

WA local government contract extensions and variations

12 May 2020

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On 4 May 2020, the Office of the Auditor General (**OAG**) published the *Local Government Contract Extensions and Variations Report (Report)*. The Report published the findings of an audit carried out by the OAG which sought to assess and determine whether local government entities were adequately managing contract extensions and variations, as well maintaining comprehensive contract records. This necessarily involved an analysis of the policies, procedures and practices in administering contract extensions and variations. The audit was undertaken during 2018-2019 across eight local governments ranging in size and located throughout metropolitan and regional Western Australia (**WA**).

In this article Solicitor [Lily Robinson](#) and colleagues break down the key recommendations made in the *Local Government Contract Extensions and Variations Report*.

Summary

The audit revealed that the contract management policies and procedures of the audited local governments did not contain appropriate guidance for employees to accurately and competently administer contract extensions and variations. More specifically:

- contract variations were not always approved by the appropriate delegated officer;
- sufficient consideration was not always given to contract terms; and
- contractor performance was not always reviewed prior to contract extensions being granted.

Further, the audit revealed that, despite the requirement to keep proper accounts and records of all the transactions and affairs of a local government pursuant to section 6.5 of the *Local Government Act 1995 (WA)*, all eight local government entities were missing key information about contracts in their official records. In particular, the value of a deal or conditions to be satisfied prior to a contract extension being granted were not recorded.

As a consequence of the findings, the Report makes the following recommendations in respect to compliance for local governments which must :

- improve policies and procedures regarding contract extensions and variations;
- maintain comprehensive registers for contracts; and
- undertake contractor performance reviews prior to exercising contract extension options.

Local governments must improve policies and procedures

In short, the Report urges local government to improve policies and procedures relating to the approval of contract extensions and variations, including ensuring that all approvals for extensions and variations are made by the appropriate regulatory officer. This requires that authority limits are clearly outlined, thereby ensuring that all decisions are made by persons with the requisite experience and knowledge. Further, policies and procedures should provide clear guidance as to when contract extensions and variations should be approved. This ensures that contract terms expressly provide an option for extension; that the time for an application to extend has not expired; and that the proposed variation, when considered in light of the contract as a whole, does not

considerably alter the original contract.

Finally, the Report recommends that policies and procedures provide that prior to approving a contract variation, local government entities ensure that adequate supporting documentation (i.e. the nature and reasons for the variation) accompanies the application. This will require cooperation between both the local government entity and the contractor.

The implementation of these amendments will assist local government to strictly comply with regulatory requirements and meet the standards expected of them by the community and Parliament.

Comprehensive contract registers

The Report recommends that all local government entities maintain a comprehensive register containing summaries of all contracts, including all material terms relating to the contracts, the detail of which is to be proportionate to the significance, number and complexity of the contractual arrangements. This improved recordkeeping will enhance accountability and transparency in relation to decision-making processes in respect of contract extensions and variations.

Assessment of contractor performance

The Report also recommends contractor performance reviews prior to approval of any contract extension. This is crucial to determine whether a contractor has achieved a value for money outcome. The failure to conduct such reviews increases the risk that poor performing contractors go unnoticed and are granted contract extensions.

This recommendation encourages best practice in respect to contractor performance. Where contractors are not meeting contractual performance targets, they will not receive the contract extensions they may have received in the past. Accordingly, this recommendation, unlike the others, should require stakeholders (developers, construction companies and service providers for example) to make changes to the way in which they report to local government in conducting their business to achieve the results necessary under the contract.

Given the low audit sample size it is likely that many local governments have the relevant policies and procedures in place. For those that do not, it will be interesting to see if and how these recommendations are adopted, as well as how they will impact stakeholders who have developed a particular way of conducting business with a local government which did not previously require this level of reporting and delivery. Ignoring the Report and its recommendations would be unwise when compliance is a simple matter to achieve.

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