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SA Health

Policy

Contract Variation

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Government
of South Australia

SA Health

1. Name of Policy

Contract Variation

2. Policy Statement

This policy provides the mandatory requirements to ensure appropriate management, approval and recording of contract variations, in the event of an addition or alteration to the original contract provisions.

3. Applicability

This policy applies to all employees and contracted staff of SA Health; that is all employees and contracted staff of the Department for Health and Wellbeing (DHW), Local Health Networks (LHNs) including state-wide services aligned with those Networks and SA Ambulance Service (SAAS).

This policy does not apply to exercising extension *options* permitted within the terms of the existing contract.

4. Policy Principles

SA Health's approach to contract variations is underpinned by the following principles:

- > We will ensure that all contract variations are assessed, documented and approved in accordance with procurement policies issued by Procurement SA (PSA) and [Treasurer's Instruction 8: Financial Authorisations](#).
- > We will maintain probity, accountability and transparency in all procurement activity.
- > We will exercise ethical conduct in all procurement processes.
- > We will ensure contract variations are considered in accordance with SA Health's business needs and funding.

5. Policy Requirements

Use and Appropriateness of Varying Contracts

SA Health must:

- > Ascertain whether a contract variation or a new procurement and contract arrangement is most appropriate by considering whether:
 - a new procurement and contract may produce a different and more preferable value-for-money outcome.
 - a contract variation:
 - is necessary and will achieve value-for-money,
 - would significantly vary the scope, value or complexity of the contract, and/or
 - may compromise the original procurement's value-for-money assessment.
- > Not perform a contract variation for contracts that have expired.
- > Consider the [PSA Contract Extensions and Variations Guideline](#), including for the instructions when a contract has expired without an approved contract variation to extend but the supply of goods and/or services is required to continue for a short time after the expiration.

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- > Ensure to avoid any unintentional contract variation or waiver by implied agreement when dealing with suppliers.
- > Undertake a contract variation to continue a contract arrangement beyond the contract end date (inclusive of all contract extension options) or to vary any contractual aspect of the contract.
- > Undertake a new procurement and contract arrangement when a contract variation would change the objective of the original procurement and contract.

Assessment and Approvals

SA Health must:

- > Undertake a contract variation impact assessment to determine the level of impact and meet any procurement approval requirements as detailed in [Appendix 1: Contract Variation Impact Assessment and Procurement Approval Mandatory Instruction](#).
- > Use the [Contract Variation Approval template](#) to seek procurement approval for moderate or major levels of impact.
- > Create a file note (as a minimum) or use the [Contract Variation Approval template](#) for insignificant or minor levels of impact.
- > Obtain further financial authorisation to enter into a contract from an appropriate delegate, where the contract variation increases the contract value, before contract execution as detailed in [Appendix 2: Contract Variation Financial Approval Mandatory Instruction](#).

Contractual Arrangements

SA Health must:

- > Notify the Office of the Industry Advocate (OIA) immediately if a contract variation to the existing contract has a material impact on the Industry Participation Plan (IPP) or Tailored Industry Participation Plan (TIPP) commitments.
- > Submit to the OIA, a revised IPP or TIPP, for approval of material impacts by the Industry Advocate.
- > Assess if advice from the Crown Solicitor's Office is required for contract variations for high risk or complex contracts, before approval is given to vary the contract.
- > Document the contract variation in writing and obtain agreement between the parties in accordance with the contract variation terms set out in the original contract.
- > Not undertake informal contract variations by way of oral agreement, or other conduct, contrary to the contract variation terms set out in the original contract.
- > Ensure contract variation letters are executed by a delegate who has the authority to execute contracts, noting that this authority is distinct from procurement or financial authorisations.

New Products

- > SA Health must obtain and consider advice, prior to performing the contract variation, from the relevant Category team in Procurement, Supply Chain and Finance when the contract variation would introduce a new product/item.

Reporting and Records Management

SA Health must:

- > Capture all contract variations, except where purchase orders are the only contractual arrangement up to and including \$55,000 (including GST), within business systems as follows:
 - o reported in the Procurement Activity and Reporting System (PARS).
 - o recorded in the Procurement and Contract Management System (PCMS), including the relevant documentation and approval.
- > Capture all contract variations, where a contract variation takes a contract that was equal to or less than \$55,000 (including GST) over this threshold, within business systems as follows:
 - o an entry in PARS must be created to report contract expenditure.
 - o a contract record in PCMS must be created.
- > Adhere to the [SA Health Corporate Records Management Policy](#) for all documents, contract variations and proposed contract variations.
- > Report all contract variations and proposed contract variations as required by the [PSA Contract Management Policy](#).

6. Mandatory Related Documents

The following documents must be complied with under this Policy, to the extent that they are relevant:

- > [Contract Variation Approval Template](#)
- > [Corporate Records Management Policy](#)
- > [Internal Procurement Framework](#)
- > [Procurement and Contract Management System Policy](#)
- > [PSA Procurement Planning Policy](#)
- > [PSA Contract Management Policy](#)
- > [PSA Sourcing Policy](#)
- > [Public Finance and Audit Act 1987](#)
- > [Treasurer's Instructions 8 - Financial Authorisations](#)
- > [Treasurers Instruction 18 - Procurement](#)

7. Supporting Information

- > [Governance and Delegations System \(GADS\)](#)
- > [Procurement Records Management Factsheet](#)
- > [PSA Contract Extensions and Variations Guidelines](#)

8. Definitions

- > **Contract variation:** means an addition or alteration to the terms of the existing contract that is mutually agreed to by both parties to the contract. Contract variations may be proposed by either party and may refer to adding, removing or changing an existing contract provision. Contract variations may impact, for example, the scope, value, options, prices, quantity and/or specifications of contracts.
- > **File Note:** means a simple record of what has occurred.
- > **Informal Contract Variation:** means a contract variation that occurs, intentionally or unintentionally, when parties agree to modify the contract without adhering to the formal requirements by means such as oral agreements or conduct that implies a contract variation.
- > **New product:** means a new medical product, consumable or equipment including:
 - New innovative medical technology recently released to the market
 - New version of existing medical technology already present in the market and available from other suppliers
 - Medical product, consumable or equipment previously only supplied to SA Health as a result of a hospital ethics committee approved clinical trial that has concluded
 - A medical product, consumable or equipment not otherwise marketed or sold to any SA Health entity.
- > **Reasonable timeframe:** means the proposed timeframe (including the anticipated key dates for commencement of planning, market approach, evaluation and contract award) that is commensurate with the nature of the circumstances, amount of procurement effort required and the market conditions and is deemed appropriate by the approving delegate.
- > **Statewide Services:** means Statewide Clinical Support Services, Prison Health, SA Dental Service, BreastScreen SA and any other state-wide services that fall under the governance of the Local Health Networks.

9. Compliance

This Policy is binding on those to whom it applies or relates. Implementation at a local level may be subject to audit/assessment. The Domain Custodian must work towards the establishment of systems which demonstrate compliance with this Policy, in accordance with the requirements of the SA Health [*Risk Management, Integrated Compliance and Internal Audit Policy*](#).

Any instance of non-compliance with this Policy should be reported to the Domain Custodian for the Procurement Policy Domain and the Domain Custodian for the Risk, Compliance and Audit Policy Domain.

10. Document Ownership

Policy owner: Domain Custodian for the Procurement Policy Domain.

Title: Contract Variation Policy

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11. Document History

Version	Date approved	Approved by	Amendment notes
V1.0	16/06/2011	PE Approved	PE Approved version.
V1.1	19/08/2014	Executive Director, Procurement and Supply Chain Management	Transferred to the new template. Scope excludes contract extension. Aligned approvals to updated across-government policy requirements.
V2.0	01/04/2015	Executive Director, Procurement and Supply Chain Management	Minor wording changes to align to State Procurement Board's Supplier Selection Guideline.
V3.0	08/12/2016	Executive Director, Procurement and Supply Chain Management	Contract Variation / Renewal changes to align with the State Procurement Board's Acquisition Planning Policy and Procurement Reforms.
V3.1	16/10/2017	Executive Director, Procurement and Supply Chain Management	Reformatted section 3.2 to include two new sub-headings: 3.2.1 Variations Prior to Contract Expiry and 3.2.1 Variations After Contract Expiry. No additional content. Transferred to the new template.
V3.2	29/11/2017	Executive Director, Procurement and Supply Chain Management	Procurement authority amount changed from \$11 million to 15 million advised by the State Procurement Board on 19 October 2017.
V3.3	14/10/2019	Executive Director, Procurement and Supply Chain Management	Clarified the requirement to seek advice from the Product Standardisation Subcommittee Executive Officer to advise if a new product requires approval. Minor amendment to New Product description to align with the Product Standardisation Subcommittee.
V3.4	04/09/2020	Executive Director, Procurement and Supply Chain Management	Highlighted the requirement to monitor contract spending against the contract's approved financial limit in order to obtain contract variation and financial approvals before the contract expires.

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V4.0	07/07/2021	Deputy Chief Executive, Corporate and System Support Services	Amendments related to the new SA Government Procurement Policy Framework, including Treasurer's Instruction 18 Procurement.
V5.0	27/07/2022	Deputy Chief Executive, Corporate & System Support Services	Simplify the policy with essential information only, non-essential information will be covered by a guide. Update references to PSA requirements.
V6.0	18/06/2025	Chief Executive	Added: <ul style="list-style-type: none">• considerations• unintentional agreement• reporting in PARS if a contract variation results in contract value above \$55,000 (including GST)• that a revised IP plan to be approved by the OIA if a contract variation has material impacts on the IP Plan commitments• definition of "reasonable timeframe". Addition of Appendix 2. Enhanced explanations/clarifications. Removal of reference to redundant Product Standardisation Committee. Removed section titled Variation After Contract Expiry - (refer to Use and Appropriateness of Varying Contracts).

12. Appendices

Appendix 1: *Contract Variation Impact Assessment and Procurement Approval Mandatory Instruction*

Appendix 2: *Contract Variation Financial Authorisation Mandatory Instruction*

Appendix 1: Contract Variation Impact Assessment and Procurement Approval Mandatory Instruction

The following Instruction must be complied with to meet the requirements of this policy.

- > An impact assessment must be undertaken for *all* contract variations using the Impact Assessment Matrix below that details the assessment criteria to determine the measure of impact and the associated procurement approvals, where required.
- > File notes must be made and recorded for impact assessment results of insignificant or minor.
- > Procurement approval must be obtained for impact assessment results of moderate and major.
- > The level of detail recorded regarding the impact assessment must be commensurate with the measure of impact of the contract variation.

Impact Assessment Matrix		
Measure of Impact	Criteria for Assessing Impact	Procurement Approval Required – Assessment by Impact
Insignificant	No potential to negatively impact the contract deliverables, price, timeframes, value for money outcomes, probity, transparency and accountability.	<ul style="list-style-type: none"> Create file note, detailing the contract variation File locally or record in PCMS (*where a PCMS record is required). <p>The Contract Variation Approval Template may be used for this purpose.</p>
Minor	Limited potential to negatively impact the contract deliverables, price, timeframes, value for money outcomes, probity, transparency and accountability.	
Moderate	Moderate potential to negatively impact the contract deliverables, price, timeframes, value for money outcomes, probity, transparency and accountability.	<ul style="list-style-type: none"> Seek procurement approval from the approver of the Acquisition Plan using the Contract Variation Approval Template. File locally or record in PCMS (*where a PCMS record is required).
Major	Major potential to negatively impact the contract deliverables, price, timeframes, value for money outcomes, probity, transparency and accountability.	

- > *Where a contract variation pertains to an existing PCMS contract record or where a contract variation means that the total contract value becomes greater than \$55,000 (inc GST), the information must be recorded in PCMS.

Appendix 2: Contract Variation Financial Authorisation Mandatory Instruction

The following Instruction must be complied with to meet the requirements of this policy.

- > In order to comply with [Treasurer's Instruction 8 Financial Authorisations](#), financial authorisation to enter into a contract must be obtained where the contract variation increases the contract value. Financial approval is not required if the total contract amount will not exceed the amount of financial authorisation granted for the contract previously.
- > The approval amount is determined by the proportion of the contract variation (including previous contract variations) to the original contract value as follows:
 - Where the total of any new contract variation and any past contract variations is less than or equal to 5% of the original total contract value (including original options) the financial approval is to be obtained based on the contract variation amount only.
 - Where the total of any new contract variation and any past contract variations is greater than 5% of original total contract value (including original extension options) the financial approval is to be obtained based on the aggregated total value of the proposed contract variation, all previous contract variations and the original contract value (including original extension options).
- > Prior to seeking financial approval for amounts above \$15 million from the Minister, advice from the Department of Treasury and Finance on the budget impact associated with the contract must be sought - DHW Corporate Finance can assist with this consultation process (email: [Health:Finance Cabinet Submission Review](#)).