

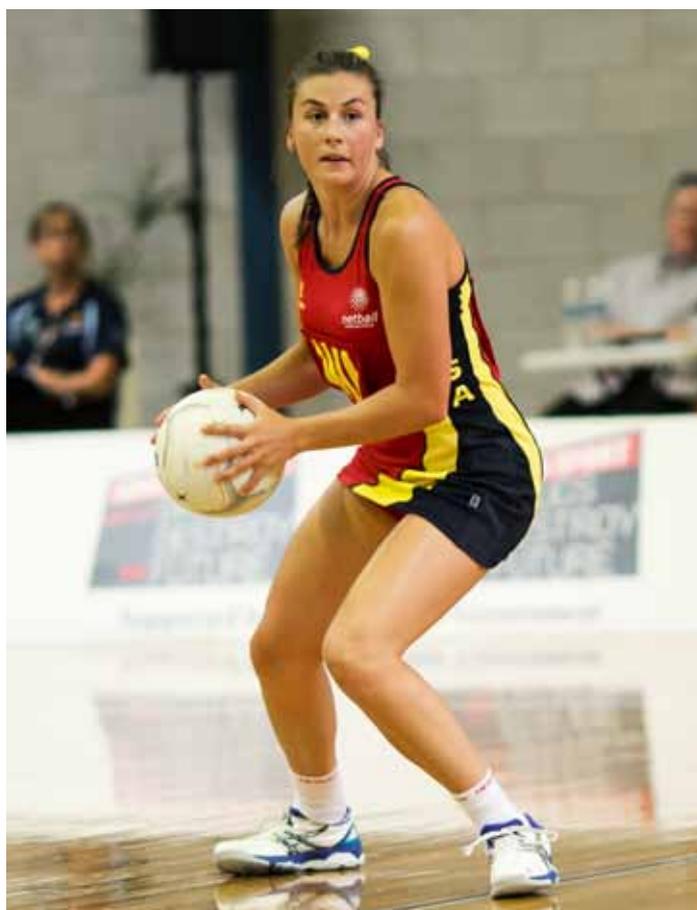
Key risks – knowing what they are and how they can be managed *cont.*

Contract management

In contract management, managing risks means identifying and controlling factors that may have an impact on the fulfilment of a contract. Regardless of the specific nature of the contract your organisation may enter into, there are a few key questions that should be addressed to identify and manage the potential risks prior to the commencement of the contract.

Refer to this contract checklist as guide when negotiating, executing and managing contracts.

Preliminary	Yes	No	For items marked as 'No', detail actions required.
For large contracts, has a due diligence and credit check been conducted on the other party? If not, explain why these were not necessary.			
For large contracts, have you been provided with details of the contractor's public liability and professional indemnity insurance – i.e. level of cover and expiry date?			



Key risks – knowing what they are and how they can be managed *cont.*

Contract contents	Yes	No	For items marked as 'No', detail actions required.
Are the correct legal names and ABN/ACN numbers advised on the contract and have they been checked against the ASIC Company register?			
Does the contract include clauses to cover, but not limited to the following:			
<ul style="list-style-type: none"> defined start and finish dates 			
<ul style="list-style-type: none"> impacts and compliance of local/interstate legislation. Does the contract explicitly state which law has jurisdiction? 			
<ul style="list-style-type: none"> confidentiality 			
<ul style="list-style-type: none"> publishing rights 			
<ul style="list-style-type: none"> GST tax issues 			
<ul style="list-style-type: none"> Does the agreement address the relationship and liability/ indemnity/ownership and rights for any sub contracting? 			
<ul style="list-style-type: none"> conflict of interest 			
<ul style="list-style-type: none"> Force Majeure, which releases parties of their contractual obligation in the event of war/natural disaster that block completion of the contract. 			
<ul style="list-style-type: none"> dispute resolution and escalation (Does the contract address dispute resolution processes and the position should a dispute not be resolved?) 			
<ul style="list-style-type: none"> price and progress payments clearly stated. 			

Termination and disputes	Yes	No	For items marked as 'No', detail actions required.
Do you understand the circumstances in which you can end the contract?			
Is there provision to allow for the formalisation of changes or variations throughout the term of the contract?			

Key risks – knowing what they are and how they can be managed *cont.*

Execution	Yes	No	For items marked as 'No', detail actions required.
Has legal advice been obtained prior to contract execution?			
Does the intended signatory have the appropriate financial delegation and authorisation of the full board/committee?			

Ongoing contract management considerations	Yes	No	For items marked as 'No', detail actions required.
Has a member or other individual been formally appointed by the board/committee for the responsibility of the ongoing management and administration of the contract including variation management and change control?			
Are there procedures in place to report on the progress of the contract to the board on a regular basis?			

Key point: *Seek professional advice when you are unsure of the meaning or consequence of any contractual issue, especially if a substantial amount of money is involved.*

Probity

What is probity?

The term probity means integrity, uprightness and honesty. Probity is also about ensuring that the processes in tendering and procurement transactions are conducted with integrity, fairness and honesty.

Probity is a behaviour and an attitude. It involves adopting an ethical and transparent approach, allowing the process to withstand scrutiny. Probity is about adherence to the following key principles:

- Ensuring the process is as competitive as possible.
- Ensuring a fair, impartial and unbiased process where no-one has an unfair advantage or is disadvantaged. (For example, ensuring that the process is conducted in accordance with the process terms and conditions provided to tenderers for all tenders.)
- Ensuring all have access to the same information at the same time.

- Having consistency and transparency of the process. (For example, disclosing to tenderers the method to be adopted for the evaluation of tenders, including all evaluation criteria.)
- Maintaining appropriate confidentiality. Sensitive information of the tendering organisation should be identifiable (i.e. marked as 'confidential').
- Identifying and resolving any real or potential conflicts of interest. In the context of a tender process, conflicts of interest can arise when members of your organisation involved in the tender process, their families or business associates stand to gain a benefit or advantage.
- Ensuring that appropriate records are kept (i.e. ensuring all process and probity issues and actions taken to resolve such matters are fully documented).

Application of probity principles should ensure that when your organisation undertakes purchases (significant or otherwise) or commits to a long-term contractual arrangement, a fair and robust process is undertaken and as a result minimises potential liability if the process outcome is challenged (for example, selection of one supplier over another).