PURPOSE

This policy details the responsibilities and processes for managing risks associated with procurement, as an integral part of Risk Management in the Department.

SCOPE

These guidelines apply to the procurement of all types of works, goods and services. The requirements specified in Part 5 "General" are mandatory.

POLICY STATEMENT

1.1 Risk Management in procurement shall be undertaken in accordance with "DP086 DPTI Risk Management Policy."

1.2 The management of risk related to the procurement and contract management process is the responsibility of the Director, Finance & Procurement, and the Director Project Procurement & Contracts. This includes the development and implementation of measures to control risk such as standard procurement procedures and standard forms of contract.

1.3 The management of risks relating to individual procurements is the responsibility of the *Procurement Lead*.

1.4 Risk Management on individual procurements shall generally follow the Risk Management Process outlined in Part 1 of "DPTI Risk Management - In Practice".

Risk Areas Assessment

The following is a summary of the generic areas of risk, which serves as a useful guide. Note that AS 31000 also has a generic guide.

Project Definition Risk (Project not adequately defined)

The very first activity in the contract cycle is the project definition stage. It is often the case that goals are not clear, or the goals are not properly translated into a suitable project. Consequently, the outcome is not in accordance with the actual objectives. This problem often manifests itself as in people 'jumping to a solution' before being clear about what they are trying to achieve.

It is good practice to define the objective in functional terms rather than any particular solution. This allows easier implementation of innovative ideas or technology.

Sometimes goals are set that are unrealistic, or simply cannot be achieved.

The procurement process is vital in this stage. A sound procurement process enables these risks to be avoided, reducing the overall cost of the project, and enhancing the likelihood of a successful outcome.

Performance risk (Contractor unable to deliver to specification)

The most significant risk to the successful completion of a project is that the Contractor does not have the capability to deliver to specification. This creates the potential for money and time to be wasted, and weakens the Principal's position in regard to engaging an alternative Contractor. Suggested means of ameliorating the risk include:

- Prequalification of suppliers, including accreditation for any relevant processes.
- Comprehensive tender evaluation criteria.
- Requiring tenderers to detail extensively their capabilities, and management plans for key areas of the contract.
- Referring to the Contractor's past performance.
- Similar vetting of any subcontractors.
- Ensuring that contract arrangements are suitable, e.g. staged tender process.
- Require either proven technology & methods, or trials, tests & demonstrations.
- Ensuring Contractor's financial stability.
- Performance based specifications allowing use of best available technology.
- Clearly defined and agreed post-delivery (after-sales) obligations.

Financial risk (Contract costs exceed estimate)

Perhaps the second biggest risk to a successful project is that its costs will blow out far beyond the estimates that were used in the economic justification. There are a wide variety of possible sources of and treatments to address this risk, including the following:

- Shared understanding and agreement as to the scope of the project. (refer to 7.4)
- Sound competitive tendering processes.
- Fixed or variable prices, contract rates.
- Performance penalties and incentives.
- Coordination of work.
- Cost adjustment process.
- Exchange rate variations.
- Loss of, or damage to goods.
- Insurances, bank guarantees.
- Project management, cost control.
- General conditions of contract.

- Method of payment.

Functional Risk (Task is not done to requirements)

Possibly the third biggest risk to a successful contract is that it may not achieve the desired requirements. This may be due to the requirements not being clear either to the Principal or to the Contractor. Issues requiring consideration include:

- Does the project accord with the DPTI strategic objectives?
- Is it the best method of achieving those objectives?
- Has it passed economic evaluation?
- Are the functional requirements clearly documented?
- Does the specification clearly outline functional and technical requirements?
- Can we measure and verify the achievement of these requirements?
- Do the tenderers understand the requirements?

Methods of communicating the requirements and verifying that they are understood include:

- A good specification, and description of work, with clear definition of relevant documents.
- Site inspections.
- Tender enquiries.
- Requirement for tenderers to acquire all necessary information.
- Post tender submission.
- Post tender meeting.
- Sound tender evaluation procedure.

Methods of ensuring ongoing adherence to the requirements include:

- Project management/quality plans, procedures, audits.
- Test and verification procedures.
- Site conferences.
- Recording of activities.
- Measurement of outcomes at specified milestones, and initiating corrective action.

Schedule Risk (Contract takes too long)

A significant risk area is that delays can occur in the schedule, which may ultimately threaten the project completion and costs. Methods of mitigating this risk include:

- Identification and discussion on delivery risks with the contractor (pre and/or post-tender).
- Agreed contract program, with milestones.
- Staged program, including studies and trials if project is innovative.
- Regular reporting requirements on the part of the Contractor.
- Regular monitoring of progress and corrective action as required.

- Payments related to progress.
- Coordination of the work.

Legal Risk (Contract is in breach of laws)

A significant risk is that the contract may not be conducted in accordance with relevant laws. This presents a two-fold problem. Firstly, the relevant laws must be known, and secondly compliance must be assured. Risk areas are as follows:

- Compliance with international treaties - the number of these treaties is increasing all the time, as the level of international cooperation on problems that are seen to be global increases. It also includes such matters as preference for Aust/NZ goods and services.
- Interference with other services such as electricity, telecommunications, gas and railways. Damage or interference with other services requires that the injured party be compensated.
- Protection of the public from danger or nuisance due to explosives, noise, vibration, traffic hazards, chemicals etc...
- Minimising inconvenience to public and disruption to business, through restriction of access to private property. This also applies to landholders whose property is acquired for the purpose of road works.
- Adherence to National Competition Policy as determined by the Australian Competition & Consumer Commission (ACCC).
- Adherence to the Australian Competition and Consumer Act.
- Compliance with Council requirements.
- Compliance with Taxation laws.
- Compliance with other laws such as:
    - Road Traffic Act.
    - Railway operations.
    - Environment Protection.
    - Pest Plants.
    - Country fires.
    - Historic relics.
    - Aboriginal Heritage.
- Compliance with labour laws such as awards, training, occupational health, safety and welfare.

Prudential Risk (Contract breaches good business ethics)

This is the risk of anything that could result in damage to either the finances or the reputation of the organisation through lack of probity or unfair practice.

These risks must also be managed in accordance with the Prudential Management Framework which is an overarching set of principles and practices that are to be applied in projects and arrangements with the private sector.

Prudential risk includes such matters as:

- Open and fair tendering practices. No party should be discriminated against, or favoured, by any clause in the contract, or any part of the tendering procedure. This covers such matters as submission of tenders, opening of tenders, non-conforming tenders, and acceptance of tenders.

- Maintenance of confidentiality. Information provided to the Principal by Tenderers must be kept confidential, and only authorised DPTI officers have access to it.
- Administrative arrangements must be such as to prevent unauthorised access to information, fraudulent use of authorities, conflict of interest, and to ensure fair dealing at all times. This includes any contractually mandated directions must be in writing, for example instructions from the Principal's site representative.
- Any systems must be secure from unauthorised use and access to information, fraud, unfair advantage, failure etc.

Political Risk (Action which, whilst not illegal, has political impact)

Transport is a portfolio that attracts considerable public interest, many people are affected in one way or the other by decisions about the transport system. Consequently, there is always a likelihood that a project will attract political interest.

The Agency must ensure that the political sensitivity of proposals be properly considered, and are subject to due consultation with the public. These processes should be open and transparent, so that any political impact is either minimised or at least seen well in advance.

- Proper consideration of public interests.
- Inconvenience to public services.

Environmental Risk

All products (goods and services) have some impact on the environment. These impacts may occur at any or all stages of the product's life cycle; from production, delivery, use, maintenance and disposal. If unmanaged, environmental issues have the potential to increase life cycle cost of the product, adversely impact on human health, contribute to ecosystem deterioration and resource depletion.

Environmental issues to consider include:

- Energy: consumption, efficiency, sources (renewable);
- Water: consumption, efficiency, sources (potable, non-potable, recycled);
- Materials: minimisation, non-hazardous, low toxicity, sustainably sourced, recycled content;
- Greenhouse gas emissions: minimisation, carbon offset, fuel types;
- Air and water pollution: minimisation of toxic emissions and discharges; and
- Waste: avoid, reduce, reuse, recycle, recover, treat, dispose.

DEFINITIONS

All definitions not specific to this policy are available in the Procurement Governance & Policy Glossary of Terms. Refer to DP086 - Attachment 2 for a full suite of definitions.

REFERENCES AND RELATED DOCUMENTS

State Procurement Board (SPB): Supplier Selection Guideline

DOCUMENT APPROVAL

Approval Date:	14 November 2018
Review Date:	14 November 2021
Policy Contact Officer:	Team Leader Policy
Policy Custodian:	Manager Procurement Governance & Policy
Division:	Finance and Procurement
Policy Owner:	Chief Executive

Attachment 1

Potential Procurement Risk Factors and Options for Risk Treatment

Potential Risk	Options for Treatment
Requirement not clearly defined or incomplete	Consult with users to develop clear and complete requirement State requirement in outcome terms
Requirement unrealistic	Consult on potential solutions Use procurement process to define requirement
Requirement too detailed	State requirement in outcome terms Aggregate detailed requirements at higher levels
Procurement started too late	Strategic procurement program Separate urgent elements Fast track options (seek Process Exemption)
Requirement not authorised	Requirement approval process linked to budget Initial Financial Authorisation
Funds not available or insufficient	Strategic program rolling into budget Estimation and industry costing Business case Contingencies Financing options
Inappropriate or ill-defined procurement method or process	Procurement strategy Correct method from SAI 14 and Procurement Manual Acquisition Plan Initial Purchasing Authorisation Use existing contracts Use project definition to refine process
Repeated piecemeal procurement	Combine procurements for leverage Establish preferred suppliers, panel contracts
Specification too detailed or prescriptive	Express specification in outcome terms
Specification biased	Test specification against supply market Independent specification review
Specification does not meet requirement	Review with users Project definition
Information inaccurate or incomplete	Review information requirement Test information Industry briefings, site inspections
Conditions of offer or draft conditions of contract unclear, incomplete or unfair	Ensure terms are clear, complete and unbiased Use standard terms and conditions
Procurement risks misplaced	Ensure risks allocated to party best able to deal with them
Selection criteria unclear or incomplete	Identify full set of criteria in procurement documentation No changes to criteria
Suppliers not given equal	Standardised procurement advertisements

Potential Risk	Options for Treatment
opportunity	Allow adequate time for response Ensure equality in availability of information Strict tender box procedure Ensure equal responses to clarification questions Control of post tender processes
Inadequate tenders or offers	Ensure requirement / specification / conditions not unduly restrictive Restart procurement with modified requirements and/or process May negotiate with preferred tenderer
Difficulty in tender / offer evaluation	Clear selection criteria Fully developed tender evaluation plan Experienced assessors Tender clarification where required Follow three stage tender evaluation process
Costly and time consuming procurement process	Use multi – stage process Prequalification Establish panel contracts
Inflexible contract conditions	Ensure flexibility where needed e.g. hold points Contract for outcomes Provide for contract variations
Contractor fails to perform	Prequalification Review past performance, resources Quality accreditation Require proven methods, tests, demonstrations Project management, quality plans and audits Agency management and controls Dispute escalation and resolution Payment milestones tied to deliveries Clear acceptance criteria Partnering
Late delivery	Realistic agreed program with milestones Regular monitoring, reporting and correction Payments related to progress Penalties and incentives Liquidated damages provisions
Cost overrun	Fixed scope and prices Control of scope changes, variations and schedule of rates items Control of escalation and exchange rate exposure Insurances and bank guarantees Control of contingencies
Lack of probity, accountability or confidentiality	Fully transparent process Approvals in accordance with SAI 14 Comprehensive selection criteria, tender evaluation plan and tender evaluation report Compliance with tender box procedure

Potential Risk	Options for Treatment
	Strict confidentiality Equality of opportunity (see above) Written record for future scrutiny Adherence to code of conduct Avoidance of conflicts of interest Probity auditor
Key environmental risks not identified	Consult widely with experienced internal and external sources Use a whole of life cycle approach Review with users
Specification too prescriptive and specific	Conduct market research Prioritise identified risks to modify requirements
Products/suppliers fail to meet specified standards	Require evidence of environmental claims Assess quality of evidence provided Review past performance