 2 – Example of contract measures**

Sustainability Theme	Contract management/ performance measure
Carbon dioxide and particulate emissions from travel	<ul style="list-style-type: none"> <li>Reduction in miles travelled to deliver and support the contract</li> <li>Reduction in carbon emissions from transport</li> <li>Continuous improvement against the sustainable travel plan</li> <li>% carbon off set against miles travelled</li> </ul>
Non-renewable resource use and associated waste of spare parts / consumables and packaging waste	<ul style="list-style-type: none"> <li>Continuous improvement in re-use of spares/ consumables</li> <li>Reduction in consumable use</li> <li>Reduced waste to landfill</li> </ul>
Energy use Non-renewable resource use to create electricity and associated carbon dioxide emissions	<ul style="list-style-type: none"> <li>Reduction in power consumption</li> <li>Overall increase in use of renewable energy</li> </ul>
Supplier organisational commitment to and management of its sustainability impacts	<ul style="list-style-type: none"> <li>Year on year update of impacts and action planning</li> <li>Achievement of sustainability targets</li> <li>Delivery of sustainable procurement</li> </ul>
Management of electronic waste – specifically old desk tops, lap tops, mfd's, servers and other hardware	<ul style="list-style-type: none"> <li>Time from de-installation to waste disposal, reducing target</li> <li>% electronic waste to landfill, reducing target</li> </ul>
Use of chemicals	<ul style="list-style-type: none"> <li>Periodic check of any chemicals being used</li> <li>Maintenance of COSHH sheets</li> </ul>
Delivery of agency corporate sustainability targets	<ul style="list-style-type: none"> <li>KPI's linked to delivery against our targets, but covered elsewhere specifically in this document</li> </ul>

Sustainability Theme	Contract management/ performance measure
Sustainability competency of supplier staff on environment agency premises	<ul style="list-style-type: none"> <li>Contract compliance (note there are links to any</li> <li>Monitoring of compliance with diversity targets,</li> </ul>
Suppliers employees are exploited	<ul style="list-style-type: none"> <li>Records maintained that demonstrate compliance with minimum social standards e.g. wage, hours, unionisation etc</li> <li></li> </ul>
Sub contractors must equally deliver on sustainability	<ul style="list-style-type: none"> <li>KPI's on sub-contractor performance</li> </ul>
Sub contractors in the developing world are exploited	<ul style="list-style-type: none"> <li>As above</li> </ul>
Supply base diversification	<ul style="list-style-type: none"> <li>Monitoring of compliance with diversity targets, but do not link to incentives</li> </ul>
Compliance with sustainability legislation	<ul style="list-style-type: none"> <li>Records of any legal investigations/ prosecutions by legal authorities e.g. environment infractions</li> </ul>
Eco-label to manage main environmental impacts of hardware selection	<ul style="list-style-type: none"> <li>KPI linked to Eco-label e.g. Cat A purchasing of Energy star hardware and % overall against a eco-label</li> </ul>
Carbon dioxide emissions from hardware logistic distribution	<ul style="list-style-type: none"> <li>Year on year improvement</li> <li>See earlier section on mileage targets</li> </ul>
Power consumption of hardware both on and off site (hosted services)	<ul style="list-style-type: none"> <li>Reduction in power consumption</li> <li>Overall increase in use of renewable energy</li> </ul>
Non renewable resources used in hardware	<ul style="list-style-type: none"> <li>Continuous improvement in re-use of hardware</li> <li>Reduction in hardware use</li> <li>Reduced waste to landfill</li> </ul>
DISABLED USER ACCESSIBILITY	<ul style="list-style-type: none"> <li>100% compliance in provision of equipment to facilitate use by disable users</li> <li></li> </ul>
Asset management / replacement strategy that minimises consumption	<ul style="list-style-type: none"> <li>% Reduction in equipment consumption</li> <li>% Amount of equipment re-deployed for re-use</li> </ul>

For each contract it is necessary to determine the sustainability risks, identify how the risks are best managed and for those that need on-going management develop specific performance management criteria. Supplier performance against these specific criteria are then reviewed as part of the contract management process. Giving a much more meaningful approach to contract management than just a general discussion about performance. Sustainability measures such as those highlighted above are also useful in demonstrating the sustainable procurement improvement being delivered.

## Risk and reward mechanisms

An option to increase a suppliers' motivation to improve sustainability performance during a contract is to use a risk/ reward mechanism. Effectively, agreeing a financial penalty and/or financial bonus payment based on the suppliers' performance. A good way to start this is to ask the supplier in their proposals for the measures they would like to be measured against and the amount of their fee they are willing to put at risk based on their performance. It is then a case of the procurer negotiating the measures to ensure they are robust and the level of fee at risk.

Procurers may seek to add additional measurement criteria or give tougher targets for which the supplier receives a bonus payment. This can be self-funding in areas such as energy efficiency etc where there is a reduced cost to the client. Another option is to link contract extensions to

performance, suppliers usually want to retain a clients business so linking performance against measures is another method of increasing a suppliers' motivation.

Procurers need to ensure that suppliers targeted for this approach, actually value their business, otherwise it will be difficult to improve performance. To check this an assessment of the suppliers view of you as a client should have been undertaken. See Guide 2 *Identify Need and Assess Risk*.

## Links to supply chain management (back to back contracts)

Many of the sustainability impacts present in a contract will actually be further down the supply chain<sup>1</sup>, with the suppliers' suppliers' and so forth. Of key importance is how the supplier you are contracting with actually deals with their suppliers and so on. This also has implications for contract management as it will be necessary to ensure that your supplier is applying similar criteria to their suppliers down the supply chain. Procurers therefore need to ensure that back-to-back contracts are in place between the main supplier and any sub-contractors/ suppliers they may have involved in delivering your contract. This is simply achieved by requiring suppliers to adopt back-to-back contracts, using the precise terms and measures agreed with you as the same contract with their subcontractors and suppliers. This approach should ensure that sustainability commitments made in the contract are applied down the supply chain.

It must however be recognised that back-to-back contracts are only usually used for higher risk/ value contracts as they are often not popular with suppliers. So their use should be considered carefully and only applied in higher risk/ value contracts where there are concerns about sustainability beyond the main supplier down the supply chain. If this approach is taken it will be necessary to add additional performance measures into the contract so that the supplier reports on their suppliers' performance also.

## Summary

Effective contract management and the setting of sustainability criteria will support sustainability improvement. Performance management criteria are essential to this as they provide the measures by which the suppliers' progress will be judged. It can however, be quite challenging to determine these criteria, but the risk assessment undertaken at the start of the contract will inform this. Suppliers may be resistant to these targets, so early engagement is essential. Suppliers should be asked for their measurement proposals and these can then be used as part of bid evaluation as a indication of their commitment to improved sustainability. These initial proposals can then also form the basis of negotiation to agree specific targets.

Procurers also need to consider the consequences of suppliers performance, will rewards be given for improved performance and/or a contract extension and will penalties be payable if the supplier fails. If risk and reward mechanisms are being used procurers will need to ensure that the criteria are measurable and fair, but also tough enough that suppliers are only rewarded for improved/exceptional performance.

Contract management requires long-term commitment and time to build the working relationship between the procurer and supplier and is often neglected by many organisations. If an organisation is to truly deliver sustainable procurement it must ensure that its suppliers deliver the sustainability commitments made, improve performance and that results are measurable. This will ensure that the procuring organisation can show sustainability improvement and demonstrate its true commitment to sustainable procurement.

<sup>1</sup> A **supply chain**, **logistics** network, or supply network is a coordinated system of organisations, people, activities, information and resources involved in moving a product or service in **physical** or **virtual** manner from **supplier** to **customer**. Supply chain activities (aka **value chains** or **life cycle processes**) transform **raw materials** and components into a finished product that is delivered to the end customer. Referenced - © Wikipedia 2007.