

**SUMMARY from the Restoring Biodiversity 09 Forum  
27<sup>th</sup> March 2009, at Ryde College of TAFE**

## **THEME: Managing contracts**

### Time frames for letting contracts

- Lengths of contracts in most organizations are too short. Inefficient process, when land manager and contractors have to revisit the tender process each year. Time consuming, half day site visit, preparation of quotes. Sometimes this is all a formality anyway because there is already a preferred contractor.
- Discontinuity of contracts. The two month lag time of July-August when contracts haven't yet been let for new financial year, and there is no work.

### Specifications and costings

- Lump sum vs schedule of rates. Setting up the right framework for contracts in different scenarios. There are advantages and disadvantages of different approaches and as an industry we need to share information and experiences to help achieve better outcomes

### Strategic frameworks

- Ensuring individual projects fit in with bigger context, without the bigger picture frameworks in place, one off projects may lead to non optimal outcomes.

### Skills in contract management

- Contractors and agencies understanding how the other party works. Understanding the limitations and processes of both sides is essential to better and more efficient outcomes.

### Implications of the above issues for biodiversity management

- Loss of staff and skills, not good value for money, lost opportunity of regen (sometimes we go backwards and there are poor quality outcomes on the ground).

## **What do we do know?**

### Industry Training

- Put a proposal to TAFE to run a 1 day contract management course, with input from many people in the industry
- Aim: Have a clear understanding of contract management process

### Draft guidelines

- Set up a working group to come up with guidelines to managing contracts
- Review and extend the AABR guidelines.
- Guideline to contract management including some standard specifications
- Guideline to include best practice approaches to different scenarios

### Explore funding opportunities to assist with developing the guidelines

- Ask LGSA

## **Who will do it?**

Frank Gasparre, Andrew McGahey, Carolyn Adamcewicz, Rhamin Khosravi, Paul Price, Steve Anstey, Assad Baheer.

- Invite others in industry to also be involved.
- Frank and Rosanna to organise a meeting for July 2009 to further the discussion, and start drafting guidelines.

## PRESENTATION FROM ANDREW McGAHEY, TOTAL EARTH CARE

### “Essential elements of a contract”

#### *Prerequisites*

##### **Competence.**

For example signatories (Parties to the contract) must be sane and of legal age.

##### **Consent.**

Signatories.(Parties to the contract) must have the authority to commit themselves or there organization to a contractual arrangement.

##### **Legality.**

The contract must not involve illegal activities, eg theft and must be founded on sound legal practice eg not collusively tendered.

#### *Essential elements*

##### **Offer/counter offer.**

In our industry the offer is generally the (Principal's) tender or quote documentation and the response from the contractor (which can modify the terms of the contract) is a counter offer. Both form the terms of the contract assuming the other essential elements, listed below, are supplied.

##### **Acceptance**

This is when the contract has been accepted by the party who invited the original negotiations. ie the Principal.

##### **Exchange**

A contract has not been completed until both the promised service or good and the corresponding remuneration have been exchanged.

### **A common mistake in completing a contract**

In order for the offer and acceptance elements to be legally relied upon their must be a ***meeting of minds***.

If there is not a meeting of minds then there is grounds for repudiating the contract ie there is grounds for claiming that the whole contract or a part of that contract never really existed.

Many of my contracts do not have a meeting of minds because the principal's representative is ignorant of the basic elements of the contract. Essentially the two contracting parties have different perspectives of the rights and obligations of the other party.

To facilitate the meeting of minds the terms of the offer and counter offer need to be clear and readily understood by both parties.

To impart clarity into a contract, common and legally tested, definitions should be used in providing a set of "General Conditions".

It is generally accepted that the contracting parties should be able to rely on the commonly used definitions in interpreting the contract terms.

These General Conditions of contract are often provided as a separate section within a tender document and set out the basic rules under which the principal wants to run the contract.

The technical specifications are often provided as another separate section.

The General Conditions (GC's) of Contract often include items such as:

The legislative jurisdiction within which the contract is bound.

Who the principle is

Who the agent is,

Time periods,

Liquidated damages,

OH&S, QA and EMS documentation and requirements,

Invoicing protocols /statements of claim

Reporting

Etc etc etc

There are many others and sometimes these GC'S can run into 100 page documents.

But there is one general condition that I believe is grounds for repudiation of many of my current contracts and it must be better understood by both contractors and more importantly by principals representatives and that is the **Nature of the Contract**.

The nature of the contract is by definition an essential element in the meeting of minds.

### **Nature of the contract**

I am not a lawyer and can only comment on the two Nature's of contract that I have dealt with, although I am sure that there must be others.

There are two types of Natures of contract that we see in our industry:

These are:

1. Schedules of rates, and
2. Lump sum.

### **Schedule of Rates Contracts**

In Short Schedule of rates contracts require the first party to pay the second party for the provision of a service or good for an agreed rate per item.

Table 1

#### **Item**

<b>Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Rate</b>	<b>Total</b>
Labour	Hr	8	\$35.00	\$ 280.00
Tubestock	Each	1000	\$ 1.50	\$1,500.00
Mulch	M3	10	\$20.00	\$ 200.00

NB. This generally relates to a minimum qty so that the contractor can be confident that he is not going to be driving across town to install one item eg a minimum number of say 4 hours should be charged for overseeing a volunteer regeneration team. Additionally a minimum overall Quantity of work should be provided by the client so that the contractor can gauge the resource commitment and contract establishment costs that must be borne by the contractor when engaging in the contract.

Report writing and site meetings should also be specifically identified as billable items within the schedule.

The way this Schedule is constructed binds the contractor to providing Labour at a set Unit rate per hour. It does not bind the contractor to completing a set rate of deliverable work for each hour of Labour provided, for example a contractor cannot be held to weeding a quantifiable area per hour.

Conversely if the schedule has an Item described as weeding and the Unit is for a Square meter then the contractor is obliged to weed that area for the agreed rate regardless of how long that weeding takes.

Table 2

**Item**

<b>Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Rate</b>	<b>Total</b>
Weeding	M2	1,000	\$1.00	\$1,000.00
Tubestock	Each	1000	\$ 1.50	\$1,500.00
Mulch	M3	10	\$20.00	\$ 200.00

Principals are often under the erroneous belief that contractors must complete a set amount of work and that they will only be remunerated for the hours that the work took to complete up to the overall budget allocation for that type of work.

To further illustrate the point if a contractor submits a tender response for a tender that allowed 10 Hours of report writing and more report writing is required than the allocated 10 hours then the contractor is not obliged to spend more than 10 hours on that task and if more report writing is required by the principal then additional hours should be paid for by the principal.

As the second table above demonstrates Weeding can be included in a contract as an item that can provide the client certainty that a discrete area is weeded.

The performance requirements provided in the technical specification of the contract determine the extent or manner of weeding required.

**Lump Sum Contracts:**

- Provide a service or good for a set sum of money.  
Examples include:
  1. regeneration of a defined area of bushland for that set sum.
  2. Prepare the soils, mulch and provide robust plants to required cover abundance within a defined area for a set sum.

In my experience most client representatives in government agencies don't know that the nature of the contract is an essential element of a contract nor do they understand that to validate a contract they must understand the difference between the types and use them appropriately.

In my opinion it is legally negligent of principles to have their representatives engage a contractor when the representative has no understanding of the most fundamental elements of the contracts they are committing their organisation to.

## **Schedules of Prices**

Definition: A table within a Lump sum contract that breaks the job up into component parts so that the completion of discrete tasks can be quantified and invoiced separately.

### **The use of a Schedule of Prices within a Lump Sum contract.**

Some confusion arises when a Schedule of Prices is included within a Lump sum contract.

This type of Schedule can be used to define the individual lump sums that make up an overall price. This is different to a Schedule of Rates. Schedules of Prices may also include Items whose units are described as Provisional Costs or Provisional Sums. These Items are for the provision of goods or services on the provision that they are needed. For example if it is believed that a site might be contaminated but the nature and extent of the contamination is unknown then a provisional sum might be included for the removal of the contaminants "if" they are found.

### **Schedules of rates within a lump sum contract.**

Schedules of Rates can also be used within a Lump Sum contract to facilitate minor variations to the contract but not to change the nature of the contract without the consent of the contracted parties. ie not to negatively or positively vary the volume of work dramatically.

Many of my clients are inadvertently trying to double dip in the management of their contracts. They ask for an hourly rate for an upper limited number of hours and then also expect a commitment from the contractor to complete a certain definable amount of work.

That is they:

- Demand that the contractor complete a set quantity of work and if the contractor does not complete it within the allocated time they expect the contractor to keep working to complete the works, but
- if the contractor completes the work within the set number of hours the client expects the remaining hours to be worked.

This is an unethical and legally indefensible practice.

## **How are Schedule of Rates contracts killing our bush.**

### **Why are they used?**

- First and foremost they are easy to document from the clients end,
- Secondly they load up the tenderers with the responsibility of undertaking the site assessment and providing budgets for the work,
- Thirdly, they more often than not, require the tenderer to write a plan of management as part of their tender response and so the principle is provided with free consultancy from multiple tenderers.
- Fourthly there are no empirical performance measures that need to be monitored by the client,

Having provided a free consulting service to clients for twenty years I can tell you it begins to grate. If Principals want a design and construct contract then they should be paying the qualified and experienced bushland management consultants within the industry to write plans and document contracts for them.

## What are the downsides for the bush.

Firstly that the bushland areas are not regenerated with long term vision because,

- an ecologically rigorous assessment completed by the contract manager is generally not undertaken
- Bushland management plans are written to satisfy council's legal obligations under the Local Government Act and not for achieving practical ecological outcomes,
- an appropriate budget is not allocated to the writing or implementation of a long term management plan. Council staff have no justification for increasing / decreasing or reallocating their financial resources if they do not have a robust management plan. Instead contractors provide prices at the tendering stage which have no long term relevance.
- A long term work program that incorporates the financial resourcing is generally not being worked to,
- the cheapest price, not the best program, is often accepted and cannot be rejected given government procurement guidelines.
- the best approach submitted on the day is accepted, not necessarily the approach that is best for the longterm management of the bush,
- Comparing quotes is made very difficult if the scope of works is not exactly the same. The principals representative cannot be expected to make a quantifiable, defensible and transparent decision if too much information in the tender response must be assessed subjectively. The subjective nature of this decision leaves the principal in the dubious position of accepting a tender in a biased manner.
  
- piece meal planning allows for political agendas to disrupt long term robust ecological management plans which are more defendable, against political desires, by the natural area manager,

Secondly the cheapest price is not the best for the bush because:

It under resources contractors and generally leads to cutting corners.

- Which companies do you know with 30 or more staff have a statutorily required OH&S Committee?
- What contractors have new vehicles owned by the company that are serviced to an acceptable OH&S Standard?.
- What contractors use their employees vehicles and do not check that they are in safe working order, let alone registered?
- Are all contractors honoring their Workers Compensation Insurance payments/commitments? There are two companies I know who sign forms that say they have paid their Insurance and Super debts who have not. This leaves the client vulnerable to paying the debt if the client has reason to believe that the contractor has not honored these payments/obligations.
- Other contractors have not paid their payroll tax.
- Poorly qualified and less experienced staff are employed and we lose our best people who have the long term knowledge of sites. This is a huge problem in the industry,
- Career regenerators are doomed to a life of poverty,
- People who are paid the minimum wage cannot be expected to work hard nor take on any substantial responsibility
- We cannot expect people to survive on their vocation alone.
- Many contractors (who had been working in the industry for up to 10 years) attended an AABR meeting about two years ago were ignorant of their legal obligation to engage their staff in accordance with a Government approved industrial relations instrument eg an Australian Workplace agreement, an Award or collective Bargaining agreement. Etc This

happens because business owners are so overworked, writing unpaid BMP'S because they are under funded and they have no free time to investigate these matters. This creates further difficulties for contractors who do apply costly resources to complying with the legislation.

Thirdly

- There is no incentive to remove the weeds that are killing whole ecological communities instead we see most of the limited funding available to bushland management wasted on monthly visits to control annual weeds that annoy the weed phobes among us. While whole ecological communities , mature trees and shrubs die because schedules of rates do not have contractually definitive performance measures. It is almost impossible to push a contractor to do more than just turn up on site.

Lastly and very importantly

A contractor must be trusted to bill for the hours that they work.

Two contractors I know are fraudulent and bill for more hours than they work. This is a terrible thing and it should be stopped, the bush suffers directly for it. It is impossible for honest contractors who set high standards to compete with criminal contractors.

Lump sum contracts can keep the bastards honest.

### **Lump sum contracts:**

How can they remedy the problem?

They force the contract manager to work to a program that they have produced that matches their budgets, their legal obligations and the needs of bushland.

People with the best experience and qualifications write the management plan not contractors with a financial agenda.

You can compare Apples with apples and be more transparent about the tender assessment.

You can reduce the chance of fraud.

Staff will be paid what they are worth and will be paid according to their productivity.

Staff will stay in the industry and not live on the breadline.

There is scope for being better remunerated / rewarded for innovations.

## **A Proposed standard Contract for the bush regeneration industry.**

### **Australian Standard Contract 2124 [www.standards.org.au](http://www.standards.org.au)**

AS 2124 is generally used by State, Federal and Local Government agencies and private companies to administer small to medium sized landscape management contracts . It is tried and tested in the courts and is updated in accordance with the Australian standards.

Government Agency legal departments and staff across the landscape management industry are familiar with the contract. It is frequently used by private agencies in administering lump sum and Schedule of Rates bush regeneration contracts.

### **AABR Contract.**

AABR have provided guidance via a document available on its website [http://www.aabr.org.au/resources / manuals /Bush Regeneration Contract Management](http://www.aabr.org.au/resources/manuals/Bush%20Regeneration%20Contract%20Management) which includes an example of a contract that may be used.

AABR recommended that a schedule of rates based contract be used for it was believed that a schedule of rates would provide a flexible framework which could allow the work program to be adapted to changing ecological circumstances and would avoid “weed control” occurring rather than bush regeneration. This recommendation was well meant however for the reasons above I believe that Schedules of Rates contracts “have some has some serious unforeseen ramifications.

An example contract provided in the documents has some flaws including an erroneous description of the nature of the contract. It is also deficient in explaining that variations can be both positive and negative. Additionally it provides an ambiguous interpretation of how labour can be included in a lump sum contract.

I have not seen this document referenced by any clients in spite of the hard work that went into it. However it does provide a useful overview of the reasons why and how contracts should be managed.

I recommend that contract principals use this document in conjunction with AS2124 to provide robust general conditions of contract (both Lumps sum and Schedule of rates) that are sympathetic to the needs of bush regeneration.



## **PRESENTATION FROM CHRIS COOMBS, GOSFORD CITY COUNCIL**

*Note: The opinions expressed in these notes do not necessarily reflect those of Gosford City Council.*

Since 1990 Chris has held various positions in Gosford City Council involving recreation services and more recently, using bush regeneration techniques for flood control works.

The Management Plan for Kahibah Creek (just to the north of Hawkesbury River) is quite controversial. Sections of the creek have become overgrown with native and exotic flora. The drainage reserve was designed to remain relatively clear of vegetation. Areas of native vegetation along the banks were assessed as being likely to qualify as an EEC. The works required the removal of 500 trees including species which provide habitat for fauna species listed under the Federal Environment Protection and Biodiversity Conservation Act (EPBC) Act 1999. The works also required under various State legislations:

- Threatened Species Conservation Act 1995
- Fisheries Management Act
- Environmental Planning and Assessment Act 1979
- SEPP 14 (Coastal Wetlands)
- SEPP 19 (Urban Bushland)
- SEPP 44 (Koalas)
- Noxious Weeds Act

The current funds allocation is \$350,000 per year from 2004-2018. Contractors were involved in the project from the planning stage. The objectives of the project are clearly defined:

- Identify opportunities to enhance and protect the natural areas of Kahibah Creek
- Implement flood mitigation measures to minimize flood damage
- Maintain design flood flows
- Restore and regenerate degraded riparian areas
- Consult with the community groups (who are very politically active and constantly scrutinize the work to ensure the Acts are adhered to)

In consultation with the contracts the Management Zone was divided into ten areas, each area having specific environmental assessment and guidelines where required. There was specific information relating to flooding and property ownership as well as a detailed scope of work for each area. Bush regeneration techniques were used on these difficult long and narrow areas. The work methods involved in this project are:

- Selective tree removal
- Typha control (mechanical)
- Integrated pest management
- Bush regeneration
- Selective vegetation control
- Long stem planting

This project uses only pre-qualified contractors. The primary reason for the establishment of a "Prequalified Contractors Register" is to ensure that only competent, professional contractors who can display a thorough knowledge of their OH&S obligations are permitted on Council sites. During the tendering process every company gets the opportunity to quote. Contracts are for one year only. Each site has a Bushland Plan of Management, which identifies the amount of hours required to work the site, the reasons for developing the plan and project objectives, the assessment criteria, reporting criteria and AABR rates (as a guide of standards).

There is a tender assessment panel, including Chris Coombs and the development project engineers (to whom Chris Coombs reports), who calculate a price point score based on the median price. In other words, we don't necessarily take the lowest price. Weightings are agreed to by the tender assessment panel.

The tender proposal will be rated using a multi-criteria analysis suggested by the Association of Consulting Engineers, Australia, including:

- Tender price/schedules
- Insurances
- Indicative project program
- Subcontractors
- Management and technical staff resources
- Referees
- Previous experience
- Occupational health and safety
- Environmental management
- Quality management system

This criteria adds up to 100% - tender price is worth 40% and the rest is split.

Contractors need to be aware of the “big picture” of community concern about the work that is being done, and step outside of their usual area of work. It is also important to the project that site induction of staff is done, that there is a good working relationship with the staff (to discuss any concerns) and that there is developed an industry standard of rates.

### **WHOLE OF GROUP DISCUSSION, AFTER THE PRESENTATIONS (MORNING SESSION)**

Question:

We have a budget too. \$5 million over 15 years. What is the urgency?

Answer:

Originally a developer made an application to the Land & Environment Court back in the 1970's (which flowed on to the 1990's) for housing development. The council tried unsuccessfully, through the Land & Environment Court, to stop the project from going ahead. As a result the lagoon and wetlands were filled in and all the 150 houses along the creek line are flood encoded. There are remnant EEC's, special species on site and as a result council has allocated funds of \$350,000 per year.

Question:

On a one year contract, how can you secure guaranteed funding?

Answer:

Our contracts section have engineers who deal with roads, potholes and concreting and they don't understand or associate with local areas. Councils have policies that control term of contract, but some councils do not. Contractors often get phased by retendering every twelve months.

Response:

As long as the funds are secured over the years, and is not re-voted money every year, that money is placed over expenditure lines, or protected by grants. Our council would have no issue with 4-5 year contracts (we have one running currently), but if possible you would need to arrange with finance section to put your money into a consolidated revenue area.

Response:

The issue of timing comes up time and time again. The real issue when dealing with twelve month programs – primary, secondary and tertiary bush regeneration sites – the future funding with 2-3-4 year timeframes for projects, should give the CMA the flexibility to allow longer term contracts that don't restrict the bush regeneration twelve months project. We will be pushing that really hard to benefit the industry.

Question to the room:

On the issue of Schedule of Rates versus Lump Sum contracts, what are your thoughts?

Answer:

This is from a contractor's point of view. With the restoration industry it is very difficult for government agencies to come up with a scope of work for regeneration. I realize that councils obviously need to have some limit to their budget and they have got to have a \$ figure on it, but sometimes it might get into the

Answer:

A lot of council funding is government based – there is a link between contractors, volunteers, Bushcare groups etc, so trying to make a point of analysis when it is known how much has been awarded by NHT for a particular project, makes it a little problematic. An approach of putting the price up front, eg \$10,000 – this is how much we have got, so tell us what you are going to give us. That is where you have got a lump sum and the Schedule of Rates coming together. You can break it down and say how many hours, how much is being attributed to regen and reveg, mulching and so forth. When you are working with government funded projects, external projects, and community council funded projects it is public knowledge how much you are working with.

Response:

The problem is when you don't know what the budget is. The nature of the contract can only be one or the other. If you try to do both then you have a contract that is not binding. It also depends of whether the specifications are well written and outcomes defined.

Response:

If you don't have your hours but your lump sum requirement is that there are no weeds left, and then you get three late dumps in November and then four weeks of lovely hot sunny weather, then your lump sum outcome may not be achieved because of weather beyond your control. It probably works both ways - contractors would have the advantage when we have a drought because there would be no weeds.

Answer:

I don't think it is very ethical to expect contractors to undertake work and risk at the same time and not be rewarded, especially since the margins on our contracts are so small.

Answer:

Regeneration contracts should be at least 3 years. Weed control contracts should be 2 weeks.

Answer:

I would like to step one bit and look at the priorities. A lot of the times we get on site that I ask myself where are the priorities come from, and it seems that we have waited too long to do them. We seem to be getting on the "shift fight" side rather than the good side. Going to a site where there is 10%-25% weed cover seems to have less importance and value.

Answer:

Our council has a real difficulty in prioritizing some of the bush regeneration work because of the expectations by the community of the outcomes for their money (environment levy). Liverpool Council does not have many areas of bushland – 140 kms of degraded creek and river. A local park was totally revegetated. The council try to balance a lot of their work between complete revegetation and maintain bushland.

Response:

That seems to be an education issue.

Answer:

Over the years we have been doing a lot of work in tall bushland areas, and we feel the core and strategic bushland areas are considered more important, through advice from consultants, our own knowledge of the long-term sites, but you try and balance it out and I feel that sometimes you should be willing to take a bit of criticism if you have an idea of where you should be going.

Response:

One of the things with a Schedule of Rates contract is that you can have a plan of management which is being used for the natural reserves. However, if you have a Lump Sum contract it is more onerous to move away from the management plan as it is a *fait d'accompli*. We do about 50% of our budget on annual weeding and we lose more and more bushland every year. If I am not making enough site visits (say about every four weeks), then I do not get the job.

Question:

Are there any areas for which the educators are not providing adequate training? If so what can we do about it? A specific example would be preparation of a tender brief.

Answer:

I think it is unethical of large organizations to expect their staff to manage a contract they do not want to undertake.

Question:

This raises the issue of free consulting. In the context of preparing the tender response, I would like you both to elaborate on that.

Answer:

When we submit a tender response we are often asked to provide a schedule of work, a scope of work, or a quote for a job. The outcome of that is an underpaid contractor has to commit their best quality staff, who should be out in the field doing work on the management plan that we are getting paid for, to write a management plan on an ad hoc basis. The information provided in the tender response is given to the council's 5 or 6 assessors, who then have to decide between "complete different animals". There is an opportunity for the principal to decide on the outcome of the contract on a purely subjective assessment of what they want. It makes a mockery of the tendering process. We should be working to one specification, one set of criteria, meeting milestones and targets. If the contract manager does not understand the nature of the contract then I don't think the contract manager will understand the legal requirements to inform all of the contractors before the information is supplied to all the tenderers. If you are writing it, it needs to be airtight, and needs to be fair and "above board". You know what you are getting with Lump Sum. With the Schedule of Rates contract you are relying on the honesty of every contractor to record their hours correctly.

Answer:

We are dictated to achieve flooding mitigation work, so our outcomes are flood based. We have tried to adjust our standards in our bush regeneration contract to change it to suit those outcomes. Every year I try to upgrade on it and take on board the industry standards.

Response:

Do we have industry standards? This is an important point to raise later on.

Question:

When you say every year you re-contract, how much time between the end of one contract and being ready for the next new one? In our case, a contract will finish at the end of June and then

one won't start again until October – you spend three months catching up on what you have lost in the previous three months.

Answer:

Initially no work occurred before three years. Every year \$250,000 has built up (over \$1 million in the fourth year). After that it became council funded, so every year \$350,000. End of contract would be end of the financial year, and in the first week of July the contracts are put out. Council decided that it would reallocate the funds somewhere else, even though it was gazetted that these funds should be spent on my project. So contractors lost out on work, and monies lost.

Question:

What about entering contracts at different times at the end of the financial year. You would have some money at the back and some money allocated for the following year, in the previous year? Could you do that? Could you finish at the end of September?

Answer:

It's June to July – financial year – one contract up....

Response:

That brings up the problem because you haven't got your money by 1st July. Contractors know that there is going to be no work happening at a site.

Response:

But my budget is split up into various different functions. There is so much allocated to bush regeneration work. The forecast expenditure is based on the plans of management. I know I have to work in these areas, because I am licensed.

Question:

My issue is with upper management in agencies that have a deciding factor where the funding goes not having the basic knowledge of best value for dollar regarding conservation. I am not sure where education can fit that in, to ensure that those people have that knowledge. I am open to ideas on that.

Response:

Have you got that on the board for discussion.... compulsory education upwards!

## WORKSHOP DISCUSSION (AFTERNOON SESSION)

### What are the issues?

Nature of contracts: In order to be able to pull together different types of contracts

- There is a need for clear understanding of site gaps in site
- knowledge must be filled
- need to establish baseline qualifications for both councils and contractors
- different types of contracts ie not standard “general conditions”
- Agencies need to use a standard contract document ABR/AS2124, rather than use their own documents
- Schedule of Rates needs a “book of definitions” showing technical specifications, applications, advantages & disadvantages.
- Continuity of Contract
- EOI and tender documents could be written before contracts close, and new contract budgets approved
- Plans of Management must be written and costed accurately to provide a platform to write contract documents
- Continuity of Funding
- Accrual based accounting
- Type of funding – pre-tender funds, grant funding (not able to be touched), levies – there are different rules that apply to various sources of funds
- Why do some services roll over but not regeneration?

### Development of a Funding Model

- To streamline this process, use established agencies, eg Willoughby/North Sydney councils, for help with long-term projects.
- Various funding opportunities need to be accessed
- LGSA could lobby to come up with guidelines with Best Practice Model
- DPI could provide a lot of training and strength
- Relevant grant opportunities need to be known
- System in place to manage contract
- Debriefing after contract is award for future tendering guidance

### Group discussion:

Training of staff and contract management is a pre-requisite for employment on that contract. We must assume that the contract manager has a good working knowledge of contract management, but this is not always the case. Question to the floor - do agencies have adequate training in contract management?

### Experiences shared by council staff:

- One person came from being a contractor to council, and had to learn in an ad hoc basis which was reasonably successful.
- Another trained through mentoring with an external consultant.
- Another’s experience came from contracting as well tendering for a contract. “Now I am with local government, I would like to put into a contract what I would like to see in the contract, and I see it as a guide. Occasionally you would get a contract (“phone book” amount of paper) where the relevant passage concerning, eg weed control, is miniscule. We do not write contracts, but write specifications for two years. Essentially the results of the expression of interest helps us cost out the job. They are chosen on their suitability to work – rating from 1 to 5 – eg if I want some on-ground fiddly hand weeding – I would get National Trust to come and do it, if I want some major earthworks – you would bring TEC on board. I know how much money I have got, I go to the contractor and tell him what I want to achieve, what do you think?”

In the lay period in between when the funds get secured, and they go to the general meeting, you produce a 6-7 page tender to hand in, and then you wait three months for it to come out, and then you walk out onto a site that has been sitting there with annuals growing for six months over spring and summer.....there must be a way of streamlining the whole contract management process whether it be with large or small organizations for varying sizes of projects – including legal implications, budgeting, funding, tendering, standardizing of contracts, good monitoring and evaluation.

Lack of clarity in contracts is a major issue. There are varying degrees of experience with those writing the contracts and those tendering. If the industry had a standard contract, with relevant specifications and information, nobody has to read the document more than once per year. If we have good monitoring on appropriateness then that type of thing would be covered.

There are no standard prices on Bushcare. There is also no training on costing and estimating. There should be an industry standard contract. There are currently two standard contracts – Australian Standard Contract – Landscape Work, and AABR (Schedule of Rates) which should be used as a guide. The existence of these two contracts should be well known throughout the industry. However, some agencies tend to want to use their own documents, so if there was a standard industry document it might be worthwhile trying to encourage them to use it. It is therefore very important to look at developing a model. If an experienced client walks out on site and has a plan of management then he knows how much it is going to cost, so when they put their program of work together, everyone can agree on the framework.

There was mention that it is not legal to put Schedule of Rates on a website.

Continuity of funding is a problem ranked by the workshop participants as greater than 5 (on a scale of 1-10). One Council person said their funding is annual and minimal, and there is usually at least one month to two months delay in it approval. Another council has the added advantage of 700 active bushcare volunteers, and the fact that they have applied for and received grant funding (which can't be touched) because we have such a great number of workers. We also have a core allocation of funds. The budget has to be spent by the end of the financial year, hence we commit money early. Contractors should be lobbying for payment on time – within two 28 days.

#### **What needs to happen? What are the steps?**

- Develop a standard industry contract for contract management, with clear technical specifications and definitions.
- Have a clear understanding of how to use a contract.
- Develop Best Practice funding model acknowledging the contract management process.

#### **Who will do it?**

Working group consisting of:

Andrew McGahey (Total Earth Care)  
Carolyn Adamcewicz (Blacktown City Council)  
Rhamin Khosravi (North Sydney Council)  
Paul Price (Sutherland Council)  
Steve Anstey (Toolijooa Environmental Restoration)  
Assad Baheer (Sydney Water)  
Frank Gasparre (Hills Bushcare)

**How will it be done?**

Manly, Mosman and Warringah Council are currently developing a standard contract – we will be able to tap into these resources, when it becomes available. Sydney Water also has a standard contract which could be made available subject to approval (due to copyright issues) – Assad Baheer will research this aspect.

**When?**

The working group will be established, and over the next two months an email notification of the results of discussions will be forthcoming.