Contract management guide

Appendices

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Appendix A: Contract documents in a typical *Partnerships Victoria* project

|  |  |  |
| --- | --- | --- |
| Document | Parties | Purpose |
| Project deed or project agreement (may be named ‘concession deed’ or similar) | * Government party
* Private party
 | The core project contract and schedules, setting out the terms on which the private party provides the contracted services to the government party |
| Real property lease/licence (may be named ‘ground lease’ or similar) | * Government party
* Private party
 | Provides the private party with access to government party property on which project facilities are located |
| Construction contract | * Private party
* Construction contractor
 | The document in which the private party’s construction obligations under the project deed are subcontracted to the construction contractor |
| Operating agreement (for a full service PPP) | * Private party
* Operator
 | The document in which the private party’s service delivery obligations under the project deed are subcontracted to the operator |
| Facilities management agreement | * Private party
* Facilities management contractor
 | The document in which the private party’s facilities management obligations under the project deed are subcontracted to the facilities management contractor |
| Loan agreement | * Private party
* Lenders
 | The document in which the lenders provide debt finance to the private party |
| Security documents | * Private party
* Lenders
 | Documents providing the lenders with security for the debt finance provided to the private party |
| Completion guarantee | * Sponsors
* Lenders
 | Guarantees the completion of construction of the facility |
| State security agreement | * Private party
* Government party
 | Provides the government party with security to support the exercise of step-in rights |
| Finance direct deed (also known as a tripartite agreement) | * Private party
* Lenders
* Government party
 | Regulates the exercise of cure rights and step-in rights by the lenders and the government party |
| Subscription agreement (may be known as a ‘shareholders’ agreement’ or similar) | * Sponsors/private party’s parent company
* Private party
 | The document in which the sponsors or the private party’s parent company provide equity finance to the private party |
| Insurance policies | * Private party
* Insurers
 | Policies insuring the private party against specified risks |
| Management services agreement (if applicable) | * Private party
* Management services contractor
 | The document in which the private party subcontracts its project management obligations |

Appendix B: Methodology for preparing the contract administration manual

(Refer to Chapter 6 and Template B of the *Partnerships Victoria* Contract management guide for additional information)

A proposed structure and methodology to prepare the contract administration manual is set out below. The structure is aligned with Template B of the *Partnerships Victoria* Contract management guide.

At the beginning of each part of this methodology, a shaded box contains an overview of what should be included in that part of the contract administration manual.

Part A: Preliminary details

It is important to set out the scope and purpose of the contract administration manual and provide context to the project, up to the beginning of the service delivery stage. Unlike other parts of the manual, which should be reviewed and updated regularly, Part A: Preliminary details provides historical context for the project.

* + 1. Glossary (optional)

For some projects, particularly those where there is significant use of project-specific technical language, inclusion of a glossary of project-specific terms may be warranted.

* + 1. Introduction
			1. Purpose and scope of the manual

Identify the purpose and scope of the contract administration manual and its link with other contract management documents. The contract administration manual must be ready for use during the service delivery phase.

* + - 1. Responsibility for developing the manual

The contract director is usually responsible for developing the contract administration manual. This appendix assumes that to be the case. In developing the manual, the contract director should:

* + - determine information needing to be gathered;
		- identify the best sources of this information;
		- allocate responsibility for information collection;
		- coordinate and allocate drafting responsibility for relevant sections of the manual;
		- list information sources used to develop the contract administration manual;
		- determine which risk and contingency management tools and processes need to be developed, implemented and included in the contract administration manual;
		- liaise with external parties including: other contract directors; other members of departmental / agency PPP contract management teams; and DTF to peer review the contract administration manual; and
		- allocate version control responsibility for the contract administration manual.
		1. The project and its status
			1. Summary of the deal

It is important the contract director understand both the contract and the environment in which the contract needs to be managed (refer Chapter 1 of the *Partnerships Victoria* Contract management guide). To develop this understanding, the contract director should document a concise summary of:

* + - the parties to the contract;
		- the financial, legal, commercial and organisational structure of the project;
		- the roles of each project party and their interfaces with the government party;
		- the service delivery requirements to meet the project output specifications;
		- any related commercial developments;
		- the key rights and obligations of the government party or other government party agencies;
		- the key rights and obligations of the private party;
		- the broad contractual allocation of project risk and mechanisms by which the private party may transfer risk to third parties (including contractual indemnities, insurance, financial guarantees);
		- mechanisms, procedures and remedies for poor or non-performance and default under the contract; and
		- critical actions/events under the contract or that may impact on project delivery.
			1. Parties to the contract

This section of the contract administration manual should identify, in more detail, the parties to the contract. This includes identification of individual members of various project parties (including nominated key people) during each project phase, their roles, contact details and organisational charts for each party. It should also outline the intention, objectives and philosophy of each project party.

Identifying the parties to the contract should be straightforward. The more complex task is to consider whether any party has any special characteristics, history of dealing, or pre-existing relationships which may impact upon the management of the contract. For example, if the government party is not the Crown but a statutory authority, the contract director may need to consider whether any special authority, coordination or any other issues arise from this status.

If the contract director identifies any special characteristics, history or pre-existing relationships relevant to the practical steps needed to manage the contract, these matters need to be incorporated into the contract administration manual.

* + - 1. History of the project to date

Provide a brief project background, outlining any key matters during the project to date that the contract management team need to know to manage the contract. This may include details of contractual amendments during the construction stage or any significant disputes that may be in progress or have been resolved.

* + - 1. Key dates

This section of the contract administration manual should identify key dates listed in the project deed and other relevant project contracts, including repricing dates for reviewable services, refinancing dates and end of term activity dates.

* + - 1. Unresolved issues at commercial acceptance

Issues unresolved at commercial acceptance should be identified. The contract administration manual contains risk mitigations and risk controls to resolve issues, including those outstanding at commercial acceptance. An issues log is a useful tool to manage unresolved issues. A template issues log is provided in Template F of the *Partnerships Victoria* Contract management guide.

Identifying and carefully managing unresolved issues is discussed in chapters 4 - 6 of the *Partnerships Victoria* Contract management guide. Once contract directors have identified and considered any unresolved matters, they should:

* + - determine the likely consequences of unresolved matters;
		- incorporate the unresolved matters into the risk analysis; and
		- develop, as part of the contingency plans, strategies to mitigate the risks arising from matters not resolved by the contract.
		1. The project in the context of the broader service delivery framework
			1. Role of the project within the broader government service delivery framework

The services delivered through the contractual arrangement with the private party (under a full-service PPP) or those delivered by the government party using assets built and maintained by the private party (under an availability PPP), will usually form one component of a broader network of services. For instance, the services provided through one *Partnerships Victoria* prison form part of the broader network of correctional services provided by the State.

It is important that the contract management team appreciate the role of the project within the broader service delivery network. *Partnership Victoria* projects are long-term contracts and inevitably the level and form of services provided by the State will change during the contract term which may lead to State-initiated modifications.

Including a broader service delivery chart accompanied by a brief description of the role of the *Partnership Victoria* project within that network is recommended. The service delivery chart will need to be updated from time to time. A link to a government party’s medium term service delivery plan may be a useful reference.

The services provided directly or indirectly through the *Partnership Victoria* projects will also form part of a specific portfolio output whose quarterly achievement is directly linked to the release of budgetary funds by the Department of Treasury and Finance (DTF), under the Victorian Government’s output funding model. We recommend including the relevant annual output service key performance indicators and the contribution by the project each year.

The Government party will also have an Asset Management Plan in accordance with the Asset Management Accountability Framework (AMAF) which can be a useful strategic reference. The purpose of the AMAF is to assist government parties manage their asset portfolios and provide better services for Victorians. The AMAF allows public sector bodies to manage their assets in a manner that is consistent with government requirements, their own specific operational circumstances and the nature of their asset base. The AMAF details mandatory asset management requirements as well as general guidance for agencies responsible for managing assets

* + - 1. Stakeholders and communication arrangements

The contract administration manual should address the project’s stakeholder and communications arrangements. A useful starting point is to review the stakeholder management plan, which is developed to identify and manage different stakeholder groups interested in the services provided by or through a *Partnership Victoria* project. The stakeholder management plan will identify a list of interested stakeholders and any existing and/or proposed communication arrangements.

Stakeholder communications arrangements are generally established during the procurement phase. As such, the contract management team will need to review the existing stakeholder management plan, in order to understand:

* + - who the stakeholder groups are;
		- why they are interested in a project; and
		- what communication arrangements have been established.

These arrangements may need to be modified to ensure they are appropriate during the construction and/or service delivery phases.

For example, for a water sector project, water users will be interested in water quality levels. In relationship to a PPP prison, other network service providers are likely to be interested in the prison’s service outcomes. In some cases, there may be a need for regular or irregular public communications.

Part B: Governance and resourcing

This part of the contract administration manual should outline the resourcing allocation that has been made for contract management and the internal government party project governance and reporting arrangements.

* + 1. Performance of the government party's role
			1. Contract management team

Issues of relevance to the resourcing of contract administration for *Partnerships Victoria* projects are discussed in Chapter 3 of the *Partnerships Victoria* Contract management guide. The contract administration manual should identify staffing positions allocated to manage the contract and the relevant roles and responsibilities of each position. This can be done by developing position descriptions for each role in the contract management team and ensuring that those position descriptions together allocate responsibility for all tasks to the contract management team. The position descriptions should be included in the contract administration manual.

The team needs a mix of skills to cover the range of tasks and sufficient flexibility to be able to respond to time-critical or material risks that may arise over the project lifecycle. Succession planning arrangements also should be addressed.

* + - 1. Operational budget

The source, amount and purpose of funding for contract management arrangements should be set out in the contract administration manual. Usually contract management funding is provided via a budget allocation that is comprised of a number of specific items. The contract administration manual should set out the details of the budgetary allocation which usually include items such as staffing, operations, consultancy, capital (if required) and the period for each specific budgetary allocation.

Where a *Partnership Victoria* project is being managed within a broader departmental PPP contract management unit, specific budgetary allocations for each project should be articulated. If the project being managed within a larger budgetary allocation ‘pool’, the internal allowance for the specific project allocation should be set out.

* + - 1. Governance arrangements

The State’s project governance arrangements for managing a *Partnership Victoria* project needs to be set out in the contract administration manual. Details of the decision-making authorities and responsibilities should be clearly articulated. Ideally, this would include a project governance structure or chart that clearly shows the arrangements and any relevant inter-linkages.

* + - 1. Delegations/authority

Issues of relevance to authority of staff involved in contract administration for *Partnerships Victoria* projects are discussed in Chapter 3 of the *Partnerships Victoria* Contract management guide. This section of the contract administration manual should outline the levels of delegation and actions that have been taken or will be taken to ensure that contract management staff have the appropriate level of authority to carry out their responsibilities.

Once these matters have been investigated, the contract director should develop procedures for inclusion in the contract administration manual relating to the authority and delegations in place to manage the contract. Usually, the contract director will develop a delegations register, and include maintenance of the register as a responsibility listed in the position description of a specific contract management team member.

* + - 1. Internal reporting

Internal government party reporting arrangements should be clearly set out. In many respects, there will be a clear link with project governance arrangements. The contract administration manual should identify the range of internal reporting arrangements, responsibilities for their preparation, their regularity and scope of coverage. Internal reporting is likely to occur in line with periodic (monthly or quarterly) private party invoices for payment, and annually on a range of broader matters.

The internal reporting arrangements include those relating to other government party agencies who have been delegated contract management responsibilities and also to the *Partnership Victoria* group within the DTF. Guidance on developing reporting arrangements is contained in Appendix C of the *Partnerships Victoria* Contract management guide.

The contract director should work with the senior responsible owner (SRO) to develop appropriate internal reporting arrangements that support their responsibility and accountability for the project. These arrangements will also need to have regard to financial delegations under the *Financial Management Act 1994*.

* + - 1. Knowledge management tools

The contract administration manual should outline the range of knowledge management tools to be used to manage the contract. Knowledge management tools and record keeping are discussed in Chapter 7 of the *Partnerships Victoria* Contract management guide. These tools include a range of registers, policies, protocols, guidelines and procedures used to manage the contract. These tools will need to be updated in order to reflect the project lifecycle phase.

As knowledge management tools are a key input into the contract management function, a useful starting point is to leverage existing government party policies, protocols, guidelines and procedures for managing project information, records and documents. This approach will also ensure consistent contract management information processes are used across government.

In addition the contract administration manual should document any specific contractual arrangements related to the use of proprietary knowledge management tools.

It is critical to have a list of key documents and copies of up to date versions of each document. Over the life of the project, there will be many updates to documents such as the financial model, risk registers, and asset registers.

Part C: Contract management strategy and framework

This part of the contract administration manual should identify the government party’s contract management strategy and framework for its implementation.

* + 1. Contract management strategy
			1. Approach to managing the contract

The contract administration manual should include a high-level strategy that will guide the government party’s management of the contract, including its inter-relationships with the private party. It can be useful to articulate a list of principles or an outline of the needs and key drivers of the parties. This section may refer to the importance of effective change management over the lifecycle of the project.

* + - 1. Key relationships and forums for communication

The strategy will articulate the nature and parameters of the relationships (including method and timing of communications) between the government party and the private party.

Key methods of communications can be listed such as Project Notes, formal Notices, formal Project Control Group, as well as informal methods of communication

* + 1. Dispute resolution
			1. Contractual provisions and their implementation

The project deed and other relevant project contracts outline the mechanisms for managing issues, resolving disputes and document the remedies open to the parties under the contract. The manual can usefully include an outline of the role and details of the joint government party and private party committees, such as the Project Control Group or Senior Representatives Group. The manual may include steps to reach a commercial agreement or using expert parties for resolving disputes.

* + - 1. Actions to date and lessons learnt

As a living document this section of the manual should provide a list of major disputes that have occurred to date, the details of what occurred and outcomes of these disputes. It should also provide a summary of lessons learnt from past issues management and dispute resolution, to assist contract managers prepare for and manage future events.

Tracking these disputes will benefit subsequent contract managers and can be used more broadly as an input into future *Partnerships Victoria* project deeds.

* + 1. Risk analysis
			1. Risk register and its review and update

A project risk register is usually established by the procurement team during earlier stages of the project. It is incumbent upon the contract management team to review the risk register upon transfer of contract management responsibilities, prior to the service delivery phase and to update the projects list of risks, their relative importance and any mitigation that have been used to manage each risk.

The risk register should be reviewed regularly and fully updated on an annual basis. Its use should be integrated with the government party’s broader risk management framework.

* + - 1. Issue escalation to other government agencies/entities

This section of the contract administration manual should outline the actions that will be taken should it be necessary to inform or involve other the government party agencies/entities in responding to the occurrence of a critical risk event.

If certain critical risks eventuate it may be necessary to inform or involve other government party entities such as the DTF or the Department of Premier and Cabinet. To facilitate this process the contract director should:

* + - understand the government party’s broader risk management framework;
		- identify the requirements of other the government party agencies; and
		- unless the necessary mechanisms and triggers already exist in the government party’s broader risk management framework –
	+ incorporate into the contract administration manual mechanisms for meeting the reporting requirements of these entities as to the management or status of critical risks;
	+ incorporate into the contingency management framework within the contract administration manual any relevant ‘triggers’ or ‘thresholds’ which should cause the matter to be referred to the other relevant the government party entity.

Generally, the DTF’s interest lies in two areas:

* + - impacts, or potential impacts, on the State Budget (funding and output targets). This includes the risks associated with potential breaches of project agreement, litigation, price and failure to achieve project objectives; and
		- changes to the contractual arrangements between the private party (or other consortium members) and the government party, and changes to any contract management agreements between the government party and other public sector entities.
			1. Contingency framework

The contingency management framework should be included in the contract administration manual. This should cover service interruption response planning, step-in planning and default planning. Where a specific contingency plan exists as a separate document and has ongoing relevance, an up-to-date copy of that document should be included as an appendix to the contract administration manual. The business continuity plan may either be project specific or broader across a range of government party assets.

Part D: Contract obligations and management processes

This part of the contract administration manual should include a listing of contractual and non-contractual obligations, and specify the actions to be taken – including coordination with other public sector parties – to ensure that these obligations are met.

* + 1. Obligations of the government party
			1. Key activities and obligations

The role of the contract administration manual in enabling the government party to meet its obligations is explained in chapter 6 of the *Partnerships Victoria* Contract management guide. To ensure the manual fulfils this role, the contract director should:

* + - review the contract and identify –
			* the obligations on the government party;
			* the timeframes in which these obligations must be undertaken;
			* whether the obligation must be undertaken once only, is recurrent, or only arises if a specific incident occurs;
		- identify who is able to deliver the obligations of the government party under the contract and who is contractually required to deliver the obligations;
		- identify the role that other government agencies or entities may have in influencing the ability of the responsible person or organisation to deliver the government party’s contractual obligations;
		- identify any other government party projects, activities or responsibilities (including statutory functions) which may impinge on the ability of either the government party or the private party to meet its obligations under the contract;
		- identify any processes which must be undertaken as a pre-condition to fulfilling the obligations of the government party or the private party (for example, the obligations of the private party may only arise after planning approval for a project has been procured by the private party, on the basis of the physical project as specified by the private party and agreed with the government party);
		- consider the extent to which the government party can expedite or otherwise facilitate these processes; and
		- consider the resources necessary to undertake these obligations.

Once the contract director has gathered information relating to the obligations of the government party under the contract, they should include in the contract administration manual actions required to ensure that the government party’s obligations are met. The nature of these actions will be different for different categories of obligations:

* + - for obligations that must be performed in the short to medium term, or that must be performed on a regular basis, the contract administration manual should document how and when the obligation will be performed. For example, in the specific case where the government party is obliged to provide raw water within specific quality parameters for a water treatment project, this could be incorporated as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Obligation/Issue/ Risk | Who? | What? | When? | How? |
| Government to provide raw water for the project | Contract director | Confirm that all input water required for the project is tested and arrangements have been put in place to ensure that it meets quality parameters | By [date/time](**occurrence**: ongoing) | Liaise with [ ]; etc. |

* + - for obligations that must be performed at some known or predictable time beyond the short to medium term, the contract administration manual should document when planning to perform the obligations should commence. The regular reviews of the contract administration manual (see section 16 below) should then identify when this obligation has moved into the medium term, and more detailed planning should then begin. For example, if the contract allows the government party to reprice reviewable services at five-year intervals, the initial contract administration manual should identify that planning for the reviewable services process should commence early in the fourth year.
		- obligations that only need be performed if some unpredictable future event occurs should be dealt with through the contingency arrangements (see section 8.3 above).

Risks that arise from the government party not fulfilling its contractual and implied obligations should be analysed as described in section 8 of this methodology.

Government’s possible implied obligations are discussed in chapter 2 of the *Partnerships Victoria* Contract management guide. The contract administration manual should include actions required to ensure that the government party’s implied obligations, as well as its express contractual obligations, are met.

* + - 1. Other relevant public sector parties/persons

The need to coordinate actions of other public sector entities is discussed in chapter 3 of the *Partnerships Victoria* Contract management guide. To prepare for coordinating the actions of other public sector entities, the contract director should:

* + - identify which public sector entities/officers, other than the government party, have a role in delivering the obligations of the government party under the contract; and
		- consider the best means of coordinating and/or monitoring this involvement.

Once the contract director has gathered information relating to the involvement and obligations of other public sector entities, this information should be used to supplement the contract administration manual.

In some instances, performing the government party’s obligations will require extensive coordination by the contract director with other public sector entities. For example, a government party may acquire services from the private party for use by a number of public sector entities, each of which will have a significant role in performing the government party’s obligations. In these situations, the procuring government party should develop and enter into:

* + - a memorandum of understanding (MOU) with the relevant public sector entities setting out the general principles for coordinating performance; and
		- service level agreements (SLA) with the relevant public sector entities to specify how and when the contract director and the other entities will act to perform specific obligations of the government party.

The MOU and/or SLA should be developed and signed by the chief executive officers of the public sector entities or other appropriate senior officers. The MOU and/or SLA developed and approved by government in the procurement phase will require reviewing and updating as the project moves into and through the service delivery phase.

* + 1. Reporting obligations of the private party

This section of the contract administration manual should list the reporting obligations of the private party as set out in the project deed and other relevant project contracts. Private party reporting obligations may be periodic (usually in line with monthly or quarterly invoices for payment), annual or dependent on the occurrence of specific events.

The contract administration manual should specify the actions to be taken to ensure that the private party’s reporting obligations are met, and the performance monitoring and reporting strategy for the project is properly implemented and coordinated with overall contract administration.

The relationship between contract administration and performance reporting is discussed in Chapters 6 and 11 of the *Partnerships Victoria* Contract management guide. To establish the government party’s reporting and monitoring mechanisms, the contract director should:

* + - identify mechanisms within the contract for monitoring and reporting on whether the private party’s (or other consortium member’s) obligations are being met;
		- consider whether these mechanisms are sufficient for ensuring that the private party (or other consortium member) is meeting its obligations under the contract; and
		- develop mechanisms for determining whether the private party’s (or other consortium member’s) obligations are being fulfilled. The primary source will be the project deed which outlines the reporting requirements. This is likely to have been developed with input from experienced contract managers and therefore should be efficient, relevant and measurable. Over the project lifecycle, reporting requirements may be reviewed to ensure reports remain needed and relevant.

Appendix C contains further information on preparing service delivery phase reports.

* + 1. Contract variations

This section of the contract administration manual should outline the process for managing and documenting variations of the project deed and other relevant project contracts, and cross-refer to those actions, risk mitigations and risk controls elsewhere in the contract administration manual that will be used to manage that process. Obligations under the project deed and other relevant project contracts may be varied either intentionally or unintentionally. The contract director should develop a process to ensure that the project deed and other relevant project contracts are only varied intentionally and that these variations are documented.

The contract director should:

* + - identify the procedures under the contract for varying the contract;
		- envisage the circumstances in which there will be the greatest risk of unintentional variation; and
		- incorporate these risks into the risk analysis undertaken in section 8 of this methodology.

The strategies that the contract director develops to deal with these risks should be included in the part of the contract administration manual dealing with the critical risks and contingency plans as discussed in section 8 above. The actions that the contract director identifies to instigate or control variations in the contract should be referenced.

* + 1. Invoicing, payment and abatement
			1. Quarterly service payments and abatement provisions

This section is used to describe the payment mechanism and help understand its operation. The performance regime and abatement provisions should be clearly spelt out. This section may include an overview to outline its objectives and structure, and a worked example to show how the mechanism is applied.

The payment history for the project should be recorded by the contract management team in a systematic and easily retrievable form. The contract administration manual should outline how performance is to be recorded and monitored. This documentation should record the outcome of any abatement made, the rationale and any challenge by the private party. This documentation should also include a full history of occasions where abatement was triggered under the performance regime but the government party chose not to abate. In such instances, the reason for non-abatement should be documented along with communications made to the private party on this matter.

In the event abatements are applied, the manual should outline the treatment of any retained funds. This may include use within the project, the related business of the agency/department or return to the State’s consolidated fund.

* + - 1. Invoicing submission, review and payment processes

This section should set out the invoicing administration requirements. It should outline how and when invoices are to be submitted including necessary supporting documentation from the private party. It should outline the process for invoice review, verification and payment by the government party. It should also set out the contractual time periods for components of the process and implications if these are not met.

* + 1. Public communications

The project deed and other relevant project contracts will set out protocols for the issue of public communications with respect to the project. To the extent that further clarification of these arrangements is necessary, it should be set out in the contract administration manual. All public communications should be recorded by the contract management team in a systematic and easily retrievable form. The contract administration manual should outline arrangements for the recording these communications.

A set of media protocols can be useful to agree in advance, given many communication requests are time critical. This is linked to the stakeholder plans discussed earlier in section 4.

* + 1. Change events

Change events are inevitable in long-term contracts. Part 4 (Chapters 12–17) of the *Partnerships Victoria* Contract management guide details most of the common change events that will arise from matters such as: State-initiated modifications; reviewable services; refinancing; change of ownership/control; and end of term arrangements. Some change events are scheduled to occur at specific times in the project agreement. Other change events will occur in an ad hoc manner during the term of the project agreement. All of these change events will have a range of outcomes that need to be understood and documented by the government party. Many will have financial implications, including for the periodic service payments. All change events should be recorded by the contract management team in a systematic and easily retrievable form. The contract administration manual should outline arrangements for the recording of change events.

Part E: Ongoing development and review

This part of the contract administration manual should include details of the strategy for reviewing the project and updating the manual.

* + 1. Project reviews
			1. Project benefit review

It is important the project outcomes are reviewed against objectives and the original benefit realisation plan. Avenues for such reviews include internal government party audit review, DTF gateway reviews (gate 6: benefits evaluation) or commissioning an external party audit review. Review findings are relevant in ongoing discussions with the private party to encourage innovation in service delivery.

* + - 1. Contract management review

The effectiveness and efficiency of the contract management approach should be reviewed. A key stakeholder in this review is the private party. The contract administration manual should include a list of reviews undertaken, their recommendations, subsequent actions by the contract management team and lessons learnt to assist future projects. The senior responsible owner should be advised of review outcomes.

There should also be a program set for future reviews and the preferred scope and form of review, along with rationale.

* + 1. Updating the contract administration manual

The contract administration manual is a living document that should be subject to regular systematic review and update. The timing and function of reviews of the contract administration manual is discussed in chapter 6 of the *Partnerships Victoria* Contract management guide. To ensure adequate review and updating of the manual, the contract director should:

* + - determine when the contract administration manual reviews should occur;
		- identify the triggers which will cause an earlier review of the manual;
		- allocate resources to reviewing and updating the manual;
		- coordinate the review process; and
		- update the manual to reflect the outcomes of the review.

Reviewing and updating the contract administration manual is a discrete task, as well as part of the wider knowledge management activities outlined in Chapter 7 of the *Partnerships Victoria* Contract management.

### Appendices

This section of the contract administration manual should contain more detailed material that supports the core content of the contract administration manual.

Appendix C: Methodology for preparing service delivery phase reports

(Refer to Chapter 11 of the *Partnerships Victoria* Contract management guide and template H for additional information)

During the service delivery phase of a *Partnership Victoria* project, the contract director must monitor the performance of the project and regularly report to senior management within the government party. It is generally appropriate for there to be two categories of reports to senior management:

1. regular reporting that is integrated with the private party’s performance reporting and payment cycle; and
2. reporting over a longer cycle, typically annually, in relation to broader contractual matters and the ‘health’ of the private party.

Guidance on the development of each of these monitoring and reporting regimes is set out below. Template H contains a template for developing these reports to senior management.

Additional ad hoc reporting may be appropriate in response to emerging risks and other issues or events over the life of the contract.

The government party must also update the DTF on a regular basis during the service delivery phase of the project. Template I contains a template for DTF reporting.

In many *Partnership Victoria* projects, the infrastructure is designed, built, financed and maintained by the private party and operated by the government party. In these projects, the government party responsible for the project will typically delegate operating responsibility to another government party entity. (For example the Department of Health and Human Services is responsible the Bendigo Hospital PPP project which is operated by Bendigo Health). The contract director will need to receive regular reports from the delegation entity as part of its broader reporting framework. Template J contains a template for developing these reports from the delegation entity.

* + 1. Regular reporting integrated with the private party’s performance reporting and payment cycle

*Partnership Victoria* projects usually have a regular reporting cycle during the service delivery phase in which the private party self-reports to the government party on its performance, the government party conducts its own reviews of the private party’s performance, and the government party makes payments to the private party in accordance with the payment mechanism. In most cases, this cycle occurs either monthly or quarterly, although in some projects the private party’s performance is measured and reported on monthly but payments are only made quarterly.

If another government party entity (a delegation entity) operates the infrastructure, it may be beneficial for that entity to conduct an initial review of the private party’s report. The delegation entity can then provide input to the contract director’s reports to senior management and DTF.

In many projects, a regular payment to the private party will require approval at a senior level within the government party. The contract director’s reports to senior management must therefore provide all of the information required to satisfy the person with the relevant financial delegation that they should authorise the payment. The reporting process must ensure the payments will be made by the government party within the required timeframes.

For smaller projects, the contract director may have sufficient financial delegation to approve the amount of a regular payment. In these cases, regular reporting to senior management is not a part of the payment approval process. Notwithstanding this, reporting should still occur to keep senior management informed of any performance issues or other material matters concerning the project.

The specific issues that should be addressed in regular reporting to senior management will vary from project to project, but will commonly include:

* + - project level performance – whether the project is delivering the expected outcomes;
		- service performance – how the private party is performing against the KPIs;
		- performance trends – how performance is changing over time;
		- information in relation to risks borne by the government party; and
		- information validating the payment calculations.

Information to assist contract directors in considering how to monitor and report on these issues is set out below. Template H contains a template for developing reports to senior management in respect of these issues.

* + - 1. Project-level performance

Project-level performance is primarily concerned with the service outcomes delivered by the project. It can be influenced by:

* + - private party’s service delivery performance;
		- government party actions; and
		- other external factors.

If the project is not performing according to expectations, the contract director’s report should include analysis of potential corrective actions that can be taken.

The following table outlines the key issues that may need to be addressed in developing the contract director’s reporting regime on project level performance.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| What are the project objectives?What are the core products/services being delivered?Who are the customers?Is the project achieving its objectives?Are the services being provided according to the output specification?Does the service represent continuing value for money?Is there a need to change the output specification?What security is there for the government party? Does the structure cut the government party out if things go wrong, and can the government party ‘walk away’ if things go wrong?Does the structure allow the government party to step in if things go wrong?  | **The project business case, Investment logic map** **and Benefit Management Plan** – these documents well set out the expected service outcomes of the project**Flow charts** – to fully understand a project, it may be helpful to analyse it in terms of inputs and outputs, and the relationships between them; it may be useful to create flow charts**Risk register** – regular monitoring and updating of the risk register for the project**Performance monitoring** – monitoring of performance against the key performance indicators (KPIs) |

* + - 1. Service performance

The following table outlines the issues, tools, and processes that can be used in developing the contract director’s reporting on performance against the contractual KPIs. (The original KPIs are developed during the procurement phase.)

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| What are the current KPIs? The KPIs will be set out in the project agreement. However, as the project progresses and early in the service delivery phase, there should be sufficient flexibility in the contract to amend and review contract KPIs. In some projects, some of the KPI targets will automatically change over time.How is service performance measured? By whom? When?How is the contract director notified of any performance failures?Do the current KPIs adequately reflect the required service outcomes? | **KPI template** – standard approach to measuring and recording KPIs on a project**SMART** – good performance targets should be specific, measurable, achievable, relevant and timely (see Note 1 below)**Regular payment reports** – discussed in detail later in this appendix**Physical measurement** – the measurement of quantitative elements within individual specification standards**Inspection** – physical inspections of operational activities to determine the quality of performance of the service**Logged failure/rectification time** – that is, the time from when the government party makes a request to the time when the private party attends the incident**User feedback** – complaints and/or service user interviews**Periodic review and audit** – combination of spot check reviews of performance and regular audits of systems**Exception reporting** – may be appropriate, however there is also a need to identify whether KPIs are being missed due to poor performance or whether it is because the KPIs themselves are poorly defined. |

Note 1: SMART performance targets are: **specific** – clear, unambiguous and easy to understand by those who are required to achieve them; **measurable** – set a target for success that can be gauged by referring to a specific measure or measures; **achievable** – express specific aims that can realistically be achieved, bearing in mind that this may be a function of the level of performance that the government party is willing to pay for; **relevant** – to those personnel who will be required to meet the target. They must have enough control over their work to be able to meet their targets or motivation may suffer; **timely** – there should be a set timescale for achieving a target. Open-ended targets may not encourage focused effort on improving performance.

* + - 1. Performance trends

Performance can be placed in context and better understood by examining trends in performance over time.

The following table outlines the key issues, tools, and processes that can be used in assessing performance trends.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| What is the overall performance of the services?What is the performance of each component of the services – service by service, facility by facility, and facility by service (as applicable)? Repeated failure will usually trigger default obligations and/or notifications under the contract.What is the appropriate time period over which trends should be analysed? | **Current and previous service performance reports** – discussed above**Trends analysis** – graphs showing trends in performance of the services for the payment period in question, compared with performance over each previous payment period by service/facility. Rolling averages of performance over extended periods |

* + - 1. Risks borne by the Government

The contract director’s regular reporting should keep senior management informed in relation to the management of risks borne by the government party. The following table sets out key issues to be considered and tools and processes that can be used to develop this aspect of the reporting regime.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| What risks have been retained and where is each one likely to have its most significant impact?What risks have been transferred to the private party and which have significant residual risk for the government party?Has the government party taken back any transferred risks?What are the quantified impacts of the risks borne by the government party?Has the risk profile changed? | **Risk register** – regular monitoring and updating of the risk matrix for the project**Risk management framework** – the government party’s internal risk management framework |

* + - 1. Payment calculations

The contract director’s regular reporting should provide sufficient information on payment calculations to validate the amount payable. The following table sets out key issues to be considered in reporting on payment calculations.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| How are the base amounts payable under the contract determined?How are the payments indexed to reflect inflation or other price changes?How does the payment mechanism determine abatements for under-performance?What other payment adjustments are required under the contract? | **Payment mechanism** –the payment mechanism contained in the project deed and other relevant project contracts **Financial models** – the private party’s financial model for the project and any model developed by the government party for calculation of payments**Price indexes** – any price indexes required for indexing of payments in accordance with the project deed and other relevant project contracts  |

* + 1. Longer cycle (typically annual) reporting

In addition to the regular reporting to senior management that ties in with the private party’s performance reporting and payment cycles, the contract director should also report to senior management at longer intervals (typically annually) on a range of matters, which may include the following:

* + - strategic performance of the project and realisation of the expected project benefits;
		- the private party’s cash flows and financial position;
		- the private party’s management of transferred risks;
		- the private party and/or key subcontractors’ organisational structure, and the quality of their management and operating personnel; and
		- the Government’s relationship with the private party.

Information to assist contract directors in considering how to monitor and report on these issues is set out below. Template H contains a template for developing reports to senior management in respect of these issues.

* + - 1. Strategic performance and realising project benefits

Strategic performance is primarily concerned with outcomes. The outcomes of *Partnership Victoria* projects are usually defined in the form of benefits that will be realised over the life of the government’s investment. It is good practice to regularly review, monitor and report on realising these benefits. In more recent projects, the benefits are usually documented in a benefit management plan, which includes the measures to be used as evidence that the benefits have been delivered. The benefit management plan also defines the dates the benefits are expected to be delivered, who is responsible for their delivery, and how they will be reported.

In many cases, the *Partnership Victoria* project will be only one element of the government’s investment that is intended to deliver the anticipated benefits. In these circumstances, the contract director may not have the primary responsibility for measuring and reporting on benefits realisation. Nevertheless, the contract director is likely to have a role in contributing to the assessment of whether the benefits are being realised, and must therefore have in place the necessary reporting and monitoring processes.

The following table outlines the key performance issues that will need to be addressed at the strategic level.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| Is the project still consistent with the service delivery strategy and/or asset management plan?Are the key stakeholders needs being met?Do the planned (and current) change initiatives contribute to the service strategy or change management strategy? Have priorities been established?Does the private party have the capability and capacity to deliver?Has the private party taken up opportunities to improve performance?What is and has been achieved?Are the high-level goals being met?What are the anticipated benefits and outcomes and are they as planned?Are the anticipated benefits and outcomes being realised quickly enough?What is the financial strength of the industry as a whole?What is the financial strength of any project guarantors?Is government policy in this area changing? | **Investment logic map and benefits management and /or realisation plan** –analysis of the original logic for the investment and the expected benefits**Business case and request for proposal; interviews with procurement team** –analysis of the business case and request for proposal, and interviews with the procurement team assist in understanding the anticipated benefits and commercial drivers of the project**Gateway gate 6, benefits realisations reviews** –gateway reviews (gate 6) can provide an independent perspective on the strategic performance and benefits realisation process**Industry analysis** – review of competitors, substitutes, customers, suppliers, government policy to understand key business drivers and risk (information can be obtained from Bloomberg/Australian Bureau of Statistics/ specialist broker reports/press/annual reports/talking to management)**Strategic issue analysis** – identify external environmental signals and examine the impacts on the project, for example, strengths, weaknesses, opportunities, threats (SWOT) analysis**Macro-environmental changes** – how are external factors likely to change in the future, over what time span and what is the potential impact on the project? E.g. economic conditions, demographic trends, technological changes, social/cultural factors, legal factors**Product/market analysis** – analysis of product and/or market growth opportunities**Policy watch** – identification of changes in the government party policy that may affect the project |

* + - 1. The private party’s cash flows and financial position

The contract director should monitor the private party’s financial position for a number of reasons. A poor financial position can be an early warning of future performance issues or of the project becoming unsustainable. In addition, the private party’s financial position may have financial consequences for the government party if the *Partnership Victoria* contract includes mechanisms such as; sharing in additional revenue generated by the private party, or sharing in risk associated with refinancings.

In *Partnership Victoria* projects, the private party’s cash flows are a key element of its overall financial position. To fully understand the cash flows, the contract director needs to consider both past performance and projected future performance of each of the elements in the cash flow. The following table outlines the key performance issues that should be considered.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| **Private party cash flow** |  |
| What are the private party’s real sources and uses of cash?What are the real sources of revenue and gain an appreciation of how revenue is likely to change over the project term?What are the revenue drivers?What is the underlying cost structure?What is the underlying capital structure?What are the project risks and how will they impact on the cash flows?At what point are dividends paid/payable?What constraints are there on dividends?How does the payment mechanism work including, where applicable, any abatements for non-performance?What are the project’s ‘pinch points’?How does the structure and constitution of the private party change over the project lifecycle? | **Financial model** – the financial model usually required for inclusion with bids is a useful starting point for understanding the cash flows (extract forecast from financial model for rolling annual basis and compare actual for forecast)**Audited accounts** – for the private party and, where available, the underlying service companies covering the last three years**Stock exchange announcements** – if a relevant entity (or its parent) is listed on a stock exchange, its stock exchange announcements may contain additional cash flow information**Risk matrix** – regular monitoring and updating of the risk matrix and management plan developed during the procurement stage and application of the quantification techniques to the financial model**Sensitivity analysis** – tests the effect on the cash flows of changes in value of underlying costs and revenues (and other variables such as risk as appropriate)**Scenario analysis** – tests likely combinations of changes in variables to establish downside (and upside) scenarios**Probability analysis (for example, Monte Carlo simulation)** – used to consider the effects of a range of values applied to underlying private party, revenues and debt service obligations (and other variables such as risk as appropriate) using appropriate probability distributions and computer aided simulation techniques |

The following table outlines the key financial position issues that should be considered and appropriate tools or processes to be used.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| **Private party financial position** |  |
| What strengths or weaknesses emerge from analysis of trends in key financial figures?What do the trends in the financial figures indicate about the organisation’s financial position?What profits come from where?What is the private party’s capital structure?What is the rate of return, both achieved to date and projected?Have dividends been paid?Is there a program for increasing return on investment?Has the management projected operating statements and balance sheets into the future?Is there an effective cash management system?Are existing and projected capital expenditures appropriate for future operational needs?Is the organisation knowledgeable and aggressive in tax planning?Will any anticipated regulatory changes affect the organisation’s financial position?What impacts might the private party’s financial position have on the government party? | **Audited accounts** – for the private party and, where available, the underlying service companies / key subcontractors covering the last three years**Stock exchange announcements** – if a relevant entity (or its parent) is listed on a stock exchange, its stock exchange announcements may contain additional financial information**Financier’s reporting requirements** –(see Note 1 below)What are the financiers monitoring and how often are they receiving reports? For example, cash flow monitoring, key debt service ratios, working capital requirements and repayments schedules **Covenant monitoring** –what financial covenants has the private party agreed to? How will these be monitored?**Dividend monitoring** – dividend payments by the private party usually indicate a healthy financial position**Credit analysis** – what is the financial position of the organisation(s), e.g. activity analysis, liquidity, long-term debt solvency, profitability and valuation? (See Note 2 below)**Financial assessment services panel** –the Victorian Government Purchasing Board has established a panel of financial assessment services providers to assist with the assessment of the financial capacity of organisations (See Note 3 below)**Moody’s/Standard & Poor’s ratings if available** –note that these ratings are based on extensive financial analysis and industry knowledge**Newspaper clippings****Financial key performance indicators** – contracts should include financial key performance indicators, e.g. cash flow monitoring, key debt service ratios, working capital requirements and repayments schedules etc. |

Note 1: There is an alignment of interest between the government and the financiers to see that the project succeeds. However, the government party should be cautious that it is not seen to be the ‘underwriter’ of the project. The government party must understand the extent to which the financiers are managing risk. Default monitoring may be preferable as the government party may be able to leverage off the banks monitoring systems.

Note 2: See Appendix F for definitions of key financial ratios.

Note 3: VGPB website at: <http://www.procurement.vic.gov.au/State-Purchase-Contracts/Professional-Advisory-Services>

* + - 1. Transferred risks

A typical *Partnership Victoria* contract transfers many risks to the private party. Many of these are managed as ‘business as usual’ by the private party and its subcontractors, with any materialisation of these risks having manageable impacts on the private party’s financial position and service delivery performance. (These impacts provide an incentive for the private party to appropriately manage these risks.) However, some other transferred risks require specific ongoing management action, and the project as a whole can be put at risk if this action is not taken. Examples of such risks include:

* + - **compliance with the output specification** – the private party’s performance against the contractual KPIs will typically be measured and reported on a monthly basis. However, the contract requires the private party to comply with the output specification, not just the KPIs. If the private party meets the KPIs but does not comply with the output specification, the long term project outcomes may be at risk. Hence while the immediate risk (compliance with the output specification) has been transferred to the private party, a failure by the government party to enforce this risk transfer has consequences for the Government. The contract director should therefore establish a process for monitoring and enforcing the private party’s compliance with the output specification, using rights under the contract as necessary;
		- **insurable risks**: – the private party is required to maintain certain insurances under the *Partnership Victoria* contract in order to protect it against certain risks. During the service delivery phase of the project, these insurances must be regularly renewed. If the insurance is not renewed on the appropriate terms and the relevant risk materialises, the private party may not be able to manage the consequences of the risk, resulting in project failure;
		- **refinancing** – the private party may need to refinance its existing debt (typically because its existing debt finance is for a shorter term than the term of the *Partnership Victoria* project agreement). If the debt is not refinanced when due, a financial default will occur;
		- **accreditation/certification** – the private party (or a key subcontractor or employees of either of them) may be required by law or under the contract to maintain a certain accreditation or certification in order to deliver the relevant services. If the accreditation or certification is not maintained or renewed as required, the private party may be unable to provide the services; and
		- **asset lifecycle management and maintenance spending** – the private party is required to manage the lifecycle of the project assets and to meet the cost of maintenance necessary to meet the output specification. If the assets are not managed or maintained as required, the future performance of the infrastructure may be compromised.

In each of these circumstances, the relevant risk has been transferred to the private party, however, there is significant residual risk to the government party if the private party does not implement the expected risk management processes (complying with the output specification, renewing insurances, refinancing when required, maintaining/renewing accreditations and certifications, and managing and maintaining assets). The contract director should therefore monitor the private party’s management of these risks and report to senior management on this.

The following table sets out key issues to be considered and tools and processes that can be used in analysing transferred risks to develop a performance reporting plan.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| What risks have been transferred and where is each one likely to have its most significant impact?What are the quantified impacts of retained risks?Has the risk profile changed?Where does the risk reside in the project? Which risks lie fully with the private party and which risks get pushed down through the structure to suppliers or subcontractors?What mechanisms have been used to allocate risk within the private party’s project structure, including service level contracts, parent company guarantees, liquidated damages clauses, letters of credit? What are the private party’s relationships with subcontractors, such as the construction contractor, operator and facilities maintenance contractor? Have they been in similar projects together? | **Risk matrix** – regular monitoring and updating of the risk matrix developed during the procurement stage**Organisational chart** – which entities should be monitored depends largely on where the risk resides. For example, it may be pointless monitoring at the level of a special purpose vehicle if the government party is heavily reliant on the operator and its financial health. Where a parent company has given performance guarantees, monitoring of the parent company’s financial health is necessary |

* + - 1. Organisational structure and quality of management and operating personnel

As discussed in Chapter 4 of the *Partnerships Victoria* Contract management guide, it is good practice for there to be a relationship at the strategic level between senior management of the government party and of the private party and its consortium members. In addition, the internal organisation of the private party and the quality of its management and operating personnel can impact upon project performance. The contract director should therefore report to senior management on material changes in the private party’s organisational structure and any concerns in relation to the quality of its management and operating personnel.

The following table outlines the key organisational structure issues that should be considered and appropriate tools or processes to be used.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| What is the organisational structure?Is there a formal organisation chart that is regularly updated?Are authority and responsibility relationships clearly established? Are plans and controls in each organisational unit inadequate, adequate, or over‑developed (red-tape)?Is there a culture throughout the organisation of reducing costs and improving quality?Do all the organisational units operate effectively in working towards the overall objectives or are they non-cooperative or competitive with one another? | **Organisational chart** – in a complex structure, the analysis of financial health should focus on which organisation/s has/have ultimate responsibility for service delivery, taking into account parent company guarantees for subsidiaries. This chart is likely to require regular updating |

The following table outlines the key performance issues that should be addressed in reviewing the quality of management personnel.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| What person or group constitutes top management?Has present top management been responsible for performance over the past few years or are they relatively new?What style of management is being used (e.g. autocratic or participative)?What influence or control does the board of directors exercise?What are the capabilities of the board of directors?What is the level of experience of top management personnel and how long are they expected to remain?What is the quality of the middle management and supervisory personnel in terms of planning and controlling work, with regard to meeting schedules, controlling costs, improving quality and performance?What are the private party’s relationships with subcontractors, such as the construction contractor, operator and facilities maintenance contractor? Have they been in similar projects together? How is the private party managing those relationships? Are there any significant issues? | **Operational reports** – there should be a requirement placed on the private party to regularly provide updates on the management structure, including any changes in personnel**Operational audit** – where necessary, the government party should conduct its own audit of the management structure, including where appropriate following up references for key managerial staff (in accordance with privacy laws and regulations)**Regular payment reports** – discussed in detail later in this appendix |

The following table outlines the key performance issues to be addressed in reviewing the quality of operative personnel.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| What are the skills and abilities of the workforce?Are these skills adequate for meeting the needs of the contract?What is the general attitude and level of motivation of employees?How responsive are staff to meeting deadlines?What is the level of employee turnover?Does the organisation have enough skilled workers to meet the needs of the contract?Are there key people specified in the contract? If so, are those individuals performing the nominated roles?What is the wage policy of the organisation? (For example, are they paying the highest wages in the sector?)What training has been undertaken or is to be undertaken?What recruitment, promotion, redundancy or dismissal of any employee and/or any industrial disputes have occurred?What accidents and health and safety incidents have occurred? | **Operational reports** – there should be a requirement placed on the private party to regularly provide updates on operating personnel, including any changes in personnel**Operational audit** – where necessary, the government party should conduct its own audit of the operations, including where appropriate following up references on operating personnel (in accordance with privacy laws and regulations)**Regular payment reports** – discussed in detail later in this appendix |

* + - 1. Government’s relationship with the private party

Although there should be a strategic relationship between senior management of the government party and of the private party and its consortium members, senior management will not necessarily have direct visibility of the quality of the relationship between the government party and the private party at all levels. The quality of this relationship can, however, have a significant influence upon project outcomes. The contract director should therefore monitor the quality of the relationship and report on it to senior management.

The following table outlines the key performance issues, tools, and processes that can be used in assessing the government party’s relationship with the private party. Relationship management is discussed in detail in Chapter 4 of the *Partnerships Victoria* Contract management guide.

|  |  |
| --- | --- |
| Issues to be considered | Tools or processes |
| What is the overall quality of the relationship?Are appropriate communication channels being used? Are roles and responsibilities clear?Are committees functioning well?Are skills well matched?Is there regular communication with the private party’s parent company or sponsors?Are issues and disputes being dealt with promptly and effectively? | **Issues log** – trends in the occurrence and speed of resolution of issues may reflect changes in the relationship**Review of communications channels** – trends in the occurrence and speed of resolution of issues may reflect changes in the relationship**Interviews with the government party and private party personnel involved in the project** |

Appendix D: Delegations – additional information

(Refer to Chapter 3 of the *Partnerships Victoria* Contract management guide for additional information)

* + 1. Delegation of legal power to exercise relevant functions, rights and powers

As a general rule, the primary person or people authorised to act on behalf of a government party in exercising legal rights or fulfilling legal obligations of the government party will be:

* the relevant portfolio Minister, acting under government administrative arrangements or under legislation applicable to the project; or
* the senior public official of the government party, empowered by legislation applying to the entity or the project.

As it can be inconvenient for all functions, rights and powers to be exercised by the Minister or senior public official, certain functions, rights and powers are often delegated to other government party personnel, nominated in the project deed.

Where legislation confers a function, right or power to the Minister or a senior public official the function may only be delegated to another person where the legislation specifically allows for this to occur.

* + 1. Authorisation to exercise relevant functions, rights and powers as an agent

Regardless of whether a function, right or power may be delegated or not, a Minister or senior public official may authorise another person to act on their behalf (as their agent) in carrying out the function, right or power, provided the function, right or power is not one that, by its nature, must be exercised by the Minister or senior public official in person.

* + 1. Capacity to make financial commitments

Where the exercise of a function, right or power involves incurring an expense or creating a financial obligation, legal authorisation to exercise that function, right or power is not the only requirement that must be met. Generally, the government party is subject to legislation or policies regulating financial commitments, under which the person exercising the function, right or power must also have the capacity to make the financial commitment resulting from the exercise of the function, right or power. For example, the ability of staff of certain public authorities and bodies to make financial commitments is subject to regulations and directions under the *Financial Management Act 1994* (including the Minister for Finance’s Standing Directions). Approval may also be required from the relevant Cabinet Subcommittee.

Appendix E: Compliance and government party accountability – additional information

Compliance and public sector accountability is discussed in Chapters 2 and 3 of the *Partnerships Victoria* Contract management guide.

* + 1. Government party accountability

There is a range of government legislation and policy requirements the government party is accountable for complying with, including;

* + - Ministerial accountability to Parliament and the people (including accountability for government’s contracting activities);
		- complying with the *Financial Management Act 1994* and the Financial Management Regulations and Directions, designed to achieve a high standard of public financial management and accountability;
		- complying with the *Audit Act 1994*, if required, by assisting the Victorian Auditor-General’s Office to undertake a performance audit to assess the efficiency and effectiveness of the management of public resources by the procuring agencies, or service delivery through contracts with private providers (under its ‘follow-the-dollar’ powers);
		- complying with *Partnerships Victoria* Requirements to publish; the redacted project deed and other associated contracts; the project summary and contract management plan within 60 days of financial close.
		- adhering to administrative law remedies, including the Ombudsman’s jurisdiction and the *Freedom of Information Act 1982*; and
		- complying with privacy obligations in relation to personal information in the hands of the government under the *Privacy and Data Protection Act 2014.*

The *Audit review of government contracts: contracting, privatisation, probity and disclosure in Victoria 1992–1999* remains an original source document that is a useful resource that discusses accountability, probity and disclosure issues generally in relation to government contracts.

* + 1. The *Freedom of Information Act 1982* and commercial in confidence materials

Despite the title of the legislation, the *Freedom of Information Act 1982* (the FoI Act) applies to documents, not information.

The definition of ‘document’ under the FoI Act is very broad and includes written and electronic documents, maps, graphs and drawings. The definition would also include contracts and documents relating to a project.

There is a presumption of release and general right of access to the government party’s documents under the FoI Act, unless the government party can establish a specified exemption from disclosure. This right of access exists irrespective of the purpose of the request.

Bearing this in mind, when a document is created its content should reflect the fact that any release granted under the FoI Act is unrestricted (meaning there are no restrictions on what the individual who requested the document may do with the document).

Under the FoI Act, certain documents may be exempt from access. The categories of exemption potentially relevant to contract and project management include:

* + - Cabinet documents (s. 28);
		- internal working documents (s. 30);
		- documents affecting legal proceedings (s. 32);
		- documents affecting personal privacy (s. 33);
		- commercial in confidence documents (s. 34);
		- documents containing material obtained in confidence (s. 35); and
		- disclosure contrary to public interest (s. 36).

In particular, s. 34 of the FoI Act provides a limited exemption in respect of third parties’ business information acquired from a business, commercial or financial undertaking. To satisfy the requirements of s. 34 of the FoI Act, agencies must demonstrate that the disclosure of information would be likely to unreasonably expose the undertaking to disadvantage. Section 34(2) outlines the considerations that a decision maker may take into account when deciding this issue. This exemption is subject to a public interest override contained in s. 50(4) of the FoI Act.

* + 1. Disclosure of contractual information

The contract disclosure and project summary requirements for *Partnerships Victoria* projects are detailed in the *Partnerships Victoria* Requirements (November 2016). Disclosing the executed redacted contract on the Victorian government tenders website and publishing a project summary for each PPP project is required to be released within 60 days of financial close.

The project summary will summarise the:

* + - project objectives, scope, and procurement process;
		- financial outcome, including the value of the project and cost to government; and
		- commercial risk allocation based on the contract.

The project summary is prepared by the procuring agency and approved by the portfolio minister and the Treasurer. The portfolio minister is responsible for tabling the project summary in Parliament (or the next available Parliamentary sitting day). Once tabled, the project summary will be published on the DTF website.

The project summary is usually released at the same or similar time as the contract Project Deed and other associated contracts in accordance with Victorian Government Purchasing Board policy.

There is an ongoing obligation for procuring agencies to update the project summary if any significant changes or modifications occur during the life of the contract.

Precedent project summaries and the Project Summary Template can be accessed via the DTF website.

A relevant consideration for both private sector parties and the government party involved in *Partnerships Victoria* projects are the limits to claims of confidentiality in contractual dealings.

The Government’s commitment to openness and transparency in its dealings extends to the public disclosure of tender and contract related information. The contract disclosure requirements are given effect through the VGPB *Contract management and contract disclosure policy* and section FRD 12B of the Financial Reporting Directions, ‘Disclosure of major contacts’ (June 2016).

The policy’s objective is to maximise disclosure but reflects a fair balance between the public’s right to know and recognition that limited circumstances exist where certain information should not be disclosed in the public interest.

The policy provides that:

* + - once the contract is signed and financial close is achieved, the government party (other than public sector agencies) is required to fully disclose details of contracts that are above $10 million on the [Victorian government contracts publishing system](http://www.vgpb.vic.gov.au/) <http://www.vgpb.vic.gov.au>;
		- disclosure is subject to the application of the criteria contained in the FoI Act which allows material to be withheld in limited circumstances;
		- if contract materials are excluded from disclosure based on FoI criteria, a note explaining the reason for non-disclosure should be included and the proposed disclosure release date of the exempt information;
		- agencies are to advise tenderers of the strict limitations of confidentiality that will apply to the government party contracts and should avoid providing bidders with absolute assurances about the confidentiality that will be given to the information they provide; and
		- a standard clause should be included in contracts requiring the private sector party to provide any information that the government party or the State may require to comply with requests from the Auditor-General.

Further information concerning the State’s contract disclosure policy is available on the [Victorian government purchasing board website](http://www.vgpb.vic.gov.au/) <www.vgpb.vic.gov.au>.

* + 1. The *Protected Disclosure Act 2013* (Vic)

The *Protected Disclosure Act 2013* (the PD Act) came into force on 10 February 2013. The purpose of the PD Actis to encourage and facilitate disclosure of improper conduct and detrimental action taken in reprisal for a person making such a disclosure by public officers and public bodies.

The PD Act protects people who make disclosures in accordance with the Act, and establishes a system for investigating the matters disclosed and taking rectifying action.

Part 10 of the PD Act requires the government party to report certain information (including its current procedures for the handling of disclosures of improper conduct) in its annual report.

Compliance with the PD Act and the development of procedures to ensure compliance are an essential part of a government party’s private party compliance program. Compliance has a significant role in ensuring the transparency and accountability of an entity’s administrative and management practices by supporting disclosures that reveal improper conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

* + 1. The *Public Records Act 1973* (Vic)

The *Public Records Act 1973* (the PR Act) was enacted to ensure the proper preservation, management and use of public records. The PR Act and the records management authorities issued by the Keeper of Public Records under section 12 of the PR Act contain provisions that agencies must follow in managing these records.

Section 13 of the PR Act states that a public officer must ‘make and keep full and accurate records of the business of the office.’ This obligation does not cease because a third party undertakes a service or activity of a government party under a contract. Contract activities are still the government party’s business.

Standards relating to storage requirements, retention periods for classes of records, management of electronic records, and processes for the legal destruction of records by public agencies have been developed under the PR Act. These standards are available at the [Public Record Office of Victoria website](http://www.prov.vic.gov.au/) <http://www.prov.vic.gov.au>. These standards can be used as guidance for the range of issues that should be incorporated into a contract.

The government party should consider what part of the private party’s records the government party might need to access to ensure compliance with s. 13 of the PR Act and other record-keeping objectives.

* + 1. Cabinet documents

All Cabinet and Cabinet committee documents, working and briefing papers are to be treated as confidential. Cabinet documents are exempt from release if requested under the FoI Act. They are also exempt under the doctrine of ‘public interest immunity’ where documents are sought from government as part of general litigation. Further information concerning the protocols regarding access to, storage and disposal of Cabinet-in-confidence materials are available from the Cabinet Secretariat of the Department of Premier and Cabinet, and in the [Cabinet handbook](http://www.dpc.vic.gov.au/index.php/policies/governance/23-policies/governance/813-the-cabinet-handbook) <http://www.dpc.vic.gov.au/index.php/policies/governance/23-policies/governance/813-the-cabinet-handbook>.

* + 1. Privacy legislation in Victoria

The *Privacy and Data Protection Act 2014* (the Privacy Act) came into effect on 17 September 2014. The Privacy Act replaced the *Information Privacy Act 2000* and the *Commissioner for Law Enforcement Security Act 2005* with a single Act that is intended to strengthen the protection of personal information and other data held by the Victorian public sector.

The Privacy Act aims to increase public confidence in government’s ability to protect and manage the personal information that it collects and stores, and applies to contractors to government (referred to in the Act as ‘contracted service providers’) as well as government organisations.

The Privacy Act does this by re-enacting the 10 Information Privacy Principles (the IPPs) which were enforceable from 1 September 2002 and attract penalties for non-compliance. The list of IPPs and further relevant information can be obtained on the [Commissioner for Privacy and Data Protection website](https://www.cpdp.vic.gov.au/) <https://www.cpdp.vic.gov.au>.

Within the *Partnerships Victoria* context, consideration needs to be given to the sort of information collected and stored in relation to the project services. The application of the Privacy Act is only relevant where either or both the parties to the contract collect and store personal information (including ‘sensitive information’) about individuals. If the Privacy Act is relevant to the project, then the compliance obligations required by the Act need to be satisfied and incorporated into the government party’s information management plan, compliance program and project contracts. Separate legal advice should also be obtained from within the government party in relation to its IP Act compliance program.

Section 17 of the Act provides that a government organisation will be responsible for any breaches by a contracted services provider of the IPPs or an applicable code of practice unless two conditions are satisfied:

The government contract provides that the contracted service provider will be bound by the IPPs or any applicable code of practice in the same way that it would apply to the government organisation.

The IPPs or applicable code of practice is capable of being enforced against the contracted service provider.

In order to ensure that the contracted service provider is held responsible for breaches of the IPPs, a provision calling on the protection of limited indemnity in s. 17 of the Privacy Act should be inserted into the project contract. This is the case whether or not the private sector party is also bound by the national privacy principles in the *Privacy Act 1988* (Cwlth).

A government party can also be liable for breaches of the IPPs by subcontractors of a private party. The contract between the government party and the private party should therefore prohibit subcontracting by the private party unless the government party consents, or the subcontract includes a pre-agreed clause that applies the Privacy Act to the subcontractor.

By including these clauses in the contract, the government party binds the contracted service provider and any later subcontractor to the IPPs in the same way and to the same extent as the government party is bound. A separate contractual financial indemnity owed by the private party to the government party should also be included to support the non-compliance indemnity provided for by s. 17 of thePrivacy Act*.*

As in the Privacy Act, the *Health Records Act* *2001* establishes standards called Health Privacy Principles (HPPs) for the collection, handling and disposal of health information in the public and private sectors. For further details, visit the [Department of Health and Human Services website](https://www2.health.vic.gov.au/about/legislation/health-records-act) <https://www2.health.vic.gov.au/about/legislation/health-records-act>.

* + 1. The Privacy Act, the Public Records Act and the FoI Act – overlap

When developing a compliance program or information management plan that involves the interaction of the Privacy Act with other legislation, s. 6(1) of the Privacy Act is significant.

Section 6(1) of the Privacy Act provides that if a provision made by or under that Act is inconsistent with a provision made by or under any other Act (for example the PR Act or the FoI Act), then the relevant provision of the PR Act or the FoI Act should be followed, but only to the extent required to resolve the inconsistency.

Appendix F: Key financial ratios

Historically, much of the interpretation of a company’s financial position has been based on ratio analysis. Accounting ratios condense the data in a company’s accounts and relate different items of data to each other, so that pictures of the company’s financial affairs expressed in just a few key numbers can be compared.

Ratios can be interpreted in one of three ways:

1. A company’s actual ratios achieved can be compared with an acceptable or safe norm.
2. A company’s ratios in the current and most recent years can be compared with the same ratios it achieved in earlier years, to detect an improving or declining trend, so‑called horizontal analysis.
3. A company’s ratios can be compared with similar ratios for other companies of a similar type in the same industry, so-called cross-industry analysis.

Ratio analysis can help to indicate whether a company’s situation is getting better or worse, or is staying much the same. Ratios can also help to indicate areas of weakness in a company’s financial performance.

Ratios by themselves are of little use. The key to obtaining meaningful information from ratio analysis is comparison—comparing ratios over time with the same business to establish how things are changing, or comparison with similar businesses to see whether the company is better or worse than average within a particular sector. However, each business should be considered separately, as a ratio that is meaningful for one type of company, (a construction company) may be completely misleading if compared with another type of company. The key to ratio analysis lies in understanding what the purpose of the analysis is and continually returning to this reference point.

It is also important to appreciate that ratios can provide useful information, but they are unlikely to be completely accurate or tell the whole story.

Different types of financial ratios can be used for different purposes:

* **Activity analysis** considers the trend in sales and an upward trend could indicate expansion or may be a result of inflation. Any downward trend could be the result of such factors as business rationalisation, deflation, a lack of competitiveness, technical obsolescence or marketing problems.
* **Liquidity ratios** are used as a measure of cash flow, or having sufficient cash to meet short-term commitments. They therefore refer to the amount of assets held in cash or near cash, usually in relation to the size of debts payable in the near future. There is no ideal level for these ratios, although it is generally considered that the range 1.5 to 2.0 for the current ratio and 0.8 to 1.0 for the quick ratio represents a good standard.
* **Long-term debt and solvency ratios** can be used to assess a company’s capital structure. A high proportion of debt capital could indicate that the company is at some financial risk.
* **Profitability analysis and valuation ratios** typically relate to the performance of the company and are usually of most interest to shareholders, who naturally want to know how well their investments are doing.

The table below contains some example of the types of financial ratios typically used to monitor the financial performance of company.

Table F.1: Monitoring company performance – typical financial ratios

|  |  |  |  |
| --- | --- | --- | --- |
| Type | Ratio | Calculation | Explanation |
| Activity analysis | Receivables turnover | Sales/average trade receivables | Measures the effectiveness of the firm's credit policies |
| Liquidity analysis | Current ratio | Current assets/current liabilities | Measures cash resources with cash obligations |
| Quick ratio | (Current assets – stock)/current liabilities | Excludes inventory from cash resources |
| Defensive interval | 365 x ((current assets – Stock)/operating cash flow) | Indicates the number of days the firm could maintain the current level of operations with its present cash resources |
| Long-term debt and solvency analysis | Debt to equity | Total debt / total equity | Examines a firm's capital structure and, indirectly, its ability to meet current debt obligations |
| Times interest earned | Earnings before interest and Taxes/interest expense | Measures the extent to which earnings available for interest ‘cover’ interest expense |
| Profitability analysis | Return on assets | (Net income + after-tax interest cost)/average total assets | Return on assets indicates how capital-intensive a company is, that is how much income is the company generating given the amount of assets |
| Return on equity | Pre-tax income/average stockholders' equity | Return on equity measures the rate of return on shareholders’ investment |
| Valuation | Earnings per share | Earnings available to common shareholders/ Weighted-average number of shares of common stock outstanding | This is the amount of profit on ordinary activities after tax and preference dividends expressed on a share basis |
| Dividend payout ratio | Dividends/Net income | Percentage of earnings paid out as dividends |
| P/E ratio | Current mid-market price/earnings per share | Market price of shares as a multiple of the earnings per share |

The commercial adviser for each specific project can advise on the most appropriate ratio and range for that type of project.

Appendix G: Processes and tools

| Process or tool | Relevant chapter |
| --- | --- |
| Cabinet provided with contract management planRecords management technology | Chapter 5: Contract management planning  |
| Analysis of business case and request for proposal Audited accountsCredit analysisDividend monitoringException reportingFinancial modelFinancier’s reporting requirementsIndustry analysis, product/market analysisMacro environmental analysisOperational and special auditsOrganisational chartsPhysical inspectionsProbability analysisRating agency ratingsScenario analysis, sensitivity analysisStrategic issue analysis, trends analysisUser feedback | Chapter 11: Service delivery phase |
| Communication planJoint review and improvement teamRecords of conversations / minutes of meetingsSWOT analysis | Chapter 4: Relationship management, dispute resolution and issue management |
| Compliance procedures manualCompliance programDelegations and authoritiesIdentifying and recording roles and responsibilitiesProbity planSuccession planning | Chapter 3: Resourcing, governance and probity |
| Knowledge and information management strategy | Chapter 7: Knowledge and information management |
| Change control proceduresContract variation registerTesting processTransition plan | Chapter 12: Change management |
| Business continuity planDefault planStep-in plan | Chapter 8: Contingency planning |
| Review of contract management tools and processesIssues logs / registers  | Chapter 9: Ongoing review |

### Risk issues and related contract management tools and processes

| Risk issue | Tool or process | Chapter/source |
| --- | --- | --- |
| Risk | * Information collection and analysis
* Contract administration
* Knowledge and information management
 | Chapter 5Chapter 6Chapter 7 |
| Has the risk/risk allocation altered since the signing of the contract? | * Governance of change management process
* Ongoing review
 | Chapter 12Chapter 9 |
| What is the likelihood of the risk occurring? | * Risk analysis
 | Chapter 2 |
| Who is responsible for averting the risk? | * Contract administration
 | Chapter 6 |
| What needs to be done to avert the risk? | * Contract administration
 | Chapter 6 |
| How will it be done? | * Contract administration
 | Chapter 6 |
| When must it be done? | * Project timetable/ milestones
 | *Practitioners' guide* |
| What do we need to do? | * Contract administration
 | Chapter 6 |
| Do we need to monitor compliance? | * Risk analysis
* Governance, probity and compliance
 | Chapter 2Chapter 3 |
| How do we know if the private party has complied? | * Performance monitoring
* Reporting mechanisms
 | Chapter 11Chapter 11 |
| What do we need to do to avert the risk? | * Contract administration
 | Chapter 6 |
| Do we have the authority, power, resources and expertise? | * Budget
* Delegations register
* Succession planning
* Allocation of roles and responsibilities to contract administration staff
 | Chapter 3Chapter 3Chapters 3, 4, Chapter 3 |
| What are the consequences if the risk eventuates? | * Contract administration
* Risk analysis
* Default plan
 | Chapter 6Chapter 2 Chapter 8 |
| What is the magnitude of the consequences if the risk occurs? | * Risk analysis
 | Chapter 2  |
| How do we mitigate the consequences? | * Issue management procedures
* Contingency plan
 | Chapter 4Chapter 8 |
| Who else is affected by the risk eventuating | * Stakeholder communication and consultation plan
 | Chapter 4 |
| What should we do if the risk eventuates? | * Contract administration
* Contingency plan
* Business continuity plan
* Disaster recovery plan
* Step-in plan
 | Chapter 6Chapter 8Chapter 8Chapter 8Chapter 8 |
| What sanctions, remedies are available? | * Contract administration
 | Chapter 6 |
| Who do we tell? | * Escalation procedures
* Internal reporting mechanisms
 | Chapter 4Chapter 3 |