

Part One: Introduction to *Partnerships Victoria* contract management

Part One (Chapters 1-3) provides an overview of *Partnerships Victoria* and the purpose of the *Contract Management Guide*. It outlines the structure of the Guide (in Section 1.3). Part One then broadly outlines the nature and function of contract management and critical elements for success.

Some of the issues covered in Part One are also discussed in Part Two – with a focus in Part Two on useful tools and processes for contract management.

1 Overview

This *Contract Management Guide* is one of a series of documents designed to assist in implementing the *Partnerships Victoria* policy framework for arrangements between government and private parties to provide public infrastructure and related ancillary services.¹

1.1 The purpose of this Guide

This Guide is one of four components of the *Partnerships Victoria* contract management framework.²

The purpose of this Guide is to provide:

- general guidance for the government party's management of a *Partnerships Victoria* contract through the lifecycle of a project – to help achieve project objectives incorporating balanced long-term value for money outcomes; and
- direction for the procurement team involved in developing a *Partnerships Victoria* project – to enable them to address and support the principles of effective contract management in the executed contract for the project.

This Guide, and the tools and processes set out in it, were developed for:

- government departments and agencies proposing *Partnerships Victoria* projects
- procurement teams for *Partnerships Victoria* projects
- Contract Directors³ and their staff within government parties responsible for *Partnerships Victoria* projects
- senior management of government parties responsible for *Partnerships Victoria* projects
- staff of government central agencies providing support for *Partnerships Victoria* projects
- other *Partnerships Victoria* project stakeholders within the public sector.

¹ The *Partnerships Victoria* suite of documents includes an *Overview*, the *Practitioners' Guide*, a *Risk Allocation and Contractual Issues* guide, a technical note, *Public Sector Comparator*, the *Partnerships Victoria* policy document and the *Partnerships Victoria Contract Management Policy* document. These documents are available from www.partnerships.vic.gov.au.

² The other components of the contract management framework are the Victorian Government policy statement, *Partnerships Victoria Contract Management Policy*, a credentialed training program and a Contract Directors' forum. This Guide contains more details on these components.

³ The Contract Director has overall responsibility for managing the contract from the date of its execution to achieve project objectives, incorporating long-term value for money outcomes. A contract management team, reporting to the Contract Director, will carry out many day-to-day contract management activities.

The underlying principles in this Guide should be considered 'best practice' at the time of publication.⁴ They may also be useful in the management of non-*Partnerships Victoria* long-term service contracts by government departments and agencies.

It is assumed that readers are familiar with the matters covered in the *Practitioners' Guide*, which describes the procurement process that leads up to contract execution.

1.2 Contract management through the project lifecycle

A typical *Partnerships Victoria* project has several distinct stages:

- **procurement stage:** the process leading up to contract execution, during which the government party should establish sound foundations for its contract management over the life of the contract;
- **construction stage:** from the time construction (or implementation) starts through the commissioning process to the start of payments when delivery of the services required by the output specification begins;
- **service delivery stage:** covering the provision and use of the contracted services during the remaining life of the contract; and
- **contract expiry or termination stage:** the period leading up to and after contract expiry or termination.

For each lifecycle stage, there is a range of contract management activities that should be conducted within the government party if the contract is to be managed effectively. The key activities in each lifecycle stage are summarised in Figure 1.1.

This Guide contains material relevant to each lifecycle stage and each significant contract management activity that may occur within those stages.

⁴ While this Guide sets out 'best practice' principles relevant to the management of a *Partnerships Victoria* contract, it is not a variation of or substitute for the terms of the contract. It is intended to better ensure the implementation of the contract. Neither this Guide nor any action taken or not taken in reliance on it is to be, or is to be taken as, a variation of contract, waiver or estoppel by the government party, unless the government party expressly confirms in writing that it is varying the contract or waiving a specific right under the contract.

Figure 1.1 Contract management issues and the project lifecycle

Procurement	Contract execution	Construction	Service delivery	Contract expiry or termination
Resourcing <ul style="list-style-type: none"> • Appoint Contract Director • Identify and budget for contract management resources 	Manage performance <ul style="list-style-type: none"> • Manage performance by government • Monitor construction progress and management quality • Consider detailed designs 	Manage performance <ul style="list-style-type: none"> • Manage performance by government • Monitor private party's performance, management etc. • Seek user feedback 	Manage performance <ul style="list-style-type: none"> • Manage performance by government • Monitor private party's compliance with obligations on expiry/termination 	
Planning and development <ul style="list-style-type: none"> • Develop contract management plan • Collect and analyse relevant information 	Manage relationships <ul style="list-style-type: none"> • Continue and strengthen communications • Establish committees • Manage stakeholders 	Manage relationships <ul style="list-style-type: none"> • Maintain and strengthen communications • Manage stakeholders • Ensure the right participants are involved in committees 	Manage relationships <ul style="list-style-type: none"> • Maintain strategic relationship with sponsors etc. 	
Develop tools <ul style="list-style-type: none"> • Develop performance monitoring • Develop contract administration manual • Develop other tools and processes 	Manage change <ul style="list-style-type: none"> • Manage transition from procurement to contract management • Manage contractor claims • Manage commissioning issues 	Manage change <ul style="list-style-type: none"> • Manage changes to output specifications • Manage automatic contractual changes, such as indexation of payments • Assess changes in service requirements and technology that impact on project service delivery 	Manage change <ul style="list-style-type: none"> • Manage asset transfer (including transfer of necessary information and records) if assets are transferred to government 	
Integrate contract management in the contract <ul style="list-style-type: none"> • Integrate reporting and KPIs • Integrate dispute and issue management mechanisms 	Manage contingency events <ul style="list-style-type: none"> • Maintain contingency plans and review prior to commencement of service delivery • Respond to defaults and disasters 	Manage contingency events <ul style="list-style-type: none"> • Maintain and review contingency plans • Scan environment for potential impacts • Respond to defaults and disasters 	Manage contingency events <ul style="list-style-type: none"> • Maintain and review contingency plans • Scan environment for potential impacts • Respond to defaults and disasters 	
Other issues <ul style="list-style-type: none"> • Is the Contract Director credentialed? • Do reality checks. Can the KPIs be measured etc.? 	Other issues <ul style="list-style-type: none"> • Manage knowledge and project records • Review contract management practices 	Other issues <ul style="list-style-type: none"> • Manage knowledge and project records • Review contract management practices 	Other issues <ul style="list-style-type: none"> • Manage knowledge and project records • Review contract management practices 	
Governance responsibility <ul style="list-style-type: none"> • Project Director ensures that: <ul style="list-style-type: none"> - the Contract Director has access to resources and information required to prepare the contract management plan - the plan is prepared - governance, reporting arrangements are in place for commencement 	Governance responsibility <ul style="list-style-type: none"> • Project Director continues in role • Project Director ensures that contract management plan for the project is submitted to Cabinet • Contract Director implements the contract management plan • Contract Director reports to senior management and DTF 	Governance responsibility <ul style="list-style-type: none"> • Contract Director continues in role, applying and regularly reviewing contract management tools and processes • Contract Director reports to senior management and DTF • Government entity plans succession 	Governance responsibility <ul style="list-style-type: none"> • Contract Director continues in role • If required, accountable public sector entity provides or procures replacement services or assists in transfer of facilities and knowledge to government • Contract Director reports to senior management and DTF 	

1.3 Structure of this Guide

The Guide has two parts:

1. **Part One** outlines the nature and function of contract management and critical elements for a successful result
2. **Part Two** outlines the key contract management processes and tools for managing a *Partnerships Victoria* project.

By using the processes and tools described in Part Two, a Contract Director can develop an effective contract management strategy for a *Partnerships Victoria* project.

The Guide includes a series of templates that can be used as a basis for developing various tools discussed in Part Two. The symbol **T** in the text indicates that there is a template for a particular process or tool.

The Appendices provide additional information on some of the more complex or technical issues that appear in Part Two.

1.4 Updates

Updates to guidance documents will be published from time to time on the *Partnerships Victoria* website, www.partnerships.vic.gov.au.

2 The relationship between risk and contract management

2.1 What is risk?

In the context of infrastructure projects, risk has been defined as ‘the chance of an event occurring which would cause actual project circumstances to differ from those assumed when forecasting project benefit and costs.’⁵ Risk is at the core of project profitability (for the private party) and efficiency (in delivering public sector objectives). Management of risks holds the key to project success or failure because ‘projects are about risks, ... their evaluation and their subsequent acceptance or avoidance’.⁶

Risk is the chance of an event occurring that would cause actual project circumstances to differ from those assumed when forecasting project benefits and costs.

2.2 Effective contract management manages risk

To be effective in the context of a *Partnerships Victoria* project, contract management must identify, monitor and manage all risks over the life of the project contract to achieve project objectives and value for money outcomes. This includes:

- quantifying actual and potential risks and their associated losses (or benefits) to identify those risks that must be managed over the contract lifecycle; and
- developing management strategies to assume, control, mitigate or eliminate these risks or losses.

Contract management builds on the allocation of project risk in the project contract. The framework for this risk allocation in *Partnerships Victoria* projects is set out in Chapter 4 of the *Risk Allocation and Contractual Issues* guide.

From time to time, the private party in a *Partnerships Victoria* project will approach the government party with proposals for changes to the contract or new opportunities that they believe will lead to mutual benefits. Effective contract management also helps the government party to assess and realise the benefits of these proposals.

Effective contract management incorporates identifying, monitoring and managing all risks and opportunities over the life of the project contract to achieve project objectives and value for money outcomes.

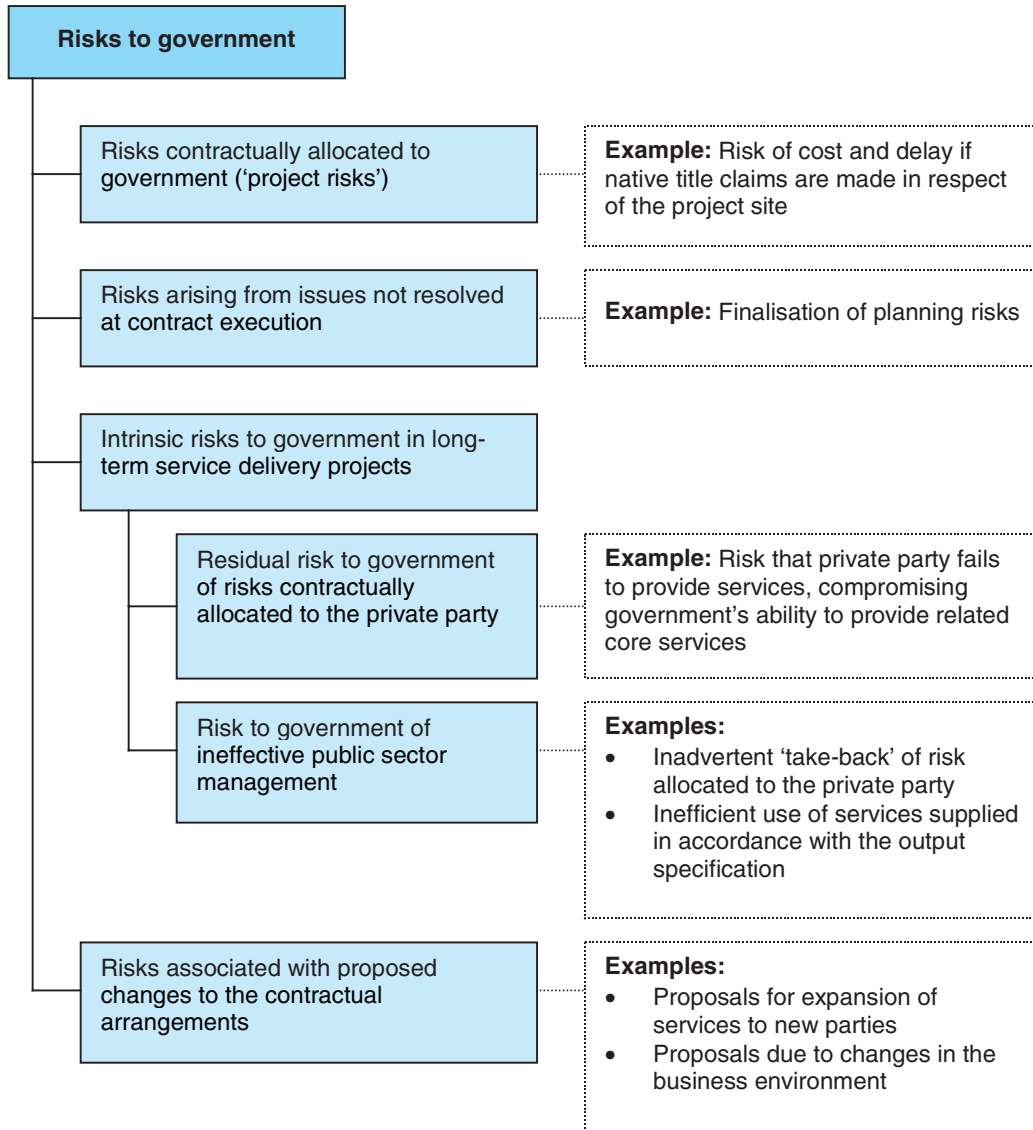
⁵ Chris Furnell, ‘Risk identification and risk allocation in project finance transactions’, paper presented at the Faculty of Law, The University of Melbourne, May 2000, p. 1.

⁶ Allen & Overy, from Furnell, *ibid.*, p. 3.

2.3 What risks must be identified and managed?

There are a number of sources of contract risk to government that may compromise or otherwise impact on the value for money outcomes of a *Partnerships Victoria* project.

Figure 2.1: Categories of contract risk in a *Partnerships Victoria* project



Thus, the range of risks that must be considered for contract management purposes ('contract risks') is broader than the range of risks considered by the procurement team for contractual risk allocation purposes ('project risks'). (Principles for the contractual allocation of project risks are discussed in Part One of *Risk Allocation and Contractual Issues*. Contractual allocation of specific project risks is discussed in Part Two of that publication.)

In order to identify and manage this range of contract risks, a contract management strategy should incorporate thorough information collection, analysis and management practices, and an ongoing review process. New and emerging risks through the project lifecycle must be identified and control action taken. Failure to develop and implement an effective contract

management strategy for the project is, in itself, a risk that must be managed. Part Two of this Guide provides assistance in the development and implementation of an effective contract management strategy.

Risks that must be identified and managed ('contract risks') in a Partnerships Victoria project are all risks that may compromise project objectives and value for money, including risks allocated to government, residual risk to government of risks allocated to the private party (for example, the residual risk to government of ineffective private party performance), and risks arising through ineffective public sector performance.

Risks not identified cannot be proactively managed. They can be very damaging. Risks cannot be correctly identified unless there are clear project objectives that provide an unambiguous description of success for the project.

Key categories of contract risks

The following paragraphs describe in more detail the key categories of risk identified in Figure 2.1. However, these categories do not encompass all possible risks to government in a *Partnerships Victoria* project. Contract management teams must carefully consider the full range of risks in their specific project.

1. *Project risks contractually allocated to government*

Selected project risks that directly affect *Partnerships Victoria* project outcomes or deliverables are contractually allocated to government. These risks are set out in the project contracts and are discussed in detail in *Risk Allocation and Contractual Issues*. Aside from express allocation of risks, commercial contracts may contain contractual obligations implied by law. There may also be consequences arising from statute⁷ or arising from the general law.⁸ Government must appropriately manage those risks allocated to it by the contract and those that arise from implied duties under the contract⁹ or from general law.

2. *Risks arising from issues not resolved at contract execution*

As a practical matter, not all issues that may arise in a *Partnerships Victoria* project will have been identified and expressly allocated in the project contracts. Some may not have been identified at all. For example, before 11 September 2001, unavailability of terrorism insurance in Australia was not generally identified as a project risk.

Other risks may have been identified, but were intentionally or unintentionally left unresolved. The fact that these issues are unresolved creates a risk that they may, in future, compromise the ability of the parties to achieve the project objectives. Government must appropriately manage the unresolved issues consistently with the risk allocation for the project generally, in order to minimise the impact of this risk upon the project objectives.

⁷ For example, *Trade Practices Act 1974* (or its Victorian equivalent) issues of misleading conduct and unconscionable conduct

⁸ For example, a failure to warn

⁹ For example, where applicable, the duties to act in good faith and to act fairly

3. *Intrinsic risks borne by government*

A variety of risks are intrinsic in a long-term service delivery project and must be managed by government. These risks include:

- the residual risk to government of a failure by the private party (or its sub-contractors) to adequately control and mitigate risks contractually allocated to the private party; and
- risks arising from ineffective public sector management (including poor contract management).

Residual risk to government of risks contractually allocated to the private party

The nature of a *Partnerships Victoria* project results in all project risks that are not assumed by government implicitly falling to the private party¹⁰ (whether expressly allocated in the contract or not).

Government may face significant residual risk where the services delivered by the project impact upon 'core'¹¹ services of the government party. In these circumstances, if the private party fails to deliver the contracted services, this may interfere with government's ability to provide the core services. Government's preferred position is that this 'interface risk' is allocated to the private party.¹²

Where interface risk is allocated to the private party, government may be entitled to financial compensation under the contract should a failure by the private party to deliver the contracted services interfere with government's ability to provide the core services. However, money alone may be insufficient to compensate government for failing to fulfil its obligations to third parties and deliver key outcomes. Thus, while the financial risk of non-performance is contractually allocated to the private party, government retains a residual risk should the private party fail to perform or pay compensation.

Government may also retain a significant residual risk if it has a continuing, non-delegable duty of care to people receiving services provided by the private party.¹³

There can be similar residual risks to government, in the absence of core service interface risk or a non-delegable duty, where a project risk allocated to the private party materialises and there is a political or public interest imperative for government to deliver the services.

Risks arising from ineffective public sector management

Consequential risks can arise if the public sector does not meet its general (non-contractual) responsibilities and mismanages the contract. These risks do not necessarily involve a failure by either party to perform its contractual obligations or impact upon the delivery of services in accordance with the output specification. They can, however, compromise the value for money outcomes of the project. They can also result in adverse political consequences for government, or damage to personal, organisational or broader government reputation.

¹⁰ See Section 4.1 of *Risk Allocation and Contractual Issues*.

¹¹ 'Core' services are discussed in Sections 1.4-1.5 of *Risk Allocation and Contractual Issues*.

¹² Interface risk and its allocation are discussed in detail in Chapter 13 of *Risk Allocation and Contractual Issues*.

¹³ Risk allocation issues relating to non-delegable duties are discussed in detail in Section 1.10 of *Risk Allocation and Contractual Issues*.

Examples of such risks include:

- ‘take-back’ risk¹⁴, which can result in government ultimately bearing the financial responsibility for project risks originally allocated to the private party. (This may occur, for example, where government fails to respond to a private party request within a contractual timeframe or where the government party engages in a pattern of behaviour at odds with the contractual arrangements); and
- the inefficient use by the public sector of the contract outputs supplied by the private party in accordance with the output specifications.

4. *Risks associated with proposed changes to the contractual arrangements*

Proposed changes to contractual arrangements involve two forms of risk:

- (i) The risk that the change process is not managed effectively.
- (ii) Risks to the ongoing success of the project that result from the proposed change.

Tools and processes for managing risks in the change process are discussed in detail in Chapter 11 of this Guide. As part of this process, the risks to the ongoing success of the project that result from the proposed change should be identified, assessed and allocated, and appropriate mitigation strategies should be put in place.

2.4 Contract management, the contract and the procurement process

The contract negotiation process must be conducted with the understanding that the contract will form part of a broader risk management framework for the project. It is vital to build a contract that not only identifies clearly the obligations of the private party and government, but also enables a productive relationship built on long-term perspectives and commitments.

The development of such relationships in the contract is an essential component of effective contract management. The contract should not be so rigid that it precludes flexible, constructive management or the natural maturing of the relationship between government and the private party.

As risk is a dynamic concept, contract management must evolve with the delivery of the contracted services throughout the project lifecycle. While contract management evolves, the contract itself should not evolve inadvertently. Through effective contract management, the government party should ensure that the contract is only modified by written agreement of the parties. For risk to be managed effectively, the foundations for contract management must be incorporated into the Project Brief and the draft contract provided to bidders, and maintained through the further development and finalisation of the contract. Doing so ensures that:

- a sound contractual basis for effective contract management is incorporated in the contract;
- there is adequate knowledge transfer from the procurement team to the contract management team; and

¹⁴ Take-back of risks is discussed in Sections 4.5 and 9.3 of *Risk Allocation and Contractual Issues*.

- the contract management strategy for the project is in place as soon as practical after the contract is executed.

To assist this process, it is essential to include the proposed Contract Director in the procurement team at an early stage, or at least allow that person to observe the procurement process and have access to procurement team members to enable an informed preparation of the contract management strategy. The procurement team should provide practical help in understanding the project and the risks inherent in it. The Project Director has overall responsibility to ensure that the Contract Director works with the procurement team to develop an effective contract management strategy that receives approval as described in Section 5.3 of this Guide.

Effective contract management must be initiated early in the procurement stage of the project and requires a strong understanding of the contract itself.

The Project Director succeeds by achieving a contractual arrangement that will deliver the project objectives. As the identification and management of risks is necessary to achieve the project objectives, the Project Director must support risk identification and management, and the development of an effective contract management strategy. The Contract Director succeeds by ensuring that the project objectives are delivered.

2.5 Contract management through the project lifecycle

Given the long-term duration of *Partnerships Victoria* projects, it is inevitable that the physical, business and technological environment in which a project operates will change over the life of the project. In addition, the project itself will pass through a number of stages and significant events. Each lifecycle stage and significant event involves particular risks and provides opportunities for the government party to implement particular control and mitigation strategies. The government party must ensure that its contract management strategy evolves through these lifecycle stages and change processes and is adapted to particular circumstances. Some of the significant contract management issues at each stage of the lifecycle are highlighted in Figure 1.1 in Section 1.2 of this Guide.

Effective contract management must take account of and adapt to changing circumstances and significant events through the project lifecycle.

2.6 Contract risk management resources

To ensure that the value for money outcome obtained in the initial contractual allocation of project risks¹⁵ is not compromised and risk is managed over the life of the contract, the government party must devote adequate resources to contract management activities. Inadequate resourcing can lead to inappropriate contract management strategies and skill levels to control and mitigate risks borne by government. In addition, over time, a lack of

¹⁵ The framework for contractual allocation of risk is discussed in Chapter 4 of the *Risk Allocation and Contractual Issues* publication.

adequate contract management capabilities can lead to the unintentional 'take-back' of risks that have been allocated to a private party through the earlier procurement process.¹⁶

The resources required for good contract management include:

- an adequate budget
- experienced personnel with the knowledge and experience to manage relationships with the private party and other stakeholders

A standing arrangement providing access to senior advisers experienced in the project. As good contract risk management starts during the procurement phase with the development of appropriate risk management strategies, contract risk management resources should be available for use during the procurement stage, not simply after contract execution.

Where feasible, the Project Director (who has overall responsibility for delivery of the project through the procurement process) should either be the inaugural Contract Director, or should be engaged until commissioning, working with the inaugural Contract Director during this period.

Effective contract risk management requires the dedication of appropriate financial resources and experienced personnel to the establishment of a contract risk management strategy during the procurement phase of the project and the maintenance of that strategy throughout the project lifecycle.

¹⁶ Take-back of risks is discussed in Sections 4.5 and 9.3 of the *Risk Allocation and Contractual Issues* publication.

3 Key elements of effective contract management

This chapter outlines the key elements of effective contract management for *Partnerships Victoria* projects and describes how these elements assist the government party. Part Two of this Guide describes the tools and processes that can be used to implement each of these elements of effective contract management.

3.1 Planning, information collection and analysis

Planning, information collection and analysis are the key first steps towards effective contract management for *Partnerships Victoria* projects. These activities go hand in hand. Planning the contract management strategies that will be used for the project assists in determining the information that will be required to implement those strategies, while the information collected and analysed helps refine the contract management plan and helps the government party in identifying, understanding and managing project risks.

In a well-managed *Partnerships Victoria* project, robust contract management planning and information collection and analysis processes have the following outcomes:

- Contract management personnel understand the legislative, regulatory and commercial context of the project.
- All the key risks of the project are identified and are updated as necessary over time.
- The likelihood of each risk materialising, and its potential consequences and impact on project objectives have been assessed.
- Possible controls and mitigants for each risk have been identified, assessed and implemented.
- Interdependencies between risks are understood.
- The private party's ability to manage the risks allocated to it has been assessed.
- Potential changes in the project's risk profile over its lifecycle have been considered, planned for and responded to. Good contract management is not reactive, but aims to anticipate and respond to business needs of the future.

Planning, information collection and analysis commence during procurement and are ongoing iterative processes. Regular review of plans will help determine what new information should be collected and analysed and where it can be collected from, and regular analysis of the information gathered then helps to refine the overall contract management strategy.

Planning, information collection and analysis are key first steps towards effective contract management for *Partnerships Victoria* projects and must continue throughout the life of the project.

3.2 Contract administration

Contract administration is generally the most significant task (in terms of time and resources required) in managing a *Partnerships Victoria* project after contract execution. Contract administration requires an understanding of the legal documentation for the project and also:

- the commercial intent of the parties
- the operating, industry and community issues associated with service provision
- the legislative and regulatory context in which the project operates.

In a well-managed *Partnerships Victoria* project, the Contract Director, with assistance from the procurement team, prepares a comprehensive Contract Administration Manual that enables the Contract Director to understand the key contract provisions and the environment in which the contract must be administered. The Contract Administration Manual answers the following key questions relating to the project:

- **What needs to be done, by whom and when?** The Contract Administration Manual assigns accountabilities, identifies government's obligations, and mitigation and control of risks, and how it will monitor the private party's performance of its obligations. (Performance monitoring is discussed in detail in Section 3.3 below and in Chapter 7 of this Guide.)
- **How will government's role be performed?** The Contract Administration Manual identifies the resources, delegations and authorisations required for government to perform its obligations.
- **What are the ramifications of any non-performance or default by the private party or government, and how should these be addressed?** The Contract Administration Manual identifies contingency plans, and issue and dispute resolution mechanisms.

By answering these questions, the Contract Administration Manual assists the Contract Director to anticipate and mitigate risk, thus maximising the project outcomes. Ongoing review and periodic updating of the Contract Administration Manual is necessary to ensure it remains of value throughout the project lifecycle.

Effective **contract administration** in a *Partnerships Victoria* project enables the government party to anticipate and mitigate risk throughout the project lifecycle, ensuring that the project objectives are delivered.

3.3 Performance reporting and monitoring

Partnerships Victoria projects, by their nature, experience high levels of change. In a well-managed *Partnerships Victoria* project, the government party is able to sensibly control this dynamic situation because it has access to adequate information on which to base 'control' actions. This information is received through effective monitoring of the 'state of health' of the project as an integral part of the government party's overall contract management strategy.

In the absence of an effective performance monitoring and reporting strategy, the government party is unlikely to have an adequate understanding of the private party's business and will not receive early warnings of risks to the project outcomes. An effective performance monitoring and reporting strategy is built upon the following elements:

- The government party understands the business environment and the objectives of government in entering into the contract in the first place. Performance measures lie at the heart of performance management and it is important that performance measures are linked to strategic objectives, or to desired outcomes.
- The government party understands the private party's internal operating environment, such as its cash flows. It is through this understanding that the government party can derive an awareness of the private party's strengths and weaknesses, including financial performance.
- The government party monitors 'soft' indicators of the management quality of the private party, looking for weaknesses or trends that may provide an early indication of trouble ahead.
- The government party regularly reviews the quality of the service as measured against the KPIs and output specifications.
- Having assessed the data collected through these monitoring activities, the government party takes appropriate action to mitigate or control any risks that are materialising, and to maximise value for money from the project.

Effective **performance monitoring** in a *Partnerships Victoria* project provides access to relevant information on which to base 'control' actions intended to mitigate any risks that are materialising.

3.4 Relationship management, dispute resolution and issue management

Given the long-term duration of *Partnerships Victoria* projects, it is imperative to maintain a strong relationship between the government party and the private party. Good relationship management enables the parties to anticipate risk events more effectively and deal with those risks that do materialise.

Good relationship management in a *Partnerships Victoria* project creates a long-term relationship of mutual benefit between the parties. Common features of good *Partnerships Victoria* relationships include the following:

- The parties appreciate one another's objectives, strategy and point of view.
- The parties are prepared to work collaboratively when required in order to resolve issues and disputes that may arise during the life cycle of the project.
- There is open and clear communication between the parties at a number of levels.
- A degree of commercial trust has been established between the parties.
- The relationship is championed at senior levels in each organisation.

Good communication and a strong relationship are essential, especially if issues arise which go to the heart of the contract's operation. It is also important to recognise that disputes and service delivery issues most likely will arise and will need to be appropriately managed. If the parties have strong dispute and issue management principles and procedures in place, these will help minimise damage to the relationship and assist the parties to achieve success in the project.

Effective **relationship management** in a *Partnerships Victoria* project creates a long-term relationship of mutual benefit between the parties, enabling them to more effectively anticipate risk events before they occur, and deal with any risks, issues and disputes that do materialise.

3.5 Governance, probity and compliance

Proper management of a *Partnerships Victoria* project by the government party involves not only managing the contract and relationship with the private party, but also ensuring appropriate governance, probity and compliance practices are established within the government party and in its interactions with the private sector party and any other government stakeholders.

In a well-managed *Partnerships Victoria* project, the risks associated with government's ultimate accountability for the delivery of infrastructure and services is effectively managed through a project governance, probity and compliance framework. This framework assists the government party to manage the contract in the context of:

- Ministerial accountability to Parliament and the people (including accountability for government's contracting activities)
- the *Financial Management Act 1994* and related Regulations and Directions, designed to safeguard public money and to ensure that it is spent efficiently
- scrutiny of the Auditor-General
- government's obligation to act as a 'moral exemplar' in commercial dealings with the private sector
- the availability of administrative law remedies, including the Ombudsman's jurisdiction and the *Freedom of Information Act 1982*
- privacy obligations in relation to personal information in the hands of the government under the *Information Privacy Act 2000*
- political or commercial constraints in exercising legal rights for non-performing or defaulting contractors.

Effective **public sector governance and compliance practices** in a *Partnerships Victoria* project ensure that appropriate governance, probity and compliance practices are established within the government party and in its interactions with the private sector party and any other government stakeholders. This assists the government party to comply with relevant laws, regulations, and government policy.

3.6 Knowledge and information management

A government party's ability to successfully manage a contract can depend upon the Contract Director having an effective knowledge and information management strategy tailored to the project's needs. In a well-managed *Partnerships Victoria* project, the Contract Director ensures the information collected in relation to a project is maintained, periodically reviewed and organised for easy retrieval and access. These practices assist the government party to comply with:

- record-keeping obligations
- disclosure obligations, such as those under Freedom of Information legislation
- intellectual property laws and confidentiality obligations.

An effective **knowledge and information management strategy** in a *Partnerships Victoria* project ensures that information relating to the project can be easily retrieved and accessed, enabling the government party to comply with obligations relating to information retention, disclosure and protection.

3.7 Change management

During the lifecycle of a *Partnerships Victoria* project, it is likely that a number of changes will occur, requiring proper management. Changes may be contemplated at the time of procurement and provided for in the contract, or not contemplated during procurement but seen as desirable or necessary alterations to services or the contract. In either case, change events are both a source of risk and a potential opportunity to extract additional benefits from the project.

Good change management processes incorporate the following features:

- Appropriate protocols are in place to manage change.
- Appropriate staff have the authority to request and authorise changes.
- Potential changes are assessed thoroughly by suitably experienced personnel, having consulted with all relevant stakeholders.
- Changes are appropriately prioritised and their implementation is properly resourced.
- The implementation of changes is controlled and tested.
- Changes are appropriately documented.
- Changes do not compromise value for money outcomes.

In a well-managed *Partnerships Victoria* project, particular care is taken during change processes to ensure that there is no unintentional take-back of risk allocated to the private party. Take-back¹⁷ can occur where the contract allocates risk associated with an aspect of a project (for example, design of the project facilities) to the private party, but the government party approves that aspect as part of the change process (for example, it approves designs for alterations to project facilities). Such an approval can result in the private party subsequently arguing that government has accepted the risk that that aspect of the project will be inadequate to enable the project to deliver the desired outputs.

Effective **change management** in a *Partnerships Victoria* project ensures that change events are managed smoothly without creating unnecessary risk or the unintended acceptance of risk by government.

3.8 Contingency planning

Contingency planning is vital to a *Partnerships Victoria* project because, as discussed in Section 2.3 of this Guide, it may not be possible to fully transfer responsibility for the risk of service delivery failure to the private party. If the private party fails to deliver services according to the requirements of the contract, the government party, and possibly government as a whole, may retain accountability, and potentially face adverse reaction from end users and third parties. In addition, the private party's obligation to provide services may be suspended through the operation of force majeure provisions. If so, the government party may be compelled or subjected to strong pressure to ensure that the public or other third parties are not inconvenienced by a disruption to the supply of those services.

In a well-managed *Partnerships Victoria* project:

- Potential contingency events have been identified and their financial consequences have been assessed.
- Information explaining the operation of the relevant contractual provisions is available for easy access and use by contract management personnel.
- Appropriate contingency plans have been developed. These may include disaster recovery and business continuity plans, step-in plans and default plans.

Effective **contingency planning** in a *Partnerships Victoria* project ensures government can react to unplanned events and control the impact of these events on service delivery value for money outcomes.

¹⁷ See Section 9.3 of *Risk Allocation and Contractual Issues*.

3.9 Ongoing review

Contract management processes must change and adapt throughout the lifecycle of a *Partnerships Victoria* contract, and therefore should be reviewed on an ongoing basis to ensure that management is sufficiently informed of current and emerging risks and issues. In addition to regular reviews, the impact of the following events should be considered as and when they occur:

- divergence between each party's expectations and actual project outcomes
- changes in the project itself through change events, contingency events, or as a result of the project moving from one stage to another in its lifecycle
- changes in the external environment in which the project operates.

Ongoing review of contract management practices and outcomes not only benefits individual projects, but can also provide knowledge to be shared across a range of *Partnerships Victoria* projects. The Department of Treasury and Finance, in pursuing its whole-of-government responsibility for supporting the contract management of *Partnerships Victoria* projects, will assist in this knowledge sharing process.

Ongoing review of contract management processes ensures that those processes change and adapt throughout the lifecycle of a *Partnerships Victoria* project and knowledge gained through those processes is retained and spread.

3.10 Contract management training

This Guide is only one component of the Victorian Government's contract management framework. A related and integral component of the framework is the contract management training to be established and maintained by the Department of Treasury and Finance.

For contract management to be effective, Contract Directors need not only a strong knowledge of this Guide, but also a detailed practical understanding of commercial and legal dimensions of contract management. The training will meet this second need. As this practical understanding is vital to the success of the Contract Director, and the Contract Director's contract management team, in implementing effective contract management practices, the training will be mandatory for public sector personnel involved in the management of *Partnerships Victoria* projects.