Commercial and contract management: insights and emerging best practice

National Audit Office

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The National Audit Office (NAO) scrutinises public spending for Parliament and is independent of government. The Comptroller and Auditor General (C&AG), Sir Amyas Morse KCB, is an Officer of the House of Commons and leads the NAO. The C&AG certifies the accounts of all government departments and many other public sector bodies. He has statutory authority to examine and report to Parliament on whether departments and the bodies they fund have used their resources efficiently, effectively, and with economy. Our studies evaluate the value for money of public spending, nationally and locally. Our recommendations and reports on good practice help government improve public services, and our work led to audited savings of £1.21 billion in 2015.

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National Audit Office

Foreword

This interactive publication draws on our audits of government contracts and engagement with government to provide practitioners with insights on the new, emerging higher standard for government contracting.

What is this?

In this publication we set out our insights on some of the areas where contracts go wrong, the warning signs that we look for, and the examples of emerging good practice we have seen across government. We draw on many of our previous reports, our engagement with government as it has sought to improve its commercial capability, and our discussions with practitioners about the challenges they face. We also set out our framework for auditing commercial relationships which we intend to increasingly use to explore emerging good practice. The specific questions we ask will vary for each audit.

Why have we produced this?

The public sector now buys more in than it spends on delivering services itself. It is also buying increasingly complex things in increasingly complex ways. Public sector requirements, such as transparency, fairness and achieving value beyond the core contract terms, make this harder.

Contracting scandals in 2013 served as a wake-up call to government. It realised that it had consistently underinvested in its commercial capability and the management of its contracts. While contractors' behaviour has sometimes been reprehensible, government should not have allowed contractors to behave in this way.

As government has reacted to these scandals, it has also come to appreciate the need to improve its commercial capability and the value of managing its contracts properly.

In 2013, government turned to our good practice framework for contract management, originally published in 2008, to assess its management of contracts. We developed this framework with government through workshops with practitioners. We believe it still stands as a practical guide to the functions that government must carry out for operational contracts. But having seen it used over the past few years, we believe that although necessary, the framework is not sufficient; government needs to develop a much higher standard if it is to achieve its contracting goals consistently.

In striving to improve, government departments have thus found themselves inventing 'good practice', rather than looking to implement an existing model. Our assessment is that things are improving, but still far from perfect. We want to challenge government to establish and meet a much higher standard so it can achieve its contracting goals. At the same time, our new audit framework for commercial relationships aims to provide some consistency in the way we view contracts so that we can enhance our understanding of what is 'good practice' just as government raises its standards.

Who is it for?

We have aimed our *Commercial and contract management – insights and emerging best practice* at public sector leaders responsible for commercial relationships and contracts, and those practitioners managing contracts, both in the commercial function and more broadly.

How should it be used?

We cover 7 areas of our commercial relationships framework and highlight some of the issues we have found for each area. These show what we think are the most important areas for government to think about and are not an exhaustive checklist or comprehensive guidance on how to procure and manage contracts. Our thoughts on emerging best practice provide ideas of what might help, as government continues its journey to work out how to best contract for what it needs and set the high standards needed. Revised commercial standards published in October 2016 are a positive step on this journey – government now needs to ensure these standards are implemented and continue to raise its expectations.

Readers may choose to read this document as a whole, or go straight to our list of the 20 important insights for government to think about.

The public sector spends £242 billion a year with private and voluntary sector suppliers

Government relies on suppliers across a range of areas

Government is improving contract management on three levels

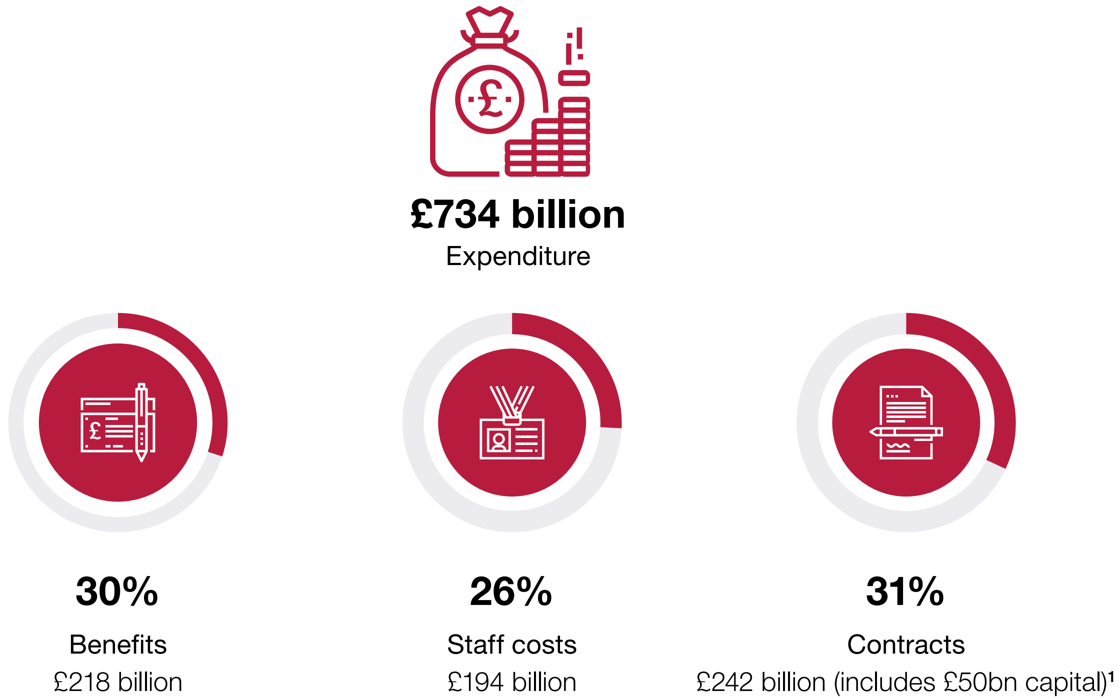
The public sector spends £242 billion a year with private and voluntary sector suppliers

The public sector spends more money on contracts than it spends on providing services itself. During 2014-15 it spent £242 billion (31% of total government spending) on external suppliers, compared with £194 billion on staff costs. Suppliers now play a significant role across the public sector. They carry out government work including complex projects, back-office administration and public-facing services.

Government's large contracts include:

- HM Revenue & Customs' information, communication and technology services contract, known as 'Aspire' (£11 billion total contract cost)
- Ministry of Defence's defence information infrastructure contract (£4 billion)
- Department for Transport's contract for the Northern Rail franchise (£2 billion)
- HM Treasury's outsourced service contract for National Savings & Investments (£1 billion)

Largest categories of public sector spending 2014-15



1 A small amount of this capital expenditure is capitalised staff costs and the majority is contracted with delivery partners.

Source: Whole of Government Accounts 2014-15

Government relies on suppliers across a range of areas

The £242 billion that the public sector spends through contracts comprises:

£192 billion on good and services

Central government departments & arm's-length bodies	Other central government entities and devolved spending	NHS	Local government	Public corporations
£62 billion	£19 billion	£54 billion	£65 billion	£9 billion

Capital

£50 billion

Capital spending is not separated out by sector in the Whole of Government Accounts

Source: Whole of Government Accounts 2014-15

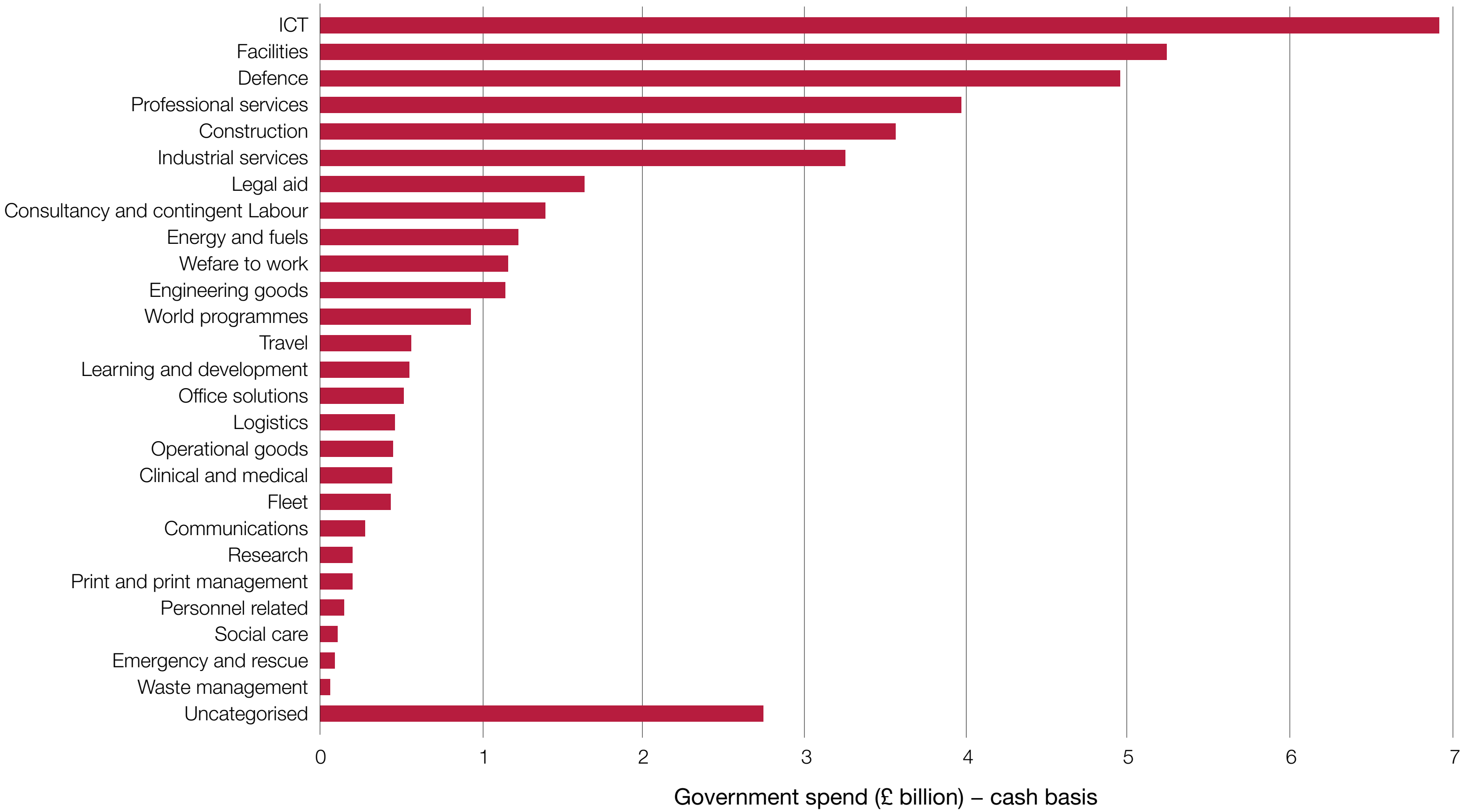
The public sector spends £242 billion a year with private and voluntary sector suppliers

Government relies on suppliers across a range of areas

Government is improving contract management on three levels

Government relies on suppliers across a range of areas *continued*

Central government contract spend categories 2014-15



Source: Cabinet Office Spend Analytic (Bravo)

The public sector spends £242 billion a year with private and voluntary sector suppliers

Government relies on suppliers across a range of areas

Government is improving contract management on three levels

Government is improving contract management on three levels

Given the importance of contracting, government needs to get it right. Since 2013, it has invested in understanding and improving commercial and contract management.

At a government level, this has included developing a stronger commercial function and re-defining the profession. Government has also improved commercial and contract management at a contract level, with the centre of government giving more support in terms of skills, expertise and guidance. We and the Committee of Public Accounts have acknowledged that government has made progress in improving contract management in recent years. The Cabinet Office recently launched new Commercial Operating Standards which apply across the whole of departments' businesses. But government still needs to do more to ensure that government contracting is effective, meets public service standards and provides better value for money for the taxpayer.

Commercial and contract management areas of focus

HM Government

Government level

Government Commercial Function has sought to redefine procurement as a new commercial profession and to improve commercial capability across government. It has developed commercial standards and guidance for departments and professional competency standards for commercial experts. It has sought to improve accountability and transparency of contracts across government and begun to build strategic relationships with it's larger suppliers.

Organisational level

Each department sets detailed commercial policies for its own organisations, and procures and manages its own contracts. Since 2013, many departments have focused on understanding and better managing their organisational capabilities. The larger spending departments, in particular, have improved the governance of both their contracts and portfolios. They have also invested in new contract management IT systems, new organisational structures and introduced new ways to prioritise resources.

Contract level (The focus for this report)

We are only just starting to see the impact of changes at a government and organisational level in our audits of individual contracts. This report focuses on the issues we still see arising in individual contracts and projects, which can be resolved at a contract level.

Identifying emerging best practice for individual contracts throughout the commercial lifecycle

Over the last 15 years we have assessed more than 140 contracts or portfolios of contracts in detail. Through this work, and broader discussions with government, we have identified a number of recurring issues.

This publication *Commercial and contract management: insights and emerging best practice*, identifies what we have seen work well and less well across contracts. It builds on our previous reports and discussions with government to provide our thoughts on emerging best practice on 20 issues across seven areas that we believe need to be improved. We illustrate emerging best practice where we have seen something work, or have identified suggestions on how to make things work better. Each of our 20 insights section shows:

- what we have seen and heard through illustrative case studies based on our previous work;
- some emerging best practice and our insights on the way forward;
- some of the audit questions for assessing the value for money of commercial relationships; and
- links to some of the wider guidance that may support government.

Fit of *Commercial and contract management: insights and emerging best practice* with our wider work

Contract level

What do we look at?

NAO contract relationship audit framework

Through a set of audit questions, helps evaluate management of commercial relations on a consistent basis to decide whether they lead to value for money.

What should government do?

For example: NAO Good practice contract management framework

Outlines contract management activities. Includes how to evaluate risk and opportunities and develop contract management plans.

What have we found?

Commercial and contract management – insights and emerging best practice

Draws on our work across government to identify what we have found and the emerging best practice for individual contracts.

This document

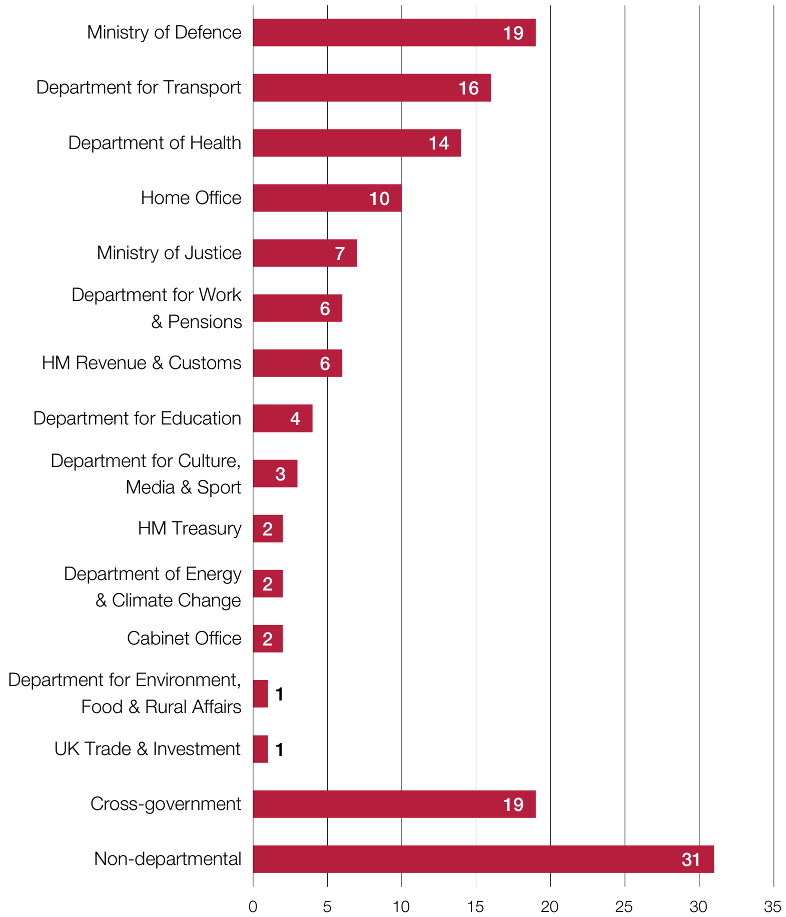
In early 2016, we published an overview of commercial and contracting in government outlining our focus for the next few years: government's commercial capability; managing contracted-out service delivery; accountability and transparency; managing markets for public services; government as one customer; and new commercial models. This overview focused on overarching government and organisational level issues rather than the contract focus we take with our insight and emerging best practice.

We used contracts and workshops

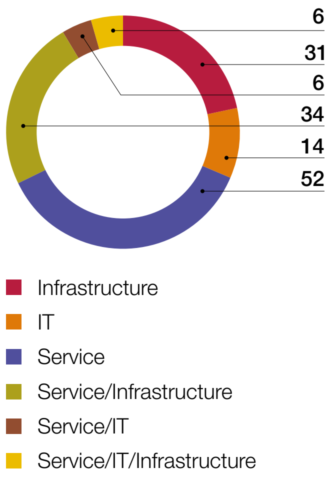
Our evidence base for emerging best practice drew on our wider back catalogue which includes more than 140 related reports since 2000 across a range of departments. We focused particularly on our most recent 26 reports covering nine central government departments. Our reports have most often focused on service contracts, but include infrastructure and IT contracts, and considered contracts at different stages in their lifecycle.

We also consulted widely with public sector practitioners. This included seven workshops with commercial staff across central government; discussions with local government representatives, suppliers and operational teams; and discussions with wider stakeholders across the commercial sector.

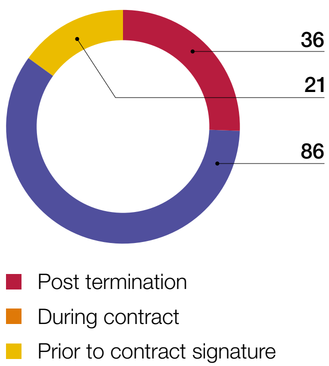
Number of reports examined for each department



Contract type



Stage examined



Our 26 most recent reports on commercial and contracting issues

Commercial strategy

- Universal Credit: progress update (2014)
- The Work Programme (2016)
- High Speed 2 (2016)
- Shared service centres (2016)

Commercial capability

- Contracted-out health and disability assessments (2016)
- Investigation into the UKTI specialist services contract (2016)
- Transforming Rehabilitation (2016)

Market management & sourcing

- General Practice Extraction Service (2016)
- Electronic monitoring contracts (2013)
- Military flying training (2015)
- InterCity West Coast (2012)
- Procuring new trains (2014)

Contract approach

- E-Borders and successor programmes (2015)
- The rural broadband programme (2013)
- Hinchingbrooke Health Care NHS Trust (2012)
- Out-of-hours GP services in England (2014)

Contract management

- Civil Service Learning's contract with Capita (2015)
- The Emergency Services Network (2016)
- Army 2020 (2014)
- Open-book accounting and supply-chain assurance (2015)

Contract lifecycle

- Yarl's Wood Immigration Removal Centre (2016)
- COMPASS contracts for the provision of accommodation for asylum seekers (2014)
- UnitingCare Partnership (2015)

Transition & termination

- Reform of the rail franchising programme (2015)
- Language services contract (2014)
- Managing and replacing the Aspire contract (2014, 2016)

A more detailed summary can be found here.

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sub-navigation

overview page

How to use this document

This interactive document sets out our insights and thoughts on emerging best practice across 20 areas relating to the contract and commercial management of individual contracts. It is designed for those working within commercial and contract management. The 20 insights are outlined here.

What this overview provides for practitioners

1. **Highlights rather than an exhaustive checklist.** We do not cover everything practitioners need to consider when setting up and managing contracts, only those issues we persistently see cause problems.

2. **A focus on commercial issues rather than project management.** Contracts often form an integral part of a wider project or programme. Getting things wrong within a programme can impact on a contract and vice versa. Here we focus on the commercial and contract management issues.

3. **An NAO perspective.** Although we consulted stakeholders for feedback on our findings and to identify good practice, our insights aligns with Cabinet Office guidance such as organisational commercial standards, are our own.

How to use this document

A standardised format

How to use this document *continued*

Tips on using this document

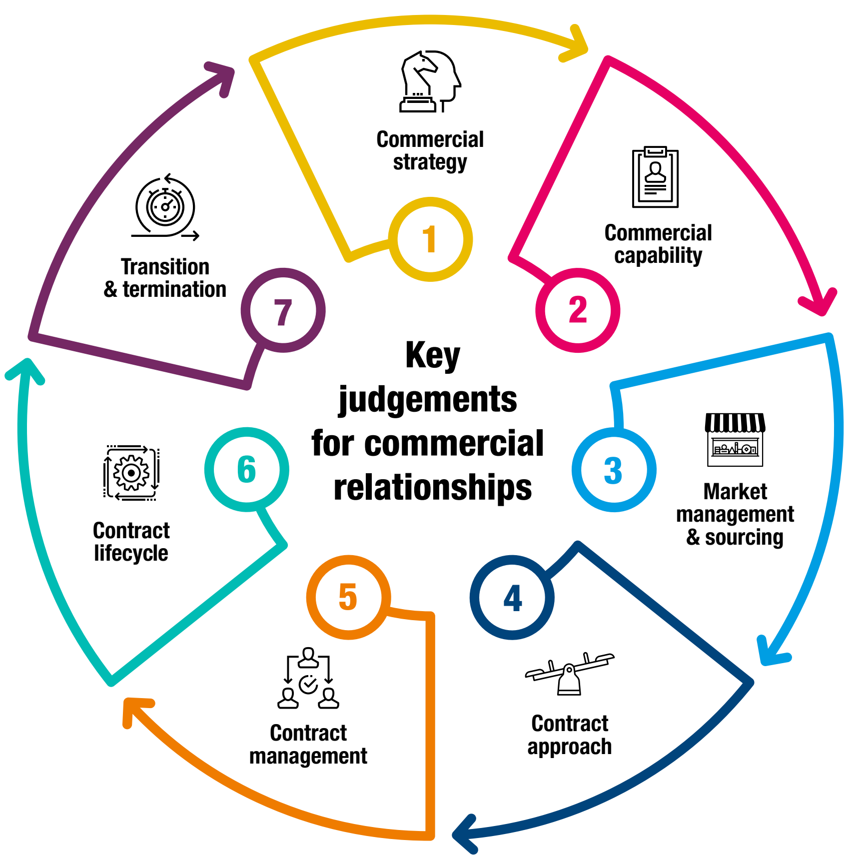
Good practice framed around the contract lifecycle – We use our commercial relationship lifecycle to structure our thinking. We recognise many of the issues raised will overlap different stages of the framework.

We adopt a **standard format set out** here.

Terminology – The public sector does not always use commercial and contracting terms consistently. We use 'commercial and contract management' to encompass all activities across the contract lifecycle. Our glossary is here.

This document is **not to be used as a checklist** for assessing commercial and contract management performance.

NAO methodology for auditing commercial relationships



Navigation

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Why is commercial and contract management important? | What are we doing? | How to use this document | The commercial relationship lifecycle – 20 insights | What does our emerging best practice mean for departments and government?

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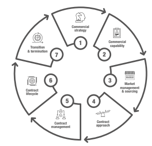
How to use this document

A standardised format



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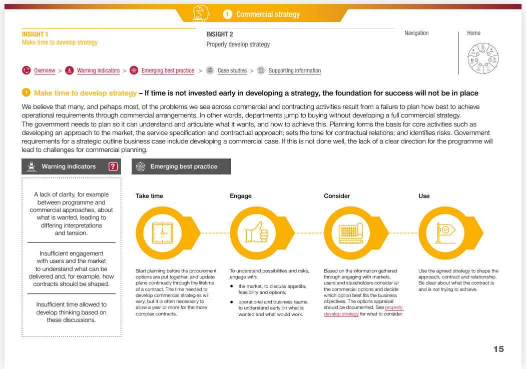
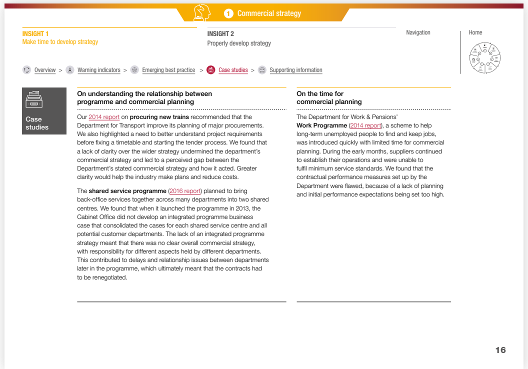
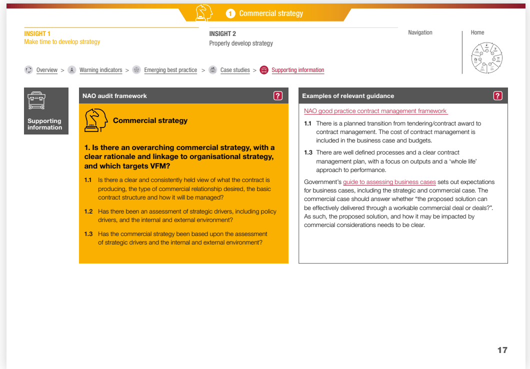






Overview

Sets out the keys issues we have identified.

Warning indicators

Highlights some common problems and risks, drawing from our past reports and wider discussions.

Emerging best practice

Identifies some sensible approaches and initiatives that we have seen or have been told about. But not all of these have been tried and tested. Following this best practice does not guarantee success in itself.

Case studies

Based on our past work and knowledge, with links to the relevant reports.

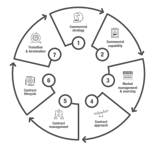
Supporting information

NAO audit framework

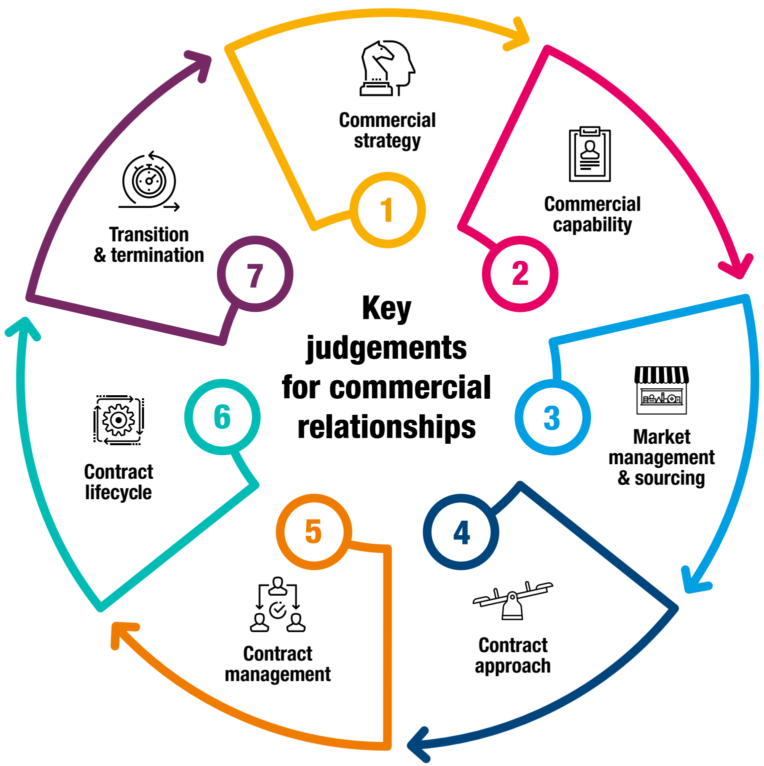
Sections from our contract relationship audit framework which outlines some of the things to look for.

Guidance

Links to other relevant guidance from government or elsewhere, such as the NAO good practice contract management framework. We do not endorse all guidance or consider it an exhaustive list but have identified it as being relevant to our insights.



Framed around our commercial relationship lifecycle, we have identified 20 issues for government to think about



Commercial strategy

1. Make time to develop strategy
2. Properly develop strategy

Commercial capability

3. Tailor capability to risks and opportunities
4. Clarify commercial and operational balance
5. Maintain 'organisational capability'

Marketing management & sourcing

6. Be 'an attractive client'
7. Be 'an intelligent client'
8. Properly evaluate bids
9. Keep up competitive tension

Contract approach

10. Ensure shared understanding
11. Understand risks
12. Design performance measures that work

Contract management

13. Manage your own obligations
14. Know what suppliers are doing
15. Show what you care about
16. Understand suppliers' motivation

Contract lifecycle

17. Plan for uncertainties
18. Work towards business as usual requirements

Transition & termination

19. Think about contract end up front
20. Allow time to consider potential end of contract

click through to insights

What does our emerging best practice mean for departments and government?

While focusing on individual contracts, our 20 insights of emerging best practice bring out themes that should be considered more strategically at a government and organisational level.

Government themes

HM Government

Data-led approach. Since our 2014 contract management report, government has improved the data it holds about contracts and suppliers. But it has some way to go in establishing benchmarks and sharing information across departments. Our emerging best practice reinforces the need for a data-led approach, including around government being a more 'intelligent client'; knowing in more detail what suppliers are doing; and gaining a collective, ongoing understanding of the market and its available options.

Trusted advisor role. The Cabinet Office is continuing to develop the commercial profession. It continues to encourage commercial teams to promote best practice rather than purely enforce procurement regulations. Emerging best practice on the importance of getting the right commercial strategy in place, and how commercial and operational teams can work together from initial consideration of commercial options through to preparing for termination, shows why this needs to be significantly improved.

Skilled commercial profession. We are concerned that government tries to do more than it has the capability to do. The Cabinet Office's capability programme is beginning to increase the number of trained commercial staff. This should improve commercial and contract management and help to ensure that there is the right staffing mix across high-profile contracts.

Organisational themes

Governance. Since 2013 we have seen departments attempt to make significant improvements to their commercial governance. Throughout our insights, we highlight the significant role played by business owners. They have a role to play in developing a strategy continuing through to ensuring that the right outcomes are achieved. We have also highlighted the need for staff to be supported by an organisation that works. Organisational structures need to be clear and effective at entity-level to be able to flow down into the processes for individual contracts.

Portfolio management. Departments segment their contract portfolio according to risk, although the sophistication of their approaches varies. Segmentation needs to be right given its importance to tailoring contract resources and understanding what suppliers are doing. Departments should maintain a comprehensive view of current and future contracts so they can actively manage their full commercial risk.

Supplier relationship management. Government widely recognises the concept of 'supplier relationship management', although many departments are still in the early stages of setting up their management processes. Emerging best practice on developing a strategy, remaining an attractive customer and sustaining competition reinforces the need to focus on managing relationships with suppliers.

1 Make time to develop strategy – If time is not invested early in developing a strategy, the foundation for success will not be in place

We believe that many, and pehaps most, of the problems we see across commercial and contracting activities result from a failure to plan how best to achieve operational requirements through commercial arrangements. In other words, departments jump to buying without developing a full commercial strategy.
The government needs to plan so it can understand and articulate what it wants, and how to achieve this. Planning forms the basis for core activities such as developing an approach to the market, the service specification and contractual approach; sets the tone for contractual relations; and identifies risks. Government requirements for a strategic outline business case include developing a commercial case. If this is not done well, the lack of a clear direction for the programme will lead to challenges for commercial planning.

Warning indicators

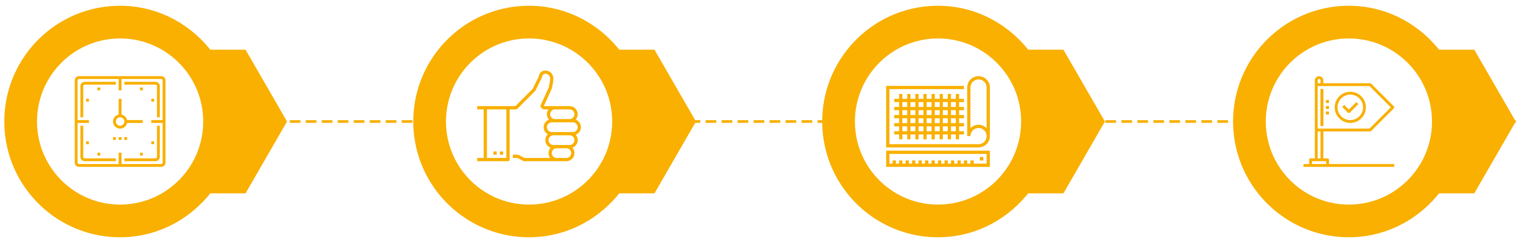
A lack of clarity, for example between programme and commercial approaches, about what is wanted, leading to differing interpretations and tension.

Insufficient engagement with users and the market to understand what can be delivered and, for example, how contracts should be shaped.

Insufficient time allowed to develop thinking based on these discussions.

Emerging best practice

Take time | Engage | Consider | Use



Take time

Start planning before the procurement options are put together, and update plans continually through the lifetime of a contract. The time needed to develop commercial strategies will vary, but it is often necessary to allow a year or more for the more complex contracts.

Engage

To understand possibilities and risks, engage with:

- the market, to discuss appetite, feasibility and options;
- operational and business teams, to understand early on what is wanted and what would work.

Consider

Based on the information gathered through engaging with markets, users and stakeholders consider all the commercial options and decide which option best fits the business objectives. The options appraisal should be documented. See properly develop strategy for what to consider.

Use

Use the agreed strategy to shape the approach, contract and relationship. Be clear about what the contract is and is not trying to achieve.

Case studies

On understanding the relationship between programme and commercial planning

Our 2014 report on **procuring new trains** recommended that the Department for Transport improve its planning of major procurements. We also highlighted a need to better understand project requirements before fixing a timetable and starting the tender process. We found that a lack of clarity over the wider strategy undermined the department's commercial strategy and led to a perceived gap between the Department's stated commercial strategy and how it acted. Greater clarity would help the industry make plans and reduce costs.

The **shared service programme** (2016 report) planned to bring back-office services together across many departments into two shared centres. We found that when it launched the programme in 2013, the Cabinet Office did not develop an integrated programme business case that consolidated the cases for each shared service centre and all potential customer departments. The lack of an integrated programme strategy meant that there was no clear overall commercial strategy, with responsibility for different aspects held by different departments. This contributed to delays and relationship issues between departments later in the programme, which ultimately meant that the contracts had to be renegotiated.

On the time for commercial planning

The Department for Work & Pensions' **Work Programme** (2014 report), a scheme to help long-term unemployed people to find and keep jobs, was introduced quickly with limited time for commercial planning. During the early months, suppliers continued to establish their operations and were unable to fulfil minimum service standards. We found that the contractual performance measures set up by the Department were flawed, because of a lack of planning and initial performance expectations being set too high.

Supporting information

NAO audit framework

Commercial strategy

1. Is there an overarching commercial strategy, with a clear rationale and linkage to organisational strategy, and which targets VFM?

1.1 Is there a clear and consistently held view of what the contract is producing, the type of commercial relationship desired, the basic contract structure and how it will be managed?

1.2 Has there been an assessment of strategic drivers, including policy drivers, and the internal and external environment?

1.3 Has the commercial strategy been based upon the assessment of strategic drivers and the internal and external environment?

Examples of relevant guidance

NAO good practice contract management framework

1.1 There is a planned transition from tendering/contract award to contract management. The cost of contract management is included in the business case and budgets.

1.3 There are well defined processes and a clear contract management plan, with a focus on outputs and a ‘whole life’ approach to performance.

Government’s guide to assessing business cases sets out expectations for business cases, including the strategic and commercial case. The commercial case should answer whether “the proposed solution can be effectively delivered through a workable commercial deal or deals?”. As such, the proposed solution, and how it may be impacted by commercial considerations needs to be clear.

2 Properly develop strategy – Underdeveloped commercial strategies will not be achievable

When we *are* given a '*commercial strategy*' as part of our audit, we rarely see commercial options fully considered and there is often a lack of realism of what can be achieved. To avoid setting itself up to fail, government needs to use commercial strategies to outline why and how it is going to conduct commercial relationships and what it wants to get from these relationships. This will prevent it from relying on generic procurement approaches with little tailoring to the specifics of the contract. Although we have found examples of where teams have adequately considered trade-offs between priorities, we often find that 'strategies' do not tackle some of the core issues that need to be considered.

Warning indicators ?

Inadequate consideration of the available commercial options and associated risks, which often leads to the easiest option being chosen.

Lack of realistic commercial options that reflect the available capability given resource constraints, and the volume of complex contracts, across government.

Lack of realism about capabilities and how these can be managed.

Lack of realism about the trade-offs between different outcomes, such as innovation and efficiencies, and how they can be managed.

Emerging best practice

Components we have seen in the most convincing commercial strategies include:

Understand			Assess	Manage	
Commercial landscape For example, breadth of market, what they can deliver, market capacity.	**Business outcomes** For example, what is realistically achievable in line with what matters to government.	**Capabilities and constraints** For example, resource and skills gaps considering specific technical skills required.	**Commercial options appraisal** For example, recognised approaches to assess range of options, including whether policy is achievable or not.	**Trade-offs** For example, outline of achievable objectives; use alternative approaches to achieve objectives where necessary. Assessed in a full review of the required commercial outcomes.	**Risks and opportunities** For example, outline of how risk is allocated and managed. Assessed in a full review of the required commercial outcomes.

Flows into: Negotiation strategies; Relationships; Procurement strategy; Contract management plan

Case studies

On considering options

In our 2015 report on **health and disability assessments**, we recommended that the Department for Work & Pensions should develop an overarching commercial strategy. The subsequent Committee of Public Accounts report stressed the importance of considering different commercial approaches, particularly where competition is limited. Otherwise, the Department would not be well placed to deliver value for money if market interest fell. While the Department said it felt positive about finding multiple bidders, there were some indications this was optimistic given previous experiences.

On being realistic about capabilities

Our 2015 report on the Home Office's **E-Borders** programme found that the Department had a more realistic strategy for its later programmes but needed to tailor its ambitions and prioritise its capabilities on projects with highest value. Programme delays and problems showed the knock-on effect of not having a realistic strategy and understanding complexities (see Figure 6). The commercial strategy adopted – a fixed price with deadlines that left detailed requirements open – caused later programme issues as the risk transfer between the Department and supplier did not work as envisaged.

We reported in 2016 that as part of HM Revenue & Customs' management and replacement of its **Aspire contract** to provide information, communication and technology services, it had developed a strategy to bring services in-house and improve its technical skills. The Department also assessed its skills and made senior technology appointments, filling 18 of 20 relevant posts permanently. This followed our 2014 findings that the Department recognised it had insufficient internal capability to challenge the cost effectiveness and suitability of its supplier's technical proposals.

On being realistic about trade-offs and what can be achieved

Our 2016 report on **Transforming Rehabilitation** found the Ministry of Justice objectively tested the appetite of prospective bidders to accept payment by results for outcomes not fully in their control, and reflected this in its payment mechanism.

The Department for Work & Pensions designed its commercial strategy for the **Work Programme** (2014 report) to promote better outcomes and innovation. It reflected lessons from previous programmes (2012 report) which were introduced quickly and not based on strong assumptions.

Supporting information

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Commercial strategy

1. Is there an overarching commercial strategy, with a clear rationale and linkage to organisational strategy, and which targets VFM?

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1.3 Has the commercial strategy been based upon the assessment of strategic drivers and the internal and external environment?

Examples of relevant guidance

NAO good practice contract management framework

10.2 A benefits realisation plan is in place for supplier relationship management; and there is a clear sense of what value is to be generated for both parties.

10.3 There is a focus on capturing innovation from the supplier where necessary or valuable.

10.4 Knowledge management issues are addressed, including knowledge capture from suppliers.

Green Book supplementary guidance on delivering public value from spending proposals includes an explanation for proposals that optimise public value by identifying and appraising a wide range of realistic and achievable options.

Government Commercial Function – Government Commercial Operating Standards Iteration ii

4.2 Commercial options should be considered early and with the department Commercial Function (suggested a minimum of six months prior to any approval date for Strategic Outline Business Case and Outline Business Case) using business cases (or equivalent) that contain appropriate consideration of commercial and contract management capability (staffing/resources).

5.1 Early engagement of suppliers.

The Scottish Government's Procurement Journey – Develop strategy

3 Tailor capability to risks and opportunities – Resources must be focused on contracts where they can be used most effectively

We are often asked what commercial and contract management resources should be devoted to individual contracts. Ideally, government would be able to resource everything it needs, but insufficient overall capacity often means it cannot. Government thus needs to ensure that resources are allocated where they are needed most and where they can achieve the most impact. This is made harder by the lack of robust benchmarks for determining the appropriate level of commercial and contract management resources.

Warning indicators

A lack of planning to tailor resources to contract risks.

Contracts understaffed at key stages as skills and staffing requirements shift throughout the contract.

A lack of analysis, such as return on investment, to identify where staff should be placed.

Emerging best practice

Organisational and contract perspectives need to be considered in establishing a staffing model

Organisation perspective

Identify how contract fits with wider portfolio of contracts

Understand sum of staffing requirements across strategically important contracts

Consider organisational return on investment and wider opportunity costs of staffing decisions

Set out capability 'blueprints' to show how they will meet their commercial needs. (Committee of Public Accounts, update on transforming contract management, 2016)

Contract staffing model

Developed early, regularly reviewed, unique to contract, differs by contract stage

Contract perspective

Identify return on investment on staff spending

Consider lifecycle stages independently

Tailor resources to risks and opportunities

Allow time to reconsider as necessary

Case studies

On considering resources against future contract risks

Our 2016 report **contracted-out health and disability assessments** found that the Department for Work & Pensions had invested heavily in its performance management team which it increased from 48 people to 80 over two years. However, we recommended the Department tailor its resources to future risks. It recognised that having insufficient skills and expertise remained a major risk.

Large-spending departments, such as the Home Office and Ministry of Justice, have developed approaches to prioritising contracts. This helps them decide whether the resources allocated to each contract are proportionate and address capability issues as covered in the Committee of Public Accounts' 2014 report on **transforming contract management**. The Home Office told us that it uses a 'heat map' to assign contracts across three tiers. This considers, for example, operational importance, business criticality, contract type and value. The Home Office is flexible in how it uses the model and applies discretion. The Department for Transport told us it has developed a similar model.

On tailoring resources to each contract stage

The Committee of Public Accounts reported that there was an insufficient focus across government on contract management once a deal had been signed (update on transforming contract management, 2016). More specifically, we found that there were insufficient staff working on the contract at different stages:

- We found most bidders to be positive about their dialogue with the Ministry of Justice when bidding for **transforming rehabilitation** (2016 report) contracts but teams had appeared stretched in dealing with so many bidders, increasing the risks connected with the process.
- The Home Office's **COMPASS contracts for the provision of accommodation for asylum seekers** (2014 report) included areas of risk such as whether suppliers would meet contractual commitments on accommodation quality and maintenance. We recommended it should make better use of its compliance teams to ensure suppliers are meeting their contractual commitments and prioritise its resources, particularly its compliance teams, so that it focused on riskier areas.
- The value for money of the **rural broadband programme** (2015 report) depended on scrutinising hundreds of thousands of supplier invoices and carrying out follow-up analysis on take-up rates. This needed the Department for Culture, Media and Sport and local bodies to have the skills and capacity to complete these checks. Some local bodies told us that they may not have enough staff, creating a risk that planned measures would not be effective. We recommended that the Department should consider the long-term need for sufficient financially skilled staff to support compliance activities during the contract. Since this report, we have found that the Department has strengthened its value-for-money team which supports local bodies (the Superfast (Rural) Broadband Programme: update 2015).

Supporting information

NAO audit framework

Commercial capability

2. Does the department have the capability needed to manage the contract and is it developing capability for the future?

2.1 Does the department have the necessary capability, skills and systems?

2.2 Does the department understand its future needs and is it working towards meeting them?

2.3 Has the department deployed its capability in a balanced way across the lifecycle and is commercial capability effectively integrated with the business?

Examples of relevant guidance

NAO good practice contract management framework

2.3 Contract manager has appropriate skills with access to relevant training and development. Experienced contract managers are used on key contracts.

2.7 Balanced contract management teams are brought together, with a range of skills.

2.8 Contract management is adequately resourced in proportion to the importance of the contract.

Scottish government framework

Identifies the skills and competencies required by staff involved in procurement.

Government Commercial Function – Government Commercial Operating Standards Iteration ii

1.1 Improving commercial capability in departments.

1.2 Changing the grade mix to reflect target operating model.

4 Clarify commercial and operational balance – Confused responsibilities and poor knowledge-transfer weaken contract management

Integrating commercial teams with policy, operational and business teams is one of the biggest challenges for public sector contracts. Commercial and policy, operational and business teams need to work together to develop a clear understanding of the outcomes required and how a contract will deliver these. Organisations are at different stages in both bringing together these functions and handling the transfer of knowledge and responsibility between teams. We remain unconvinced that anyone has cracked how to do this fully. At an organisational level, some government departments have tried to do things differently, with business areas taking more ownership of the process.

Warning indicators ?

Unclear roles and responsibilities, particularly in terms of the commercial role which can range from 'adviser' to 'owner'.

Operational contract managers not having the capacity to understand and perform their role and get the best from the contract.

Ineffective and poorly managed handovers and transition of knowledge and skills across the lifecycle as roles change.

High levels of senior staff turnover create challenges for transferring knowledge and expertise.

Emerging best practice

Plan

Plan who should be involved and when, thinking ahead about risks and opportunities for each lifecycle stage.

- Confirm the role of the commercial function and other experts at each stage.
- Produce clear documentation outlining roles and responsibilities, such as a statement of ownership.
- Blueprint resourcing strategy achieved.
- Procedures that validate the delivery of contract management plans.

Resource: Give the right people the right levers

- Establish a clear overarching commercial governance framework for the department with an appointed senior leader who is regularly challenged around commercial delivery effectiveness.
- Ensure that those involved in contracting have adequate skills, knowledge and proven competency for their roles.
- Make sure that people understand their role and have sufficient training and support.
- Draw on commercial and other business expertise as required.
- Give identified owners enough control and levers to carry out their role effectively.

Manage: handovers and interfaces

- Maintain clear documentation.
- Manage handovers from procurement to operations; and then the interface between commercial and operations.

Continuity

- Monitor continuity and add retention incentives as required.
- Establish transition protocols for when staff in senior positions leave.

Case studies

On effective transition of knowledge and skills across the contract's lifecycle

Our 2016 investigation into the **UK Trade & Investment's specialist services contract** found that its governance of the procurement was weak, the procurement team had a poor understanding of the bid and requirement, and there was no effective handover to the contract management team. UKTI ultimately decided to terminate the contract on the basis that it no longer considered the contract to represent value for money.

The Department for Transport cancelled its franchise competition for **InterCity West Coast** (2012 report), following technical concerns about the procurement process. We found no one person oversaw the whole process, or could see patterns of emerging problems, partly because of inconsistency in committee membership and requirements.

The Major Project Authority's reviews of **E-Borders** (2015 report) found governance issues including unclear roles and responsibilities and prolonged disagreements about critical issues. This was not helped by a lack of continuity of key staff and programme reliance on suppliers for staffing.

On aligning commercial and business expertise

Recent reports recommended the need to clarify roles and responsibilities, such as whether commercial should act as advisers or take more ownership with support from operations. When managing contracts within operational teams, managers need to be well-equipped and understand the commercial levers to get the best from contracts. We have seen some good practice:

National Offender Management Service – Transforming Rehabilitation (2016 report)

We found that operational contract managers are supported by analytical, finance and data assurance specialists that give an improved view on contract performance. This is backed up by operational assurance teams, which assess contract compliance, data quality and service quality, including links with other agencies.

Department for Work & Pensions – Contracted-out health and disability assessments (2016 report)

The Department reorganised responsibilities so that each contract has a senior contract owner and business partners provide expertise and challenge financial reports. Dedicated commercial teams within programmes are responsible for commissioning commercial services and performance management teams act as primary contacts for suppliers.

On disconnect between commercial and operational activities

In our 2016 report on the **Emergency Services Network** we thought that the commercial arrangements in place created a risk that the emergency services did not have sufficient control over the service they received. They did not have commercial levers over the full service received, limited contact with suppliers across the end-to-end service, and no direct recourse to suppliers for poor service. This reduces the benefits available from the new services.

We found in 2009 that the Department for Education's **building schools for the future programme** had a shortage of the commercial and project management skills needed by local authorities to implement the programme. Projects were delayed because of a lack of capacity, reliance on consultants and continuity issues. Inadequate attention was given to operational activities such as community consultation. We highlighted a danger of benefits not being achieved without clear responsibilities, accountability and commitment.

Supporting information

NAO audit framework

Commercial capability

2. Does the department have the capability needed to manage the contract and is it developing capability for the future?

2.1 Does the department have the necessary capability, skills and systems?

2.2 Does the department understand its future needs and is it working towards meeting them?

2.3 Has the department deployed its capability in a balanced way across the lifecycle and is commercial capability effectively integrated with the business?

Examples of relevant guidance

NAO good practice contract management framework

1.4 Overall ownership of contract management across the organisation is clear, with a 'contract management senior responsible owner' with responsibility for driving organisation-wide contract management performance.

2.3 Contract manager has appropriate skills with access to relevant training and development. Experienced contract managers are used on key contracts.

2.4 Contract managers have accurate job descriptions, roles and positioned at an appropriate level.

2.5 Contract managers have clear objectives and reporting lines.

Government Commercial Function – Government Commercial Operating Standards Iteration ii

1.4 The level of commercial interim staffing in departments is optimised.

3.1 Ensuring strong and effective commercial engagement.

7.3 Commercial contract management competency.

5 Maintain ‘organisational capability’ – Without effective governance and systems, even the most capable people will not succeed

Simply investing in skilled people will not be enough to ensure commercial success. The right people need to work within the right environment. This includes having appropriate governance, systems, processes and data to make effective decisions. Team members need to know what is going on, the levers at their disposal and how their actions affect the overall outcome required. This is an area where we have seen some of the biggest changes in government departments over recent years, but no-one yet says they have a fully mature organisational model.

Warning indicators

Insufficient data and information being available to make informed decisions.

Poorly established governance leading to unclear roles and responsibilities and ineffective oversight.

Poor-quality information and reporting systems and a lack of standardised approaches to using data.

Emerging best practice

Governance

Put in place roles, responsibilities and processes for monitoring, decision-making, ownership and oversight from early in the contract lifecycle. This includes establishing ‘executive champions’ who report to organisational committees with oversight of the contractual portfolio. Continuity should be supported by back-up plans that document what staff need to know and specific handover processes. See ensure a shared understanding for more examples.

IT systems

Develop and use systems that produce electronic invoices, record cost and progress information in a way that is consistent and easy to analyse. This will allow closer management of the contract with less effort required.

Data and processes

Make use of standard and documented processes to manage obligations, carry out procurement processes in a lean and effective way, and deal with changes or any incidents or disputes. Collect and use information to make decisions across contracts, categories and the organisation. See manage your own obligations and properly evaluate bids for more details of processes.

Visibility

Keep records with information and dates relating to processes, contracts, contract performance, and the pipeline of forthcoming work. These should be available to all those involved with the contract and should feed into the governance systems, including portfolio overviews, detailed above.

Case studies

On establishing governance

Our 2016 investigation into the **UKTI specialist services contract** found communication during procurement to be relatively informal. Significant changes, such as to the volume and contract price, were not consistently recorded. These governance shortfalls contributed to control problems, leading to pricing disputes and the ultimate early termination of the contract.

In our 2014 report on the **Army 2020** recruitment programme we recommended that the Ministry of Defence should closely monitor the effectiveness of its governance regime to oversee its supplier. Its failure to effectively manage contracts contributed to delays in developing the software required and increased costs. This led to poor results and an inability to implement the performance management mechanism.

In 2013, government's internal audit agency criticised governance and accountability arrangements for the shared service centres programme. This led to difficulties in deciding on a design, which contributed to delays. The Cabinet Office took steps to restructure governance and clarified roles. The governance was further strengthened in 2016 to better enable shared decision-making.

Our 2014 report, **Transforming government's contract management**, identified good practice across five levels of governance. In particular we found that:

- The Department for Work & Pensions commissioned an external review to identify good practice in its day-to-day contract management and improve consistency.
- The Department of Health reviewed its data to make sure contract ownership information was up-to-date and strengthened its guidance for senior responsible owners.
- The Department for Work & Pensions improved escalation routes by ensuring that all contracts have senior responsible owners reporting to staff in suitable procurement categories.
- The Ministry of Justice established a new commercial and contract governance committee with a wider remit and greater seniority covering current contracts as well as those yet to be signed.
- The Crown Commercial Service's complex transactions team provided central support to departments with contractual disputes.

Supporting information

NAO audit framework

Commercial capability

2. Does the department have the capability needed to manage the contract and is it developing capability for the future?

2.1 Does the department have the necessary capability, skills and systems?

2.2 Does the department understand its future needs and is it working towards meeting them?

2.3 Has the department deployed its capability in a balanced way across the lifecycle and is commercial capability effectively integrated with the business?

Examples of relevant guidance

NAO good practice contract management framework

1.2 Contract ownership is clear, with the budget holder, senior responsible owner (SRO), and contract manager clearly defined; there is continuity of governance as far as possible.

1.3 There are well defined processes and a clear contract management plan, with a focus on outputs and a 'whole life' approach to performance.

1.5 Contract management processes are aligned with, among others, wider organisational governance processes, operational boards, and risk structures.

1.6 Contract management issues and performance are reported through the governance structure with senior level engagement.

2.9 Organisation has a contract management 'community' allowing contract managers to share good practice. The community also plays a role in the wider government contract management/procurement community.

Government Commercial Function – Government Commercial Operating Standards Iteration ii

2.3 Using management information to support effective demand and category management.

6 Be 'an attractive client' – Short-term or ill-considered decisions influence whether suppliers want to work with government

Government does not always behave as if suppliers have a choice whether to work with it or not. Suppliers need to know that they will get something out of a contract and that they will receive a fair deal before they bid. We often find that government is keen to take short term tactical advantages over contractors, and fails to think about the long-term impact of its decisions on suppliers and market sustainability.

Warning indicators ?

Doing things quickly puts at risk long-terms commercial sustainability.

Not providing sufficient information during procurement, suppliers do not know what they are getting themselves into.

Short sighted commercial decisions contribute to unfair, non-profitable contracts and impact market sustainability.

Insufficient time allowed for supplier due diligence.

We continue to have concerns about the level of competition in some vital areas of public service delivered through providers – even where competition exists it can often be a thin market. We have sometimes seen departments disappointed by how difficult it is to generate interest, bidders withdrawing during procurement and suppliers seeking to terminate contracts early. Public sector requirements can act as a barrier for some suppliers – our report on government's spending with small and medium-sized enterprises found that transparency, government's appetite for risk and disproportionate bidding requirements created barriers for smaller businesses. Larger suppliers also told us they discriminate which contracts to bid for in choosing potential work. They consider how contracts fit with their expertise and existing or potential work, alongside balancing contract risk against profitability.

Emerging best practice

Before

Market engagement

Engage with the market on an ongoing basis to promote opportunities and assess suppliers.

Give as much notice as possible about future approaches and contracts (before developing strategy).

During

Procurement

Keep potential suppliers well informed about the procurement and the project ahead.

Consider the impact of procurement decisions on contract risk and profitability.

Provide the information required and allow time for bidder due diligence.

Later

Live running

Ensure as far as possible that the contract proceeds in a consistent and fair way.

Continue to think about the wider implications of any decisions.

Case studies

On ensuring fairness through procurement

Providing sufficient information throughout procurement allows bidders to know what they are getting themselves into and minimise contractual risk, as well as supporting a fair and open contract.

For the **InterCity West Coast franchise** (2012 report), the Department for Transport's invitation to tender contained significant gaps on how the Department would calculate any capital needed from bidders. There was considerable confusion among staff about the primary purpose of the subordinated loan facility. Some bidders told us that when they asked for clarification on issues, staff did not appear to know the answers and it often took some time before there was clarification. We concluded that this contributed to cancelling of the West Coast procurement.

For **Transforming Rehabilitation** (2016 report), the Ministry of Justice set out its commercial strategy to bring new suppliers into the market, and put extensive effort into attracting a diverse range of potential bidders. While more than 700 private, public and third-sector organisations registered an interest, only one of its contracts was won by a supplier from outside the private sector. Voluntary sector bidders were put off by the scale, fixed timetable and associated risks, and a lack of detail about the Ministry's requirements for financial guarantees from bidders.

Our 2016 report on the **UnitingCare Partnership contract** found that bidders faced significant difficulties in pricing their bids accurately due to limitations in the available data. It was difficult to determine accurately the volume, services to be provided and the costs of providing services, and bidders had to make large assumptions, with scope clarifications made late and in some cases even after the contract was signed.

On ensuring contracts are profitable and set reasonable expectations

Contracts need to be profitable for suppliers to remain interested. In 2014, a supplier withdrew from providing **contracted-out health and disability assessments** (2016 report) for the Department for Work & Pensions following concerns over the negative impact of the contract on claimants, its reputation, staff and profitability. The Department and suppliers recognise that inconsistency in the approach to the contract, inflexibility in setting terms and potential financial losses reduced the attractiveness of the contract.

The motivation of the Ministry of Defence's supplier for **military flying training** (2015 report) to look for cost reductions within the contract is likely to have been affected by reductions in the overall value of the programme to implement new core training as well as the structure of the incentivisation regime. Its potential earnings reduced while its planning and infrastructure costs have been largely unaffected by the changes. During the procurement of the Fixed Wing contract amendment two bidders withdrew from the competition, leaving one bidder, as they had concerns about meeting the commercial and technical requirements of the Request For Proposals.

Supporting information

NAO audit framework

Market management & sourcing

3. Has sourcing supported the commercial strategy and followed recognised good practice to optimise VFM?

3.1 Has market management driven long term value for money?

3.2 Was there a defensible process that resulted in the selection of a capable provider?

3.3 Was there optimum use of competitive pressure?

Examples of relevant guidance

NAO good practice contract management framework

4.2 The respective responsibilities of the contract manager and the supplier are clear, and potentially defined in a 'joint statement of intent' or similar.

9.3 The customer organisation understands what motivates and drives the supplier and how supplier development fits with the supplier's goals.

7 Be 'an intelligent client' – Without understanding what is wanted and at what cost, government will not get the outcomes it wants

Far too often, we find that government does not understand what it means to buy and what this should cost, or what it has actually bought for the price paid. Without this understanding, government exposes itself to a risk that it will not achieve its goals or that its contracts will be ineffective and inefficient. In putting itself in the best position to negotiate or understand how contractual changes affect service and price, government needs to understand both the specification and how the price offered by suppliers relates to its understanding of costs.

Warning indicators

Incomplete, inaccurate and broad specifications leading to requirements not being delivered or significant costs to amend the specifications.

Ineffective challenge of the assumptions underlying bids.

Misunderstanding of the cost drivers and incentives through, for example, a lack of modelling.

Emerging best practice

Intelligent clients need a deep understanding of the required contract specification and the way the contractors will deliver it. This includes an understanding of the appropriate cost of the contract and the contractors' cost drives.

See the next page.

	Cost: Intelligent clients should maintain:	Cost: Examples of how it can be used	Specification: Intelligent clients:
Commercial Strategy	• A should-cost model • (proportionate to the complexity of the service)	• Decide whether to make or buy • Divide large services into lots in a way that helps competition • Choose an appropriate pricing mechanism	• Engage the market early to improve understanding of suppliers and what can be delivered • Make early discussions with the end user of the contract to understand the environment, constraints, requirements, risks and opportunities
Commercial capability		• Ensure the business has the ability to understand the cost-drivers and how they can influence supplier behaviour	• Establish and keep in-house knowledge and use it to define what is bought • Align operational requirements with commercial possibilities
Market management & sourcing	• A cost template for bidders to use (consistent with the should-cost model)	• Evaluate bids consistently • Compare costs between bids to help negotiate with the preferred bidder	• Evaluate potential solutions on the market • Benchmark and challenge individual suppliers on potential
Contract approach	• A contract cost schedule (consistent with should-cost model and identical to winning bid)	• Ensure the contract is consistent with the winning bid • Create a contract which incentivises the supplier to optimise price and quality	• Are transparent through the procurement about requirements, including any uncertainties and likely changes • Risk assess the likelihood of individual bids being able to meet the expected scope
Contract management	• An invoice format that follows the contract exactly	• Ensure the invoice is consistent with the contract before paying • Understand the commercial pressures driving the supplier's behaviour	• Ensure that sufficient capacity is available for any required work with suppliers to refine specification and reduce uncertainties
Lifecycle management	• A contract cost schedule updated for any agreed changes	• Evaluate and price any changes consistently • Forecast and manage budgets • Benchmark against similar contracts and the original bid	• Revisit requirements throughout the contract's lifetime. • Recognise where there are uncertainties and plan for where changes are expected
Transition & termination	• A revised should-cost model, learning lessons from the contract, to be used for the next contract	• Prepare for the end of the contract by updating and refining the should-cost model	• Put processes in place early to understand the service and how it could transition • Continue market engagement to keep options open

Case studies

On developing what is wanted

Our 2015 report on the **GP Extraction Service** found that project requirements were not initially set out in detail. When the NHS Information Centre (now NHS Digital) then needed to work with the client to produce detailed requirements, it had issues with high project manager turnover, reliance on contractors for expertise and not having sufficient capability for requirement workshops. It found it difficult to agree detailed requirements.

On using knowledge to challenge bidders

Our 2016 report on **contracted-out health and disability assessments** found that the Department for Work & Pensions continued to set high targets and use assumptions without evidence or sufficient testing and challenge. It also allowed bidders to make assumptions about staff training that it knew were overly optimistic and difficult to achieve.

The **Department for Transport** shared with us its approach to developing a benchmark to assess bids. It iteratively develops models for expected bids each time it runs a rail franchise competition. Models consider, alongside other assumptions, previous growth rates, adjustments for planned changes (eg electrification of particular routes), the context of bids on other franchises and a prediction of the likely offers from bidders. These are used to predict revenue costs and likely profit demands. This means that the Department can take a more intelligent view of bids and focus on the areas that fall outside its predictions and expectations, which will be more risky.

On understanding costs

In our 2016 investigation into UK Trade & Investment's specialist services contract we found that UKTI gave insufficient challenge to its supplier's costings, bids and negotiations. For example, it did not challenge when elements of the price that had previously been described as 'fixed' were changed, or when a new element was introduced to the pricing mechanism.

UnitingCare Partnership (2016 report) won a five-year contract to provide older people's and adult community services from the Cambridgeshire and Peterborough clinical commissioning group. The partnership made a tactical decision to submit a lower bid to win the tender, despite increasing demand for services. This lower bid helped win the contract, but neither organisation could fully assess whether the contract price was viable due to limitations in the data. This contributed to the collapse of the contract.

In our 2015 **Superfast (Rural) Broadband Programme** update we found that during the first phase of the programme, the Department for Culture, Media & Sport developed its knowledge of costs and undertook cost comparison exercises. It used this understanding to agree lower costs with its supplier in the next phase of the programme.

Supporting information

NAO audit framework

Market management & sourcing

3. Has sourcing supported the commercial strategy and followed recognised good practice to optimise VFM?

3.1 Has market management driven long term value for money?

3.2 Was there a defensible process that resulted in the selection of a capable provider?

3.3 Was there optimum use of competitive pressure?

Examples of relevant guidance

NAO good practice contract management framework

1.2 Market intelligence is used to maintain an understanding of the market and of alternative suppliers (to inform benchmarking, contingency planning and re-competition strategies).

10.2 The capacity and capability of potential suppliers is analysed, and linked to wider government analysis.

11.5 Market making is undertaken where appropriate to stimulate competition and ensure the requirements can be delivered by the market; there is an understanding of issues such as switching and bidding costs.

Cabinet Office open book guidance

Discusses how government is to decide which contracts would benefit from open book approaches. At a minimum, it recommends understanding cost units and drivers.

IACCM – Tackling the weaknesses in Contract Management Pitfall 1: Lack of clarity in scope and goals

8 Properly evaluate bids – Evaluating the capability to deliver is just as important as evaluating what will be delivered

Government officials often say that they are good at 'getting the bidding process right'. Very few procurements are legally challenged. But we have recently seen a handful of examples where procurement has gone very wrong. And when it goes wrong it has a significant impact on value-for-money. Furthermore, in our discussions, practitioners told us that they felt the right bidder does not always win. In part this comes from the challenge of assessing suppliers' ability to deliver, rather than assessing competing promises of what they will deliver.

Warning indicators ?

Process weaknesses, such as errors in the assessment criteria and not being consistent or transparent.

Competition structured in a way that rules out desirable bidders such as small and medium enterprises.

Evaluation criteria not aligning to the outcomes required.

Bids evaluated on the basis of promises rather than an assessment of a capability to deliver that promise.

Emerging best practice

Assessment of capability

Clear business outcome agreed with the operational team at all levels of the organisation.

Clear criteria and measures linked to overall outcomes.

Work out how this will this be measured in the bid assessment.

Require and assess a method statement and team diagram.

Assessment against outcomes

Consider past performance to the extent procurement regulations allow. A procurement policy note requires organisations to: satisfy themselves that suppliers' recent performance is in line with requirements; ensure that selection criteria on past performance and related required information are specified in EU procurement notices; obtain and where necessary verify the information as part of applying selection criteria and pass on relevant information to the Crown Commercial Service.

Assessment of risks

Assess the risk of a bid not being delivered in line with the specification considering capabilities, ambition and innovation, dependencies and risk, and the supply chain.

Assess risks consistently through, for example, scenario testing.

Consider potential timing of cash flows.

Have pre-determined thresholds been breached?

Determine a minimum standard in advance, with bids below this not considered.

Use a realistic 'should cost' model and expectations to create thresholds of acceptability.

Case studies

On carrying out the procurement process

Our 2016 investigation into UK Trade & Investment's specialist services contract found that it breached good practice and the principles of good procurement. The negotiations before contract award gave the impression of UKTI not wanting to reopen the competition to other bidders by awarding the official contract on one basis, while agreeing to act on another. Negotiating on key issues after bids were submitted restricted competitive tension and exposing it to a risk of significantly reduced value for money from the deal.

On using evaluative criteria to get a supplier that can provide the desired outcome

The Ministry of Justice's evaluation of **transforming rehabilitation** (2016 report) bids considered both financial and qualitative criteria. To ensure that no supplier captured more than 25% of the total market, its approach allowed it to revert to the next-best bidder in four cases. This contributed to increasing the number of suppliers.

The **Crown Commercial Service** told us that when it realised that only the incumbent supplier would bid for new government travel contracts, it restarted the process using different criteria. This brought in more small and medium enterprises.

The Department for Culture, Media & Sport's approach to **rural broadband contracts** (2013 report) was less well developed. Given weak competition across the rural broadband market, it developed a national procurement approach with local bodies agreeing call-off contracts with suppliers. This reduced public sector risk but also competition as the framework entry requirements favoured those with national capacity. This led to one effective bidder – the incumbent – winning all local contracts.

The **Home Office** and **HM Revenue & Customs** told us that they have been developing a more intelligent approach to evaluating bids. This involved developing models to allow them to more effectively balance the need for cost, quality, and efficiency; perform sensitivity analysis; and understand what it meant when criteria changed.

In our 2014 report on **procuring new trains**, we recommended that the Department for Transport continue to consider train operating companies' ability to work collaboratively with train manufacturers when it selects operators and drafts franchise agreements, to help reduce whole system costs.

When reporting in 2012 on **Hinchingbrooke Health Care NHS Trust**, we found that the authority let bidders adjust the risk in their own proposals and could not be sure it compared like with like when selecting its preferred bidder. This increased the risk of making the wrong choice. We recommended that procuring authorities need to apply consistent risk adjustments so bidders are treated equally and only realistic savings opportunities are considered.

Supporting information

NAO audit framework

Market management & sourcing

3. Has sourcing supported the commercial strategy and followed recognised good practice to optimise VFM?

3.1 Has market management driven long term value for money?

3.2 Was there a defensible process that resulted in the selection of a capable provider?

3.3 Was there optimum use of competitive pressure?

Examples of relevant guidance

NAO good practice contract management framework

11.1 Processes are in place to evaluate and review options around delivering services in-house or outsourcing.

11.2 Market intelligence is used to maintain an understanding of the market and of alternative suppliers (to inform benchmarking, contingency planning and re-competition strategies).

11.3 The capacity and capability of potential suppliers is analysed, and linked to wider government analysis, for example, by the Office of Government Commerce.

The Scottish Government's Procurement Journey

9 Keep up competitive tension – Competition need not just happen at the start – sustaining competitive tension throughout adds value

We believe that competition can be taken further than just focusing on ensuring that there are sufficient, credible bidders during procurement. Competition is critical at the bid stage but this alone will not provide value for money. It is also desirable to keep-up competitive tension throughout the contract. Organisations can also learn from others, such as defence, where single-source suppliers are common.

Warning indicators

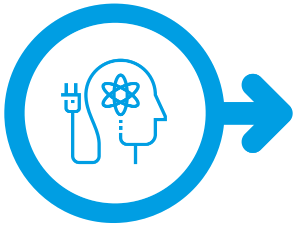
Negotiations slipping until after contracts are signed leading to a loss of competitive tension.

Over-reliance on initial competition to maintain tension throughout the contract with, for example, a lack of consideration of benchmarking and other ways of securing competitive pressure.

Contracts being perpetually renewed as competition is not considered or sustained throughout a contract.

Emerging best practice

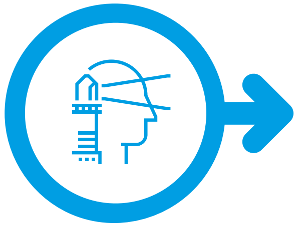
Pre-Bid



Market engagement: Maximise engagement through early and ongoing discussions and listening. Discuss prospects, inform the market of plans and use knowledge to outline what is to be provided. Allow suppliers to influence, understand and prepare to bid for work.

Consider contract structure. There are opportunities to be innovative. This could include competition between lots, formal benchmarking and allocation of work depending on performance between suppliers.

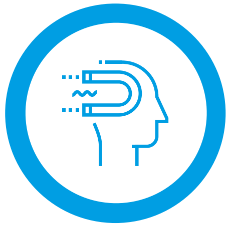
Bid stage



Market engagement: Keep all bidders in the game as long as possible.

Agree all core contract terms before signature.

During contract



Market engagement: Continue to keep the market warm to help sustain a credible set of possible suppliers and benchmark performance. This keeps alive the threat of leaving a contract with alternatives kept open. Consider commercial trends and the impact that shifting markets and technology has on the relative power of suppliers and government.

Benchmark changes to the model and market and understand thresholds for acceptable performance.

Take strategic decisions that balance, alongside other factors, the need for competitive tension.

Reward good performance by, for example, varying contract volumes between suppliers.

Case studies

On maintaining competition throughout procurement

Our 2016 investigation into **UK Trade & Investment's specialist services contract** found that UKTI agreed to negotiate a significant change to the contract after bids were submitted and before the contract was awarded. It was procuring the contract under the 'restricted procedure', whereby the contract should be awarded on the basis of the bids provided by those invited to the competition and there should have been no further negotiation. UKTI and its supplier did not formally record the outcomes of negotiations. Restricting competitive tension exposed it to a risk of significantly reduced value for money from the deal.

Our 2015 report on **rail franchising** recommended that the Department for Transport develop alternatives to its commercial approach to reduce the risk to value for money in the event of market interest and competition falling. This could involve introducing more negotiation and dialogue with bidders to a better deal.

On setting up contracts to encourage competition

We found good practice in the way that the Department for Work & Pensions set up its **Work Programme** (2014 report) contracts, where using two or three prime suppliers in each region helped sustain competitive tension. The Department could shift referrals between suppliers if performance differences exceeded a certain level. In addition, it could issue performance notices to prime contractor suppliers where performance targets were not met. Eventually it could terminate their contracts, with a range of experienced suppliers able to take their place. In practice, the benefits of this approach have not been fully realised as the contractual performance structure made it more expensive to terminate poorly performing suppliers.

In our 2016 report on **nuclear power in the UK** we found that government paid low-carbon generators the difference between the price they receive for electricity sold and a measure of the average market price for electricity in the UK market. This would cover the gap if the average price fell below the contract. These contracts are designed to create competition between projects and technologies as part of supporting awarding contracts competitively and improving value for money.

On considering competition as part of decision-making

HM Revenue and Customs successfully negotiated cost savings on its **Aspire contract** (2014 report) in 2007 and 2009, but in doing so conceded safeguards designed to preserve competitive pressure. For example, it gave the Aspire suppliers greater exclusivity and suspended its right to benchmark services, thereby losing its ability to assess how well the suppliers were performing against commercial comparators. Recognising their importance, it restored some of the conditions that provided competitive tension in a further re-negotiation of the contract in 2012.

On using alternatives to competition

Our 2015 **open book report** highlighted ways that the Ministry of Defence deals with single source contracts. Where contracts are let without competition, it scrutinises suppliers' costs, systems and overheads to check whether costs are in line with the contract and to forecast the cost of defence equipment and support. It collates supplier information to support this.

Supporting information

NAO audit framework

Market management & sourcing

3. Has sourcing supported the commercial strategy and followed recognised good practice to optimise VFM?

3.1 Has market management driven long term value for money?

3.2 Was there a defensible process that resulted in the selection of a capable provider?

3.3 Was there optimum use of competitive pressure?

Examples of relevant guidance

NAO good practice contract management framework

11.4 There is ongoing evaluation of emerging technologies and practices, and identification of opportunities from both immediate and parallel market sectors.

11.6 A re-competition strategy and plan is put in place in a timely manner; the contract manager feeds into strategy development for the 'new' procurement process.

Government Commercial Function – Government Commercial Operating Standards Iteration ii

5.1 Early engagement of suppliers.

10 Ensure shared understanding – Misunderstanding of the contract and how it works creates confusion and tension

Far too often we find contracts that are unreadable, and misunderstandings about how they work or are priced, resulting in contract or service failures. Government contracts deal with complex services, systems and infrastructure, but that does not mean they need to be made harder to read by poor drafting, jargon and inconsistency. On the contrary, it makes it more important for contracts to be readable and easy to understand. Contracts provide a foundation for building effective commercial relationships and need to be useable by people without legal training.

Warning indicators

Badly drawn-up contracts, for example with undefined terms and a lack of plain English.

'Core terms' differing across similar contracts and limited standardisation across contracts.

Terms and references that are overly complex and difficult to understand; this may introduce ambiguities and lead to different interpretations.

Emerging best practice

Pre-procurement

Greater accessibility and awareness of commercial terms.

During market engagement, be clear about what is wanted, or where this is still to be defined.

Agree requirements with internal stakeholders.

Procurement

Carry out procurement in line with supplier expectations.

Agree clear heads of terms to understand what should be negotiated up front.

Drafting

Ensure that contracts are simple, accessible and easy to read.

Produce a 'contract summary' or define main terms that may sit alongside the contract.

Use standardised contracts or standardised contract terms where ever possible, and make clear where the contract has not used standard terms. This also allows more time to be invested in developing specific contact terms that may be more complicated.

Use worked examples to help explain how contract provisions work.

Case studies

On standardisation

We have previously reported on how standardised NHS private finance initiative contracts led to successful hospital contracts for example in **West Middlesex University Hospital** (2002 report), by encouraging improvements in value for money through the central renegotiation of terms and conditions.

HM Treasury has maintained standard contract terms for private finance initiative (PFI) projects, and we see standard terms across the health and defence areas. However, most contracts we came across are not standardised. The Ministry of Justice's own 2013 **contract management review** identified that it did not collect management information in a standardised way – this was a factor in reducing the quality of information available.

On clarity over contract terms and requirements

In reviewing its **electronic monitoring contracts** (2013 report) the Ministry of Justice discovered that suppliers had been misreporting their performance, in part because they understood contractual terms differently from the Ministry . This led to a dispute about potential overcharging. Despite widespread reporting on this case we have since seen further issues with a lack of clarity over contract terms.

Our 2015 report **E-borders and successor programmes** outlined varying interpretations of the contract, in particular the underlying requirements. The Home Office incorporated the supplier's proposed design within the contract, but had not sufficiently aligned this with its own requirements. This resulted in disputes after contract award over whether the proposal satisfied the Home Office's needs, causing long delays.

Our 2016 **investigation into the UKTI specialist services contract** considered the UKTI's termination of a contract after a commercial dispute over pricing. One reason behind the dispute was that it was unclear how the contract was meant to be priced, so UKTI was unable to understand the commercial deal it had struck.

In 2016, we investigated the **collapse of the UnitingCare Partnership**, where an NHS contract was terminated after eight months as the supplier found it needed more funding than was available. One month into the contract, the supplier asked for 21% more revenue for the first year. The two sides differed in their understanding of the extent to which contract clauses allowed the supplier to negotiate extra funding after signing the contract. Although both parties negotiated to reduce the funding gap, they were not able to reach a resolution.

Supporting information

NAO audit framework

Contract approach

4. Has the contract set up risk and reward dynamics that will encourage delivery, minimise perverse incentives and promote good relationships?

4.1 Is there an appropriate allocation of risk between department and contractor?

4.2 Are there incentives to encourage the contractor to act in the interest of the department?

4.3 Are suitable mechanisms established to drive the desired relationship?

Examples of relevant guidance

Cabinet Office open book accounting guidance

Required government to decide which contracts would benefit. At a minimum it recommends understanding cost units and drivers.

Open-book accounting and supply-chain assurance (NAO report)

NAO good practice contract management framework

4.1 The contract manager understands his/her own role and has clear visibility of well-structured roles and responsibilities on the supplier side.

4.2 The respective responsibilities of the contract manager and the supplier are clear, and potentially defined in a 'joint statement of intent' or similar document.

Procurement policy note – Information sharing in government procurement exercises

Sets out the steps to take in the case of a commercial dispute settlement.

Model services contract and models for construction procurement (Crown Commercial Service)

Government Commercial Function- Government Commercial Operating Standards Iteration ii

6.1 Greater accessibility and awareness of commercial terms.

11 Understand risks – Understanding and allocating risks appropriately remains fundamental in driving the right behaviours

Over the last few years, many of our disagreements with government relate to how it measures, understands and allocates contract risks. Inappropriate allocation of risk has been a problem we have seen since our audits of the earliest government public-private partnerships. It continues to be the area of most contention between the NAO and government in our audits of its largest contracts. Although the importance of risk is widely recognised across government, we would be more convinced that it was well managed if we saw proper processes in place.

Warning indicators ?

Not understanding and quantifying risks in advance.

Failing to allocate risks to those best able to manage them.

A lack of recognition that risks will always return to government when things go wrong – the full risk cannot be allocated to the contractor.

Emerging best practice

Identification and quantification

Ensure all contracts are subject to a commercial risk assessment, and that there are regular risk reviews across the whole contract portfolio to test and benchmark commercial risk.

Conduct workshops and modelling with suppliers, commercial and business owners to understand risks (for larger contracts).

Carry out analysis to outline options and assess the impact of various risk allocation approaches.

Allocation

Enure risk allocation matrix is included in the outline business case for all contracts. This should reflect:

- In considering who is best able to manage risk, government needs to take into account ability to manage and capacity to bear risk.
- As government has the biggest balance sheet risk allocation should always default to government, except where suppliers are better able to manage risk.
- Government should accept and manage ultimate risk – the impact of poor performance always returns to government when things go wrong.

Plan

Establish a systematic, project management style approach to management.

Set out the distribution of risks in advance, with the contract and contract management plan structured around the risk allocation.

Create appropriate incentives for suppliers to manage risks, that is commensurate with their importance. Incentives need to outweigh the costs that may be incurred.

Ensure levers are in place to effectively manage risk and that these work.

Case studies

On understanding risks

We found in 2013 that the Department for Culture, Media & Sport did not model the contractual risks of its **rural broadband** contract to decide whether the price paid for the balance of risk was reasonable. It transferred much of the downside risk to the supplier, such as increased costs and lower revenues, but also the upside risk of the supplier getting larger volumes than expected. Similarly, in the **shared service centres programme** departments were able to delay their moves as long as they were able to maintain their legacy systems. The Cabinet Office argued that it had transferred the financial risk of delays to the programme through its contracts. However, neither the contractor nor the Cabinet Office had the power to prevent delays, so this risk could not reasonably reside solely with the contractor.

In our 2012 report on the first **carbon capture and storage** competition, we found that the Department of Energy & Climate Change did not have a clear strategy to address commercial risks. The Department requested frequent external reviews which advised of significant risks. However, it continued without fully considering the cost implications because the potential strategic benefits outweighed its costs. We found that as expected costs increased the project became unaffordable, and negotiations with the one remaining bidder were ended by the government.

On allocating and managing risks

In 2008, the Ministry of Defence contracted a supplier to develop and manage a new approach to **military flying training** (2015 report). The provider was responsible for providing aircraft and simulators for training, running training courses, and training an agreed number of aircrew each year. The Department retained responsibility for some aspects of the core training, which undermined its ability to fully hold the supplier to account for the activities it sought to transfer out. The risk to UK military capability of not training enough aircrew to meet military needs ultimately rests with the Department and cannot be transferred.

On trying to transfer all risks

The ultimate risk (beyond whatever financial or reputational harm a company takes) rests with government. In 2002, we reported that the Ministry of Defence, in relation to its **nuclear submarine facilities at Devonport**, considered that it had transferred the risk of cost overruns to the private sector. However, the Department ultimately funded the cost overruns as it had nowhere else to go and needed to ensure the supplier remained viable.

The franchising of Hinchingbrooke Health Care NHS Trust (2012 report) transferred demand risk and up to £5 million of financial risk to the provider. The NHS East of England Strategic Health Authority provided incentives for bidders to include guaranteed payments by double-weighting these in the financial assessment. However, it made no other changes to bidders' projected savings to account for risk. This approach may have encouraged bidders to make overly-optimistic savings projections.

Supporting information

NAO audit framework

Contract approach

4. Has the contract set up risk and reward dynamics that will encourage delivery, minimise perverse incentives and promote good relationships?

4.1 Is there an appropriate allocation of risk between department and contractor?

4.2 Are there incentives to encourage the contractor to act in the interest of the department?

4.3 Are suitable mechanisms established to drive the desired relationship?

Examples of relevant guidance

NAO good practice contract management framework

7.1 Contractual/supplier risk management is in place with clear responsibilities and processes, identification of who is best placed to manage risk, and supplier involvement where appropriate.

7.2 Risks are formally identified and monitored regularly, with mitigating actions developed and implemented where possible, and 'obsolete' risks removed from consideration where appropriate.

7.3 Escalation and reporting routes are in place for risk governance.

CIPS' contract management guide

Covers how to assess risks and set up mitigation (pp. 7–9).

The HM Treasury Green Book

Outlines requirements to set out risks in business cases (at 4.3) and the Orange Book gives more detailed guidance on risk management.

Cabinet Office – Communicating risk guidance

Details communication strategy and how to develop good risk management more widely.

Government Commercial Function – Government Commercial Operating Standards Iteration ii

6.3 Appropriate risk allocation between parties.

The Scottish Government's Procurement Journey – Risk management

12 Design performance measures that work – Without relevant and workable measures, business outcomes may fail or perverse incentives may be created

We rarely see performance management mechanisms (which apply rewards or penalties, such as through key performance indicators) working as intended. Even where normal processes have been followed, we have seen clients happy despite measures not being met and unhappy when they are. As a result, we need to question not only whether the performance regime is right (does it incentivise the right behaviours, penalise poor performance and ensure that government gets what it wants?), but also whether government knows what performance is and can manage contractors to get what it wants. We develop this point further in client leadership.

Warning indicators

A lack of alignment between overall business outcomes and performance measures.

Measures that are complicated, vague or ill thought through.

Financial incentives linked to performance measures being too small to have an impact.

Measures becoming out-of-date during the contract.

Emerging best practice

Existing guidance outlines formal approaches and processes to establishing, monitoring and evaluating performance. Determining the right measures, and the right number of measures, to include in a contract is important, but needs to form part of a wider process:

Get measures right

Focus on what matters	Time should be invested to produce measures that flow from the strategy that outlines expected outcomes – the key things that matter.
Proportional	The burden of work required, such as in obtaining information and monitoring, should not outweigh benefits when considering the number of measures and access to robust data.
Clear	Need advance agreement on the purpose, definition and measurement of each measure.
Strong evidence base	Evidence gives confidence that targets are achievable.

Review & update

Where possible amend key performance indicators during a contract lifetime without altering the balance between risk and reward. Indicators that probably should be changed may include those where incentives linked to measures are too small to matter; that are not providing the right incentives; have insufficient information to monitor performance, or where the time needed to monitor performance outweighs the benefits gained. A regular review allows government to consider whether indicators remain relevant.

Use other levers

A well-designed set of performance measures should motivate suppliers but they should be used alongside other methods. See client leadership focuses on what matters and understand suppliers' motivation.

Case studies

On the content of performance measures

We have seen many cases of ineffective performance measures. Our 2014 report on the **Work Programme** found that flawed measures meant the Department for Work & Pensions had to make incentive payments to even the worst performing suppliers. We recommended that it should review whether different groups need different minimum service standards; monitor minimum service standards by group; and gather other standard measures of services. Also, our work on **contracted-out health and disability assessments** (2016) and on **transforming rehabilitation** (2016) highlighted the challenges in developing service level agreements that measure quality and the need to understand the trade-offs between quality and other factors when setting the service level agreements. It is important for the Department to gain good information to be able to manage performance, incentivise providers and identify emerging risks.

On changing performance measures mid-contract

Changes to performance measures during a contract have been rare but we have seen good practice:

- The **Ministry of Defence** told us that it considers reviewing key performance indicators for each contract every year. As part of this exercise, it reduced 140 key performance indicators to eight on a facilities management contract after considering whether the benefits of this change outweighed the costs and risks of the process. The Department told us that it is also looking to renegotiate a current estates management contract because the effort of measuring performance outweighs the benefit it gets from measurement.
- On the **Work Programme** (2014 report), the Department for Work & Pensions changed the way that it approached performance measurement two years into the scheme in response to the difficulty of monitoring and enforcing minimum service standards. It was able to get a better oversight of performance and provide better incentives to suppliers as a result.
- We found the Home Office's contract for **Yarl's Wood immigration removal centre** (2016 report) distracted the teams from what mattered – the Department is now reducing the number of key performance indicators from 120 to around 30.

Supporting information

NAO audit framework

Contract approach

4. Has the contract set up risk and reward dynamics that will encourage delivery, minimise perverse incentives and promote good relationships?

4.1 Is there an appropriate allocation of risk between department and contractor?

4.2 Are there incentives to encourage the contractor to act in the interest of the department?

4.3 Are suitable mechanisms established to drive the desired relationship?

Examples of relevant guidance

NAO good practice contract management framework

5.2 A performance management framework is in place when the contract is signed. The framework is comprehensive, objective and provides incentives for the supplier to meet or exceed agreed performance standards.

5.3 Service levels agreements are in place, and are linked to business needs, understood by the supplier, and monitored by the contract manager and/or end users.

5.4 Supplier performance is assessed using clear, objective and meaningful metrics, linked where appropriate to the Office of Government Commerce's 'Common Assessment Framework' for monitoring suppliers.

NAO payment by results guidance

Explains benefits, structure, risks and framework for payment by results.

Model services contract (Cabinet Office)

Details expected contract terms for different approaches.

The Scottish Government's Procurement Journey – Contract and supplier management

13 Manage your own obligations – Government must meet its own obligations for contracts to succeed

We often see government not fulfilling its own contractual obligations. Supplier performance can depend on government taking actions such as making critical decisions, designing a process, projecting forecasts or providing assets such as IT systems. Not delivering on these government's obligations can lead to extra costs through projects being delayed or a limit to government's ability to hold suppliers to account. Along with meeting its contractual obligations, government needs to ensure it fully capitalises on the benefits a contract and a commercial relationship can bring.

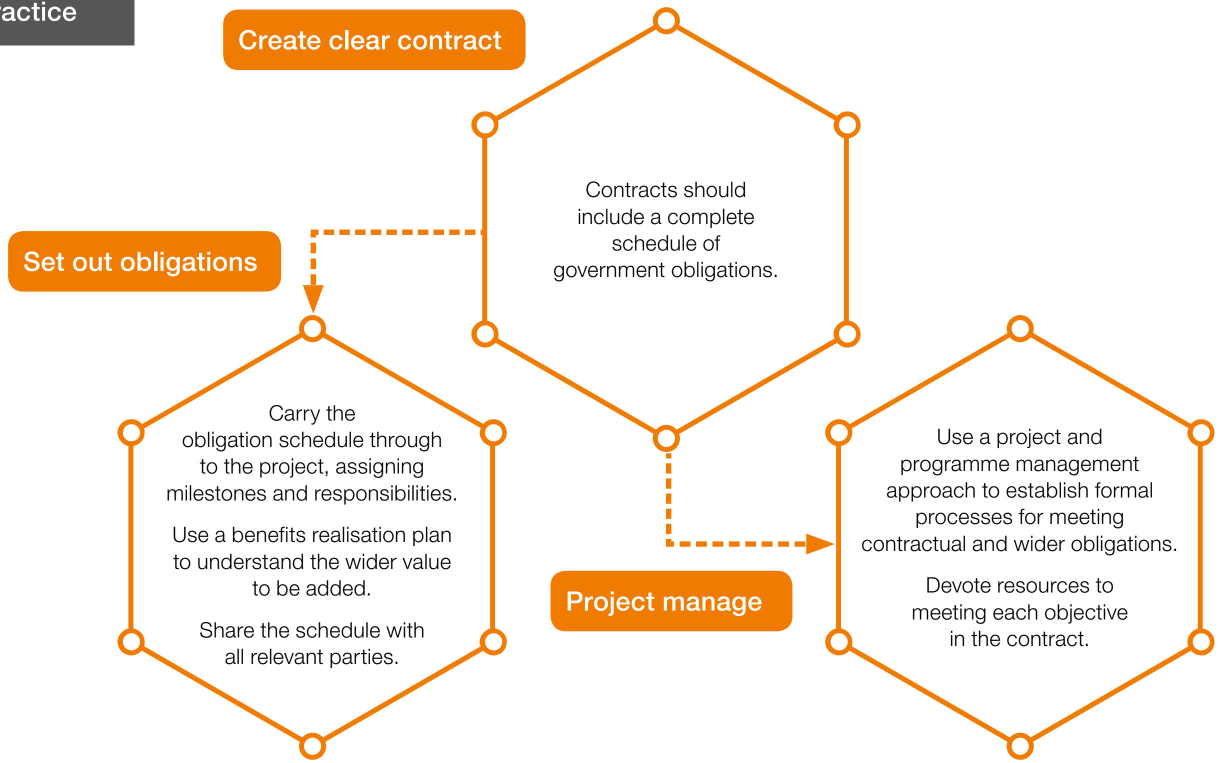
Warning indicators

Ambiguous responsibilities and unclear obligations leading to confusion.

Poor management of multiple stakeholder dependencies through, for example, lack of a project management approach.

Not making the most of the potential for contracts and commercial relationships to add value beyond the contract itself.

Emerging best practice



Case studies

On the impact of not meeting obligations and managing interdependencies

We frequently see government failing to recognise interdependencies or meet its obligations, with a range of negative results, for example:

- **Extra costs and delay.** The Ministry of Defence contracted a supplier to recruit enough suitable personnel for its **Army 2020** (2014 report) structure. The supplier's performance, agreed in its contract, depended on the Department providing supporting ICT infrastructure for their new recruitment software by an agreed date. The Department did not provide this infrastructure which meant the supplier could not run the recruitment process as planned. It had to fund extra costs to support manual workarounds, which were likely to total some £25 million. The Home Office's **E-borders** (2015 report) supplier carried out initial design before designers were fully aware of the Department's detailed requirements. Disputes arose because the supplier did not believe the Department had rights to change requirements after contract award, and this resulted in programme delays.

- **Understanding and challenging supplier performance.** Our 2015 report on **military flying training** found that the Ministry of Defence had difficulty holding the supplier to account for its performance partly because it was required to provide instructors itself. Because of issues with its own performance, the Department deducted little from payments because of its supplier failing to meet its responsibilities despite considering performance to have been poor.

- **Failing to transfer risk as planned.** Our 2010 report on **PFI hospitals** found that hospital trusts had difficulty meeting their obligations to allow suppliers to manage maintenance. This was because they needed to vacate hospital wards for maintenance to be carried out. Because they did not always allow scheduled maintenance, trusts found themselves accepting the maintenance risk, despite having paid for the risk to be transferred.

- **Complexity.** The Cabinet Office's **shared service centres** (2016 report) programme relied on the different customer departments and organisations agreeing the specification of new software. Reaching an agreement took longer than expected which led to significant delays. Suppliers argued that government was responsible for some of the extra costs. Government and suppliers are in the process of renegotiating the contracts.

- **Failing to achieve benefits.** For planned benefits from the new **emergency services network** (2016 report) contract to be realised, major business change by the emergency services is needed. Supporting the achievement of these benefits is not part of the programme's scope and it was not clear who should take responsibility for changing behaviour. Without a co-ordinated approach to add value, we found that the programme's benefits would likely be reduced.

Supporting information

NAO audit framework

Contract management

5. Is the contract being managed well, with costs and benefits being realised as expected?

5.1 Do the department and the contractor have comprehensive knowledge of service performance?

5.2 Is the contractor providing a service in accordance with the contract and are they actively managed by the department to meet or exceed requirements?

5.3 Is the department meeting its obligations?

Examples of relevant guidance

NAO good practice contract management framework

5.1 Service management is well structured; baselines are understood by both parties, and suppliers understand the service they are required to deliver. The contract manager ensures that the customer organisation provides the supplier with the information and contacts needed to deliver he service.

5.6 Clear processes are in place to handle operational problem resolution and resolve issues as quickly as possible.

5.7 Where appropriate, user compliance with the contract is monitored and managed to ensure maximum operational effectiveness and value for money.

Crown Commercial Service contract management principles

2 Be clear about accountability, roles and responsibilities. Ensure contract ownership, management processes and governance mechanisms are clear with defined roles and responsibilities at appropriate levels of seniority. Make sure contracts have a documented Contract Management Plan.

Government Commercial Function – Government Commercial Operating Standards Iteration ii

6.4 Departments will have a mechanism for tracking the deliverability of mobilisation obligations.

14 Know what suppliers are doing – To manage a contract it is important to understand performance and costs

Government needs a 'hands-on' approach to understanding suppliers' performance. It has been increasingly aware of the need to do this but can go further. Assurance requires investment of both time and resources so government needs to think carefully about how to get the right approach. We have seen both cases where there is not enough assurance over reporting and cases where there is too much compliance testing without it being targeted effectively. Decisions need to be made, for example, on the balance of self-reporting with independent monitoring and of the use of detailed controls testing with a proportionate approach.

Warning indicators

A lack of transparency about supplier data, despite government's transparency agenda.

Overreliance on supplier self-reporting without gaining independent assurance of data.

A tendency to substantively test supplier information rather than understanding the controls over the information.

Challenges in understanding the supply chain's performance and resultant risks.

Insufficient consequences for poor performance or errors being found through assurance.

Emerging best practice

Proportional approach

All major contracts need a bespoke compliance programme aligned to the risks of that contract.

Supply chain assurance strategies should be set out early and included in the contract management plan.

Self-reporting vs own information

Government data is easier to assure but is not always feasible or efficient.

Substantive vs controls testing

Where suppliers self-report, government needs assurance. Controls assurance is often less onerous, more efficient, improves understanding and can help indicate broader concerns that need to be actioned.

However controls testing requires more expertise to do properly.

Rolling assurance vs standing teams

A rolling programme of routine assurance could reduce the need for compliance testing of all contracts.

Case studies

On self-reporting versus supplier assurance

In our 2015 report on the **provision of out-of-hours GP service in Cornwall** we reported that supplier staff had made unauthorised changes, which were inappropriate and lacked justification, to performance data. The Primary Care Trust relied on the supplier self-reporting and performance was overstated on multiple measures.

Our 2014 report on the Department for Work & Pensions' **Work Programme** showed the merits of validating performance data, in particular job outcome payments. The Department checks job outcome claims and extrapolates rates of invalid claims to reduce payments to suppliers. The Department estimates that its approach has saved it £21 million up to March 2014. The validation regime may also have deterred suppliers from claiming some job outcomes. It continues to improve its approach.

We found in 2016 the Department improved assurance over supplier data for its **contracted-out health and disability assessments** through independent quality audits. We had previously recommended the Department improves its validation of key performance data.

On a controls based approach versus substantive testing

Government can obtain assurance through substantive testing or a controls-based approach. Our 2014 report **Transforming government's contract management** reported that the Cabinet Office and Confederation of British Industry were producing a set of principles to improve transparency. This led to the Institute for Government recommending transparency to be included in government contracts alongside existing confidentiality and freedom of information clauses, in its report Enhancing transparency in public service contracts. We also described how the Department for Work & Pensions required major suppliers to commission external reviews to receive independent assurance on performance and on their controls. This improved the Department's level of assurance and supported performance management.

On understanding the supply chain

In the Ministry of Justice's **Transforming Rehabilitation** (2016 report) programme, directly contracted suppliers use a complex supply chain of private and third sector organisations. We recommended that the National Offender Management Service combine its supply chain analysis with feedback from voluntary organisations to identify and address gaps in provision.

Supporting information

NAO audit framework

Contract management

5. Is the contract being managed well, with costs and benefits being realised as expected?

5.1 Do the department and the contractor have comprehensive knowledge of service performance?

5.2 Is the contractor providing a service in accordance with the contract and are they actively managed by the department to meet or exceed requirements?

5.3 Is the department meeting its obligations?

Examples of relevant guidance

NAO good practice contract management framework

5.1 Service management is well structured; baselines are understood by both parties, and suppliers understand the service they are required to deliver. The contract manager ensures that the customer organisation provides the supplier with the information and contacts needed to deliver the service.

5.2 A performance management framework is in place when the contract is signed. The framework is comprehensive, objective and provides incentives for the supplier to meet or exceed agreed performance standards.

6.7 Where open-book or similar financial/pricing mechanisms are used, the process is managed professionally and fairly.

Crown Commercial Service open book guidance

Sets out aims, objectives and expected approaches for open book contract management.

HM Treasury guidance to making savings in operational PFI contracts

Information Commissioner's Office roadmap for transparency in outsourcing

15 Show what you care about – Client leadership encourages emphasis on the right business outcomes

A shared understanding of outcomes between government and suppliers, and strong client leadership, can help to overcome poorly designed contracts and the limitations of formal performance measures. Effective client leadership gives government an opportunity to keep suppliers focused on what really matters to them and service users. Suppliers react to what clients pay attention to. They may even ignore contractual requirements if they believe that the client is ignoring them, or go beyond the contract if they believe that it will win them merit with the client.

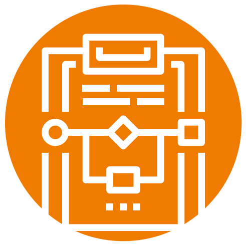
Warning indicators ?

Not being clear to suppliers about what government wants from a contract.

Not paying attention to what matters during the contract.

Not being close enough to suppliers.

Emerging best practice



Plan

Clarity from the outset about the business outcomes that are most critical to service users, and that government cares about.

Encourage suppliers to **plan for outcomes** that really matter. This should align with contract incentives, but does not always.

Set timetables that are clear and agreed.

Use contract provisions that promote **continuous improvement and innovation**.

Work together

Clearly and consistently communicate to suppliers what really matters through progress meetings, site visits, and information requests, to improve contract compliance and ensure outcomes achieved.

Work closely and flexibly with suppliers through progress meetings to ensure that service is in line with the contract.

Explicitly **manage any trade-offs** required to deliver the outcomes that matter.

Case studies

On focusing on what matters

The **National Savings & Investments (NS&I)** operational services contract with Atos has a range of key performance indicators covering areas of the business, from accounting and complaint handling to call centre and internet performance. NS&I can reduce the amount paid to Atos where performance indicators are missed with deductions escalating if targets are repeatedly missed. However, instead of automatically applying maximum deductions where an indicator is missed, NS&I prefers to discuss with Atos the circumstances of the failure, waiving or reducing the deduction if they are satisfied with the action taken. This protects the customer by ensuring the supplier continues to focus on service quality and continuity in areas where a key performance indicator target is likely to be missed.

In 2015 we visited the facilities management service run by Amey at the **National Physical Laboratory**. We found that the contract, which was coming to an end, was out of date. The contract included over 80 key performance indicators although scientists told us that what mattered most to them– the availability of laboratory time – was not reflected. Client contract managers worked closely with the supplier, helped through being based in the same location as the supplier, and being able to receive regular feedback from service users. Given the focus of service users, Amey established regular drop-in sessions to allow scientists and other users to engage with its staff and develop their understanding of current user priorities.

On working together to focus on what matters to both government and supplier

The **Ministry of Defence** told us that some of its contracts include a 'reward fee' where a share of the agreed profit is awarded if the supplier has demonstrated some of the softer factors required in managing the contract. Using an agreed framework, the Ministry of Defence will use its discretion in making payment. It has been positive about the benefits of this approach.

Supporting information

NAO audit framework

Contract management

5. Is the contract being managed well, with costs and benefits being realised as expected?

5.1 Do the department and the contractor have comprehensive knowledge of service performance?

5.2 Is the contractor providing a service in accordance with the contract and are they actively managed by the department to meet or exceed requirements?

5.3 Is the department meeting its obligations?

Examples of relevant guidance

NAO good practice contract management framework

4.4 Both regular structured and informal communication routes between the contract manager and supplier are open and used; customer and supplier staff are co-located where appropriate.

4.6 Communications between the contract manager, supplier and other stakeholders (users of the contract and others such as technical experts) are effective; and stakeholders are involved in contract management processes where appropriate.

Government Commercial Function- Government Commercial Operating Standards Iteration ii

7.1 Contracts should deliver the outcomes anticipated.

16 Understand suppliers' motivation – Use other levers to get the best from suppliers

Suppliers are normally motivated by maximising their profits on contracts but they are also motivated by other factors. The high-profile failure of public service delivery can affect a supplier's reputation. For example, it can affect their ability to win future work both with government and elsewhere, and significantly affect their share price. However, government contracts can also offer suppliers public recognition and prestige, alongside opportunities to fulfil wider values and objectives. Our work with suppliers has shown how important reputation is to them and how some manage this at least as strongly as formal performance management mechanisms against contractual incentives.

Warning indicators ?

Not taking advantage of suppliers' reputation management which we have seen built into internal control frameworks.

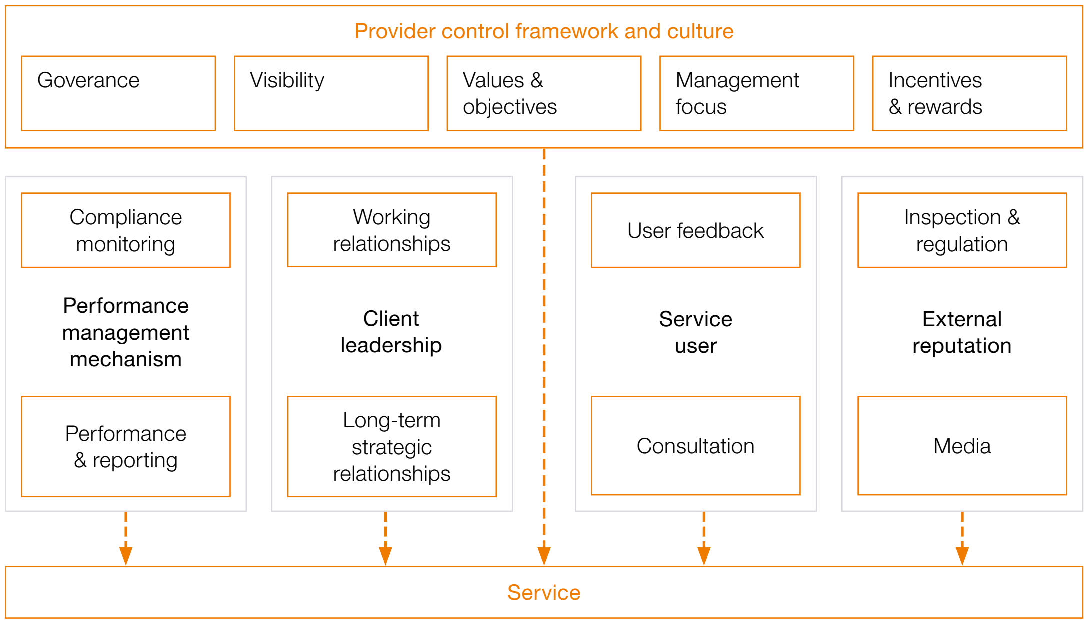
Ignoring the ways suppliers can use contracts and contract performance to align with their own supplier values, objectives and standards for staff engagement.

Emerging best practice

Good contract managers realise that suppliers care for other things alongside profit. This include reputation, values and how staff are engaged and included. Alongside contractual performance measures, they use these insights to influence suppliers' performance and get the best from suppliers.

Government has begun to focus more on 'strategic relationship management', which could be used to capture and share insights more widely.

Factors influencing delivery include supplier values and reputation



Case studies

On using transparency and reputational risk

In 2015, Sodexo and Mitie invited us to visit the services they respectively run at **HMP Northumberland** and the **Heathrow Immigration Removal Centre**. These highly regulated services are subject to external inspections from Her Majesty's Inspectorate of Prisons (HMIP) and the Independent Monitoring Board, the findings of which are publicly reported. The performance of HMP Northumberland is also reported in the Prisons Rating System alongside all other prisons. The suppliers acknowledged that this increased level of transparency brought a reputational incentive to deliver a good service.

On using supplier values and objectives

In 2015, Amey and Interserve invited us to visit the services they respectively run at the **National Physical Laboratory** (NPL) and the **Defence Training Estate**. This allowed us to see the impact of corporate objectives concerning reputation on the contract, and the opportunities this raised for the client.

At NPL, contract managers could 'trade-off' service credit deductions for extra activity outside the scope of the contract. Amey developed an energy reduction plan that benefited the client while also aligning with Amey's corporate objective to protect and enhance the environment.

At the Defence Training Estate, Interserve pursues its corporate social responsibility objectives through making £10,000 available each year to support community activities in each of the six contract regions.

Supporting information

NAO audit framework

Contract management

5. Is the contract being managed well, with costs and benefits being realised as expected?

5.1 Do the department and the contractor have comprehensive knowledge of service performance?

5.2 Is the contractor providing a service in accordance with the contract and are they actively managed by the department to meet or exceed requirements?

5.3 Is the department meeting its obligations?

Examples of relevant guidance

NAO good practice contract management framework

5.1 Service management is well structured; baselines are understood by both parties, and suppliers understand the service they are required to deliver. The contract manager ensures that the customer organisation provides the supplier with the information and contacts needed to deliver the service.

6.5 Incentive structures (financial or non-financial) relate clearly to desired outcomes, and are well managed and governed, with appropriate checks and approval mechanisms.

INSIGHT 17
Plan for uncertainties

INSIGHT 18
Work towards business-as-usual requirements

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17 Plan for uncertainties – Contracts become unworkable if they do not align to changing circumstances

Government works within a constantly evolving environment, which it can struggle to reflect in contracts. For many contracts, some uncertainty will be expected when the contract is signed. Customer behaviours can be difficult to predict, public policies can change or requirements may need to be refined where contracts introduce new processes and systems. The result is that poor contracts prove too inflexible, resulting in costly changes, the contract failing to deliver what was intended or delivering the wrong thing. Where government plans for the need for flexibility upfront, it is much better able to manage uncertainty.

Warning indicators

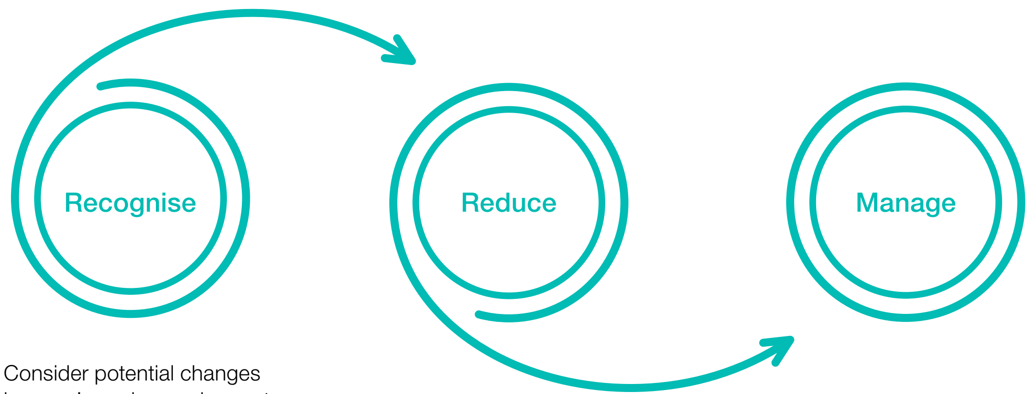
Flexibility not being built into a contract, particularly in the early days.

Contracts not reflecting uncertainties and the need to change, and therefore running into difficulties, particularly where uncertainties are significant.

Residual risks associated with uncertainties not being recognised or managed.

Emerging best practice

Dealing with uncertainties



Recognise

Consider potential changes in users' needs, requirements and external factors.

Create trust and openness around uncertainties.

Design contracts that allow for change, eg through contracting for a minimal solution.

Reduce

Specify details where reasonable.

Build in pilots and process tests to pin down more details.

Design contracts that include agreement on the cost of potential future options.

Manage

Regularly monitor risks and uncertainties.

Keep data up to date and share with suppliers.

Consider how to reflect outcomes of pilots and other work.

Case studies

On managing uncertainties

The Department for Work & Pensions introduced the **Work Programme** (2014 report) quickly in 2011. The programme had a slow start and ramp-up. The Department recognised uncertainties within the programme and took a more active approach to changing its requirements and monitoring, including terminating some contracts, during the early stages.

For the **Yarl's Wood Immigration Removal Centre** (2016 report), some users' needs were not being fully met. We recommended that when designing contractual arrangements, departments should consider including arrangements to assess users' initial needs, and any that develop while using the service. They should ensure that there are mechanisms for varying the contract or buying more services if necessary.

In our 2016 report on **contracted-out health and disability assessments**, we recommended that the Department for Work & Pensions should set out realistic targets and follow clear principles for challenging assumptions. Otherwise, there is a risk that bidders will not be able to tell whether requirements are deliverable. We recommended that where assumptions are uncertain, the Department should develop its principles for using 'allowable assumptions' clauses and extend these beyond the initial stages of a contract.

On considering the risks associated with uncertainties

Our 2016 report on **Transforming Rehabilitation** identified concerns about how uncertainties were managed. Outsourcing immature businesses within the wider context of a changing new probation system increased the risk and made the programme less attractive. We recommended that departments outsourcing complex transformed services should consider how to mitigate or reduce risk and uncertainty from concurrent changes, including through phasing changes to occur at different times.

Supporting information

NAO audit framework

Contract lifecycle

6. Is the contract delivering value for money and will it continue to demonstrate VFM through its lifecycle?

6.1 Does the contract continue to support the strategic intent?

6.2 Are VFM mechanisms used to ensure the contract continues to deliver VFM over its life?

6.3 Is change controlled and well managed and does the contract remain current?

Examples of relevant guidance

NAO good practice contract management framework

8.1 The contract is regularly reviewed (with a view to updating where necessary) to ensure it meets evolving business needs.

8.2 Processes are in place that clearly lay out the governance of contractual change – who needs to approve what and how it will happen – with a focus on effective and prompt change implementation.

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6.2 Contracts will outline agreement on the costs of potential future options.

6.5 Transition arrangements.

18 Work towards business-as-usual requirements – A sufficient and effective transition period from procurement to live running is crucial

The critical importance of 'mobilisation' – the time between contract award and business as usual – is sometimes underestimated. This phase includes supporting a smooth transition; time to set up good practice; and identifying potential contractual changes, problems and risks that may have a subsequent impact. The early success of a contract depends on how quickly and efficiently government gets the contract up and running. Not getting it right at this stage will set the tone for the rest of the contract, and could have serious consequences. Government's commercial operating standards recognise the importance of mobilisation as a specific phase to consider, monitor and assess.

Warning indicators

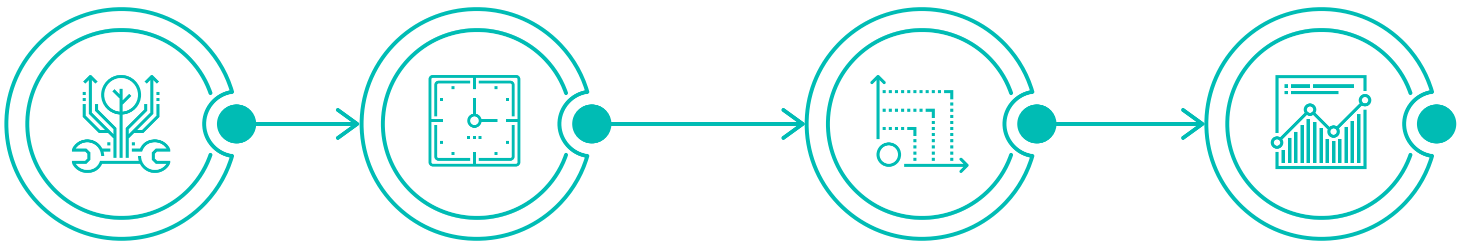
Rushing mobilisation, which has an impact on performance.

A lack of clear specification of roles and responsibilities before 'live running', creating uncertainties and performance challenges.

Extending 'service credit holidays', reducing the effectiveness of the early stages of a contract.

Emerging best practice

Mobilisation factors to consider would include:



Establish a mobilisation plan

Mutual agreement about the level of detailed required to get up and running.

Get wider input into design and specification before work begins.

Create shared transition goals and responsibilities.

Set aside time and resource

Allow both suppliers and government sufficient time to prepare resources and plans.

Dedicate funding to ensure a high-quality transition.

Explicitly recognise challenges.

Bring in staff with specific expertise.

Use effective processes

Set realistic timetables and milestones.

Establish governance processes and reporting arrangements.

Work together, involving previous suppliers where applicable.

Apply performance measures, whether interim or full, to see how performance is progressing.

Monitor the results

Ensure there is a mechanism for tracking the deliverability of mobilisation obligations to ensure:

- Obligations are documented and understood.
- Obligations are risk assessed early.

Apply a benefits realisation approach.

Case studies

See also Transition & termination section for some overlapping examples.

On allocating enough time and resources

Our 2016 investigation into the **UnitingCare Partnership** found that bidders highlighted an insufficient amount of transformation funding and the short mobilisation period allowed. The client told us that it expected the supplier to invest its own funds to support service transformation, but this was not a requirement in the contract. UnitingCare Partnership told us that it disagreed with this expectation.

Our 2016 report on **contracted-out health and disability assessments** praised the Department for Work & Pensions and suppliers on the transition of health assessment provision from one supplier to another. Their success was down to key factors including recognising the challenges of a tight timetable (four months) and seconding staff to support transition; tripartite governance arrangements; and shared goals and reporting arrangements.

On clarifying what is required

Mobilisation provides a further opportunity to agree a clear specification, providing a foundation for the contract. The Cabinet Office's **shared service centres programme** (2016 report) did not secure sufficient early support from departments, which felt insufficiently involved in appointing suppliers and designing new systems. Failing to get an early agreed design contributed to delays in implementing the programme.

On putting performance regimes in place

Our 2014 report on **COMPASS contracts for the provision of accommodation for asylum seekers** found that transition happened during a demanding period for the Home Office. As a result of the capability issues, in some areas transition to the new contracts took longer. During transition the Home Office decided not to impose any penalties through its key performance indicator regime.

Supporting information

NAO audit framework

Contract lifecycle

6. Is the contract delivering value for money and will it continue to demonstrate VFM through its lifecycle?

6.1 Does the contract continue to support the strategic intent?

6.2 Are VFM mechanisms used to ensure the contract continues to deliver VFM over its life?

6.3 Is change controlled and well managed and does the contract remain current?

Examples of relevant guidance

NAO good practice contract management framework

1.1 There is a planned transition from the tendering/contract award phase to the contract management phase, and a handover to the contract manager; the cost of contract management is included in the business case and budgets.

CIPS – contract management guide

Covers the various activities to be carried out immediately post-contract award (p. 26).

IACCM and DPSS consultants' interactive guide to post-award processes

Local Government Association – A Councillor's Guide to Procurement

Covers critical success factors for contract management (p. 27 and 28).

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6.4 Departments will have a mechanism for tracking the deliverability of mobilisation obligations.

19 Think about contract end up front – A lack of upfront planning puts effective contract transfer at risk

Even before a contract is signed, government needs to be thinking about its end. We see termination rights vary in how they are stipulated and used, and it is not always clear why. The questions we ask include – in what circumstances could a contract be terminated? Or extended? What can be learned from the contract and how will this be captured? What information and data will be needed so that a subsequent supplier could take over?

Warning indicators ?

New suppliers not having access to sufficient information, in particular from existing suppliers, to ensure an effective transition.

Performance dipping where suppliers begin to wind-down towards the end of a contract.

Not formally building in time to learn from experiences.

Termination rights being traded away without justification.

Emerging best practice

Plan thoroughly

Ensure contracts are clear on contract-end options and timings, for example the right to terminate (which is valuable and should not be traded away unless the benefits received outweigh the loss incurred).

Ensure contracts are clear on transition responsibilities, with detailed timings and definitions of what should be delivered. Also, allow for modification/expansion of transition arrangements through agreed contract review processes.

Consider the risks of failure and different approaches to the end of the contract.

Put in place contingency plans from early in the contract.

Plan the wind-down

Ensure there are sufficient means to incentivise the supplier to maintain resources and performance right up to the end of the contract.

Consider information

Work out the information suppliers will need for transition, eg information on costs and service volumes and asset registers.

Set out how bidders will have sight of all information they require from the incumbent supplier.

Lessons learnt

Allow enough time and resources for looking at lessons learned from the contract.

Follow a standard process for lessons to feed into future work.

Case studies

Clear termination approach

We recommended in our 2014 report on the Department for Work & Pensions' **Work Programme** that the Department should develop a clear approach to making any future termination decisions. After agreeing termination costs, the Department should evaluate the impact of terminating a contract; set out clear principles for making future termination decisions using break clauses in the current contracts; and include relative as well as better absolute measures of performance in setting the conditions under which it could terminate contracts at no cost.

Supporting supplier transition needs

Our 2016 report on the **Yarl's Wood Immigration Removal Centre** found that services did not fully meet users' needs. There was a lack of clarity over each supplier's responsibilities which took time to become clear. We recommended that where multiple organisations become responsible for providing a service, the departments involved should agree on how to resolve issues, such as gaps between contracts and interdependencies, before transition.

Embedding a lessons learned process

The Department for Transport is committed to continuously improving its **rail franchising programme** (2015 report) and has embedded a structured approach to learning lessons and responding to feedback from operators and stakeholders. This includes:

- holding 'lessons learned' workshops after each franchise competition.
- holding 'bidder days' to give bidders the opportunity to feed back their experiences of the procurement process and make suggestions for improving it.
- reviewing the complexity and quantity of information it requires from bidders in its financial models.

As a result, the Department has made changes to simplify and improve the bidding process and encourage new entrants.

Supporting information

NAO audit framework

Termination and transition

7. Is the Department ready to move into a new contract?

7.1 Has market management been undertaken to support new contracts?

7.2 Has the end of the contract been managed efficiently and effectively to allow re-bid or handover?

7.3 Are insights from the operation of the contract brought to bear in developing the new contract?

Examples of relevant guidance

NAO good practice contract management framework

7.4 Contingency plans are developed to handle supplier failure (temporary or long-term failure/default); exit strategies are developed and updated through the life of the contract.

7.5 Contractual terms around termination are understood and monitored by the contract manager.

NAO principles on supplier failure

Sets out principles to consider when planning for and managing failure. This includes:

- Setting out a definition for failure
- Developing contingency plans
- Appropriate oversight arrangements
- Monitoring failure
- Considering market impact
- Learning lessons

20 Allow time to consider potential end of contract – Not thinking early enough about the future beyond a contract increases risks

In not making decisions about reprocuring contracts early enough, government limits its options, leading to the status quo often being adopted. At this point the contract lifecycle comes full circle – decisions on whether or not to end a contract need to consider the overarching commercial strategy and wider market considerations. It takes time to consider these implications. Not allowing enough time weakens government's negotiating position and stifles opportunities for innovation or securing value for money. Government needs to make early thinking part of a routine process.

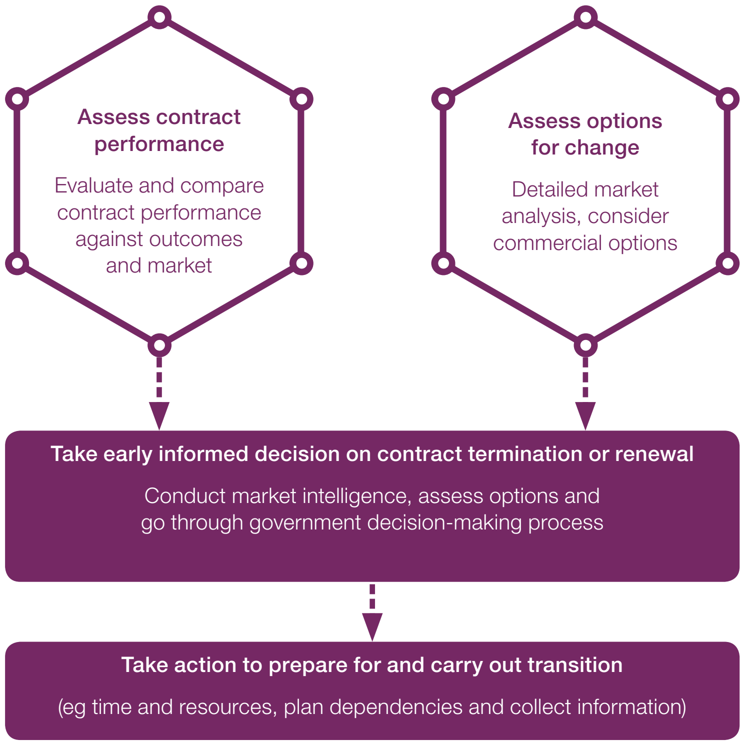
Warning indicators

Contracts extended on poor terms following insufficient time to consider possible termination and transition.

Not starting transition early enough and having to discard options as a result.

Reluctance to use processes for dealing with provider failure.

Emerging best practice



Case studies

See also contract lifecycle section for some overlapping examples.

On timing transition right

Our 2016 report on **contracted-out health and disability assessments** praised the Department for Work & Pensions and suppliers on the transition of health assessment provision from one supplier to another. However, we still found that the Department needs to prepare for transition earlier and had done limited preparatory work for contract transition.

We reported in 2016 that HM Revenue & Customs had set out a phased approach to replacing its Aspire contract to manage commercial and technical risk and give it more time to smoothly exit from the contract. This followed findings in our 2014 report that the Department had yet to develop a formal business case and overall project plan. It was left with much to achieve in little time.

On approaches to failure

Our 2015 report paper on **managing provider failure** set out options for managing failure and how adopting either a market-focused or provider-focused approach reflects different appetites for failure. We reported seeing many instances where government has set up failure regimes but few occasions where it has allowed suppliers to actually fail. To manage markets and suppliers it is important for government to follow through with its planned processes for failure.

On learning lessons

The Ministry of Justice completed a lessons learned exercise on its **language services contract**, (2014 report) reviewing lessons to ensure that they would be taken into account in future contracts. In particular, the Department reviewed the use of management information for new policies. It conducted a separate review of governance that led to the Department strengthening its governance, including its approvals and assurance processes.

Supporting information

NAO audit framework

Termination & transition

7. Is the Department ready to move into a new contract?

7.1 Has market management been undertaken to support new contracts?

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Examples of relevant guidance

NAO good practice contract management framework

7.4 Contingency plans are developed to handle supplier failure (temporary or long-term failure/default); exit strategies are developed and updated through the life of the contract.

7.5 Contractual terms around termination are understood and monitored by the contract manager.

CIPS – contract management guide

The guide sets out that the end of a contract should have been considered during the pre-contract award stages, but also highlights the importance of allowing for risk of failure to agree and a period of time for the contract to be re-let in order to ensure smooth transition (p. 34 and 35).

National Outsourcing Association manual for the effective exiting of outsourcing agreements

The guidance suggests that the provisions of detailed exit management plans at a certain point should be specified in a contract, alongside requiring regular updates (p. 11).

Government Commercial Function – Government Commercial Operating Standards Iteration ii

2.2 Creating a comprehensive commercial pipeline (minimum of 18 months) of high risk contracts.

Glossary

Key terms

We have used the following key terms:

- **commercial and contract management** refers to the wider process of managing a contract across a project's lifecycle.
- **procurement process** refers to the process of identifying a supplier of a good or service and then arranging a contract, including the tendering and any competition and negotiation.
- **contract termination** refers to the ending of a contract, either through reaching the end of its defined period or other reasons.
- **contract transition** refers to the continuing of provision after the end of the contract, either through extension, renewal or a new contract with a different supplier.

When describing risk, we use **contract risk** to encompass all risks related to a contract and its performance, **compliance risk** as the risk of consequences of failing to follow expected standards, and **risk allocation** to mean the proportioning of contract risk between different parties.

Other definitions

Term	Definition
Benchmarking	Comparative exercise using other similar services/contracts as a way of assessing price or performance.
Business case	The justification for a project based on its rationale, risk, cost and benefits.
Business owner	The front-line manager with responsibility for a contract or element of a contract.
Change control	The process of managing changes to a contract.
Client leadership	An approach to managing a contract in such a way as to take leadership over the focus of the parties involved.
Commercial strategy	An overall strategy for a contract, with a clear rationale and link to organisational strategy and how value for money will be achieved. Part but not all of this will be the commercial case as part of the business case.
Contract management plan	Plan for how to manage a contract which sets out resources, risks and the various contract management activities that will be carried out.
Control test	Checks performed to verify whether internal controls are working.
Crown Commercial Service	Executive agency sponsored by the Cabinet Office which brings together policy, advice and direct buying for the public sector.
Forensic audit	Evaluation of financial information for use as evidence in court.

Glossary *continued*

Term	Definition
Framework	An agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement.
KPIs (Key Performance Indicators)	A series of measures against which performance on a contract can be judged, which should incentivise good performance and penalise poor performance.
Market engagement	The process of identifying potential suppliers and discussing contracts or potential contracts with them.
OJEU notice	Official Journal of the European Union (EU) notice – publication that lets potential suppliers know of a procurement process under EU rules.
Open book	A type of supply chain assurance wherein the supplier makes more of their contractual and financial information available.
Partnering	Development of successful, long term, strategic relationships between customers and suppliers, based on achieving best practice.
Payment by results	A type of public policy where payments are contingent on the independent verification of results.
PFI	Private Finance Initiative (PFI) as a way of funding public infrastructure projects with private capital.
Preferred bidder	The bidder which the vendor intends to award the business to, subject to the completion of negotiations and legal arrangements.
Project management	The whole process by which projects are carried out, including wider strategic consideration outside of commercial factors.

Term	Definition
Segmentation	Identifying different types of contract, for example by size or risk, to manage them in different ways.
Sensitivity analysis	The study of how the uncertainty in an output can be apportioned to different sources of uncertainty in its inputs.
Service Credit	Mechanism for reducing payments if supplier performance fails to meet expected standards.
Service Level Agreement (SLA)	Agreement on the levels of performance expected, which can be used to decide service credits and other incentives.
Should-cost model	Model which allows an estimation of the expected cost of goods or services to use as a comparator for bids received or actual costs.
Sourcing	Process of finding, evaluating and engaging potential suppliers about an upcoming opportunity.
SRO	Senior Responsible Owner with the ultimate responsibility for a contract.
Staffing model	A model for staff requirements and which staff will be allocated to a contract to meet its contract management requirements.
Substantive test	Analytical procedures or tests of detail used to verify assertions.
Supplier Relationship Management (SRM)	Methods of strategically planning for, and managing, interactions with supplier.
Transitioning	Process of changing from one contract for a service/good to another contract for the same or similar contract/good.

links to insights

Study title	Commercial strategy	Commercial capability	Market management & sourcing	Contract approach	Contract management	Contract lifecycle	Transition & termination
Cabinet Office: Shared service centres, 2016	1	5		11	13	18	
Cross-government: Government's spending with small and medium-sized enterprises, 2016			6				
Cross-government: Open-book accounting and supply-chain assurance, 2015			9				
Department for Culture, Media & Sport: The rural broadband programme, 2013		3	8	11			
Department for Culture, Media & Sport: The superfast (rural) broadband programme: Update, 2015		3	7				
Department for Education: The Building Schools for the Future Programme, 2009		4					
Department for Transport: Lessons from cancelling the InterCity West Coast franchise competition, 2012		4	6				
Department for Transport: Procuring new trains, 2014	1		8				
Department for Transport: Reform of the rail franchising programme, 2015			9				19
Department for Work & Pensions: Contracted-out health and disability assessments, 2016	2	3, 4	6, 7	12	14	17, 18	20

Study title	Commercial strategy	Commercial capability	Market management & sourcing	Contract approach	Contract management	Contract lifecycle	Transition & termination
Department for Work & Pensions: The Introduction of the Work Programme, 2012	2						
Department for Work & Pensions: The Work Programme, 2014	1, 2		9	12	14	17	19
Department of Energy & Climate Change: Carbon capture and storage: lessons from the competition for the first UK demonstration, 2012				11			
Department of Energy & Climate Change: Nuclear power in the UK, 2016			9				
Department of Health and NHS England: Out-of-hours GP services in England, 2014					14		
Department of Health: General Practice Extraction Service – Investigation, 2015			7				
Department of Health: Investigation into the collapse of the UnitingCare Partnership in Cambridgeshire and Peterborough, 2016			6, 7	10		18	
Department of Health: The franchising of Hinchingbrooke Health Care NHS Trust, 2012			8	11			
Department of Health: The performance and management of hospital PFI contracts, 2010					13		

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Study title	Commercial strategy	Commercial capability	Market management & sourcing	Contract approach	Contract management	Contract lifecycle	Transition & termination
Department of Health: The PFI contract for the redevelopment of West Middlesex University Hospital, 2002				10			
Home Office and NHS England: Yarl's Wood Immigration Removal Centre, 2016				12		17	19
Home Office/Ministry of Justice and Cabinet Office/ Cross-government: Transforming government's contract management, 2014		5			14		
Home Office: COMPASS contracts for the provision of accommodation for asylum seekers, 2014		3	6			18	
Home Office: E-Borders and successor programmes, 2015	2	4		10	13		
Home Office: Upgrading emergency service communications: the Emergency Services Network, 2016		4			13		
HM Revenue & Customs: Managing and replacing the Aspire contract, 2014	2		9				20
HM Revenue & Customs: Replacing the Aspire contract, 2016	2						20
Ministry of Defence: Army 2020, 2014		5			13		
Ministry of Defence: Military flying training, 2015			6	11	13		

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Study title	Commercial strategy	Commercial capability	Market management & sourcing	Contract approach	Contract management	Contract lifecycle	Transition & termination
Ministry of Defence: The construction of nuclear submarine facilities at Devonport, 2002				11			
Ministry of Justice: Electronic monitoring contracts, 2013				10			
Ministry of Justice: Language services contract: Progress update, 2014							20
Ministry of Justice: Transforming Rehabilitation, 2016	2	3, 4	6, 8	12	14	17	
Principles Paper: Managing provider failure, 2015							20
UK Trade & Investment: Investigation into the UKTI specialist services contract with PA Consulting, 2016		4, 5	7, 8, 9	10			

Our enquires into Civil Service Learning's contract with Capita, 2015

Department for Work & Pensions: Universal Credit: Progress update, 2014

Department for Transport and HS2 Ltd: Progress with preparation for High Speed 2, 2016

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Useful links

National Audit Office (NAO) guidance

NAO Overview of commercial and contracting in government

NAO Good practice contract management framework

NAO Managing supplier failure

NAO Open-book accounting and supply-chain assurance

NAO Payment by results analytical framework

Other guidance

CIPFA Practical Guide to Contract Management in the Public Sector

CIPFA Open book contract management

CIPS Contract management guide

Green Book supplementary guidance on delivering public value from spending proposals

Crown Commercial Service contract management principles

Crown Commercial Service model services contract

Local Government Association's making savings from contract management

Crown Commercial Service Open Book Contract Management Guidance

Procurement Policy Note – Taking Account of Suppliers' Past Performance

Procurement Policy Note – Information sharing in Government procurement exercises

Local Government Association's A Councillor's Guide to Procurement

The Scottish Government's Procurement Competency Framework

The Scottish Government's Procurement Journey

Government Commercial Function- Government Commercial Operating Standards Iteration ii

IACCM's Ten pitfalls to avoid in contracting

Sources of information

Whole of government accounts 2014-15

HM Treasury Public Expenditure Statistical Analysis