

# **WEST RAND DISTRICT MUNICIPALITY**



## **SUPPLY CHAIN MANAGEMENT CONTRACT MANAGEMENT POLICY**

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## 1. PREAMBLE

All transactions undertaken by the West Rand District Municipality involve a contract whether explicitly agreed in writing or implicitly implied through actions.

Properly managed contracts by all stakeholders involved, can ensure that services are delivered within specifications as set and agreed by all during the specifications phase and at the agreed cost, (Inclusive of escalation clauses in contracts) time period and qualities of the goods and services procured.

All contracts must be managed throughout the contract Life Cycle, based on the level of management control appropriate for the classification of that contract.

Improperly managed contracts may impact negatively on service delivery. Adverse effects of ineffective contract management include, but are not limited to:

- 1.1 goods and services outside of specification;
- 1.2 cost overruns;
- 1.3 poor suppliers-, buyer- or other stakeholder relations;
- 1.4 negative public perception, and
- 1.5 potentially complete service delivery failures.

Hence, good contract management by all stakeholders involved is essential for good financial management and will contribute greatly to the effectiveness and efficiency of service delivery. In effect, it would give strategic direction to all municipal departments following a centralised strategy of contract management.

This policy must be read in coincidence with the SCM Policy of the West Rand District Municipality.

## 2. DEFINITIONS

In this Policy, unless the context indicates otherwise-

Accounting Officer	Means the municipal official referred to in section 60 of the MFMA (2003); and include a person acting as the accounting officer.
Act or MFMA	Means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
Circular 62	Means communication from National Treasury by means of a Circular to enhance compliance and accountability to SCM Regulations and the MFMA of 2003.
Construction Industry Development Board (CIDB):	Means the Construction Industry Development Board (CIDB), a national body established by an Act of Parliament (Act 38 of 2000) to oversee the sustainability and growth of construction enterprises across the country.
Contract	Means the agreement that results from the acceptance of a bid by the Municipality (mutual agreement) or agreement (explicit or implied) legally binding two or more parties to the terms of the agreement.
Contract alteration	Means changing technical writing or input errors to the agreement of the contract without changing the scope of contract.
Contract amendment	Means changing the scope, nature, duration, purpose or objective of the agreement or contract (In context of Circular 62 and section 116 (3) of the MFMA).
Contract officer	Means the official within a specific department, responsible for all day-to-day activities (including performance management and dispute resolution) during the life cycle of the contract (with delegated powers to perform this function).
Contract owner/ user-department	Means the specific department, responsible for all day to day activities during the life cycle of the contract (with delegated powers to perform this function) including continuous management and control of all documentation relating to the contract.
Contract Management	Means the holistic term of all role players involved in an agreement (SLA) or contract and include the; Manager SCM, Departmental Manager (Executive Director), contract officer and supplier or service provider.
SCM Manager	Means the SCM official responsible for monitoring, regulating and reporting on all contract related activities as set out in Section 116 of the MFMA.
Legal Services Manager	Means the manager responsible for Legal Services and drafting contracts
Executive Director	An official appointment according to sect 56 of the Systems Act
Delegation	Includes an instruction or request to perform or to assist in performing the duty.
Force Majure	Is the expression used to denote irresistible superior force which might cause damage or prevent the execution of an obligation, therefore suppliers is not liable for damages caused by force majure or for failure to carry out a contract if prevented (Term and conditions in this regard will be determined by every individual contract/s).

Official	means: <ul style="list-style-type: none"> <li>• an employee of a municipality;</li> <li>• a person seconded to a municipality to work as a member of the staff of the municipality; or</li> <li>• a person contracted by a municipality to work as a member of the staff of the municipality otherwise than as an employee.</li> </ul>
Users	Means all officials as set out in the organogram of the West Rand District Municipality involved with contracts.
Bid	A written offer or stipulated form, in response to an invitation by an institution for
Cession	Means when a contract/agreement is relinquished to another individual/institution.
Closeout	Means when a contract is considered complete and the service provider has complied with all terms and conditions of the contract, and the Institution has inspected and accepted the goods/services and/or works.
Consortium	A consortium is an association of two or more individuals/companies with the objective of participating in a common activity or joining their resources to achieve a common goal.
Contract Amendment	Means changing the scope, nature, duration, purpose or objective of the agreement
Contract Life Cycle	The stages of a contract encompassing planning, creation, collaboration, execution,
Contract Management	Means the holistic term for all activities in the contract lifecycle that is undertaken by all role players involved in a contract and include the, contract manager, Contract owner, contract champion and supplier.
Contract Manager	Means the official responsible for overall contract management in an institution.
Contract Owner	Means the official that is ultimately accountable for the deliverables during the contract lifecycle relevant to the service delivery target that the contract seeks to achieve.
Contract Price	The all-inclusive price of the contract over the complete duration of the contract and includes price escalations, cost of contract variations, disbursements, VAT, etc.
Service provider	The contracting party that represents a Supplier, Service Provider or Vendor.
Deliverable	Any measurable, tangible, verifiable outcome, result or item that must be produced, delivered or constructed to meet the strategic objectives and service delivery targets of an institution.
Extension	Means when an institution decides to increase the term of a contract/agreement mutually agreed upon in writing, but for no longer than six months in terms of Treasury Regulations.
Finance Lease	A lease that transfers substantially the risks and rewards of ownership of an asset.

Firm Price	The price that appears on the Purchase Order and is not affected by price fluctuations due to specific industry price escalations for the duration of the contract.
Goods	Tangible movable products that are purchased from a Supplier and consumed by the institution, excluding purchases of capital assets.
Institution	Municipality or Municipal Entity.
Joint Venture	Means a business arrangement in which two or more parties agree to join together their resources for the purpose of completing a project.
Operating Lease	A lease other than a finance lease and is regarded as a current payment.
Project	The project named in the contract on the cover page.
Purchaser	The acquiring public sector entity or institution.
Renewal	Means to allow a contract/agreement to continue for a defined period if the existing contract/ agreement provides for a renewal period after the termination date.
Service Provider / Supplier / Vendor	The contracting party named in the contract that is required to provide goods, services and or works to the institution.
Services	The tasks to be performed by the Service Provider pursuant to the contract as described in the Terms of Reference advertised in the Invitation to Bid.
Sub-Contractor	A person or entity that enters into a subcontracting agreement with the Service Provider/ Supplier to execute part of the contract.

### 3. ABBREVIATIONS

AA	Accounting Authority
AO	Accounting Officer
ASB	Accounting Standards Board
CIDB	Construction Industry Development Board
CLMS	Contract Life-Cycle Management System
CMD	Contract Management Database
ECM	Electronic Content Management
GCC	General Conditions of Contract
MFMA	Municipal Finance Management Act, Act No. 56 of 2003
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MTEF	Medium Term Expenditure Framework
NT	National Treasury
PPP	Public Private Partnership
SBD	Standard Bidding Documents
SCC	Special Conditions of Contract
SCM	Supply Chain Management
SLA	Service Level Agreement
TR	Treasury Regulations

## 4. INTRODUCTION

The Municipal Manager is appointed in terms of section 54A of the Local Government Municipal Systems Act, No 32 of 2000 (hereinafter referred to the MSA) as the accounting officer, who is responsible and accountable for all income and expenditure of the municipality and to insure proper and diligent compliance with the Local Government: Municipal Finance Management Act, No 56 of 2003 (hereinafter referred to as the MFMA) and Regulations.

Section 116 of the MFMA and Regulations as amended from time to time inter alia compel the accounting officer to establish capacity in the administration of the municipality to assist him/her in carrying out the duties, to ensure sound and well administrated contract management.

It is also important to give effect to section 217 of the Constitution of South Africa, 1996 that stipulate that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must act in accordance with a system which is equitable, transparent, competitive, cost-effective and fair.

Good contract management is essential for sound financial management and contributes significantly to effective and efficient service delivery. Contract management is concerned with monitoring supplier performance to avoid bid violation (e.g submission and payment of fictitious invoices, abuse of the variation procedures and poor performance).

Contract management leads to increased savings and good quality, on-time service delivery. Furthermore, it is the process that enables both parties to a contract to meet their contractual obligations in order to deliver the objectives required from the contract and building a good and sound working relationship between the parties. Contract management continues throughout the life of a contract and also involves managing proactively to anticipate future needs as well as reacting to situations that arise during the contract.

One of the fundamental aspects of contract management is to accelerate service delivery in accordance with the duly signed contract and attainment of value for money while managing the risks. Active management of contractual relationship with the contractor will ultimately give optimum balance in costs and risk.

## 5. PURPOSE OF THE POLICY

The purpose of the Municipal Contract Management Policy is to establish sound and consistent management practices in respect of municipal contracts. Furthermore, to establish a uniform governance structure for the management of SLAs / contracts and other legally binding documents, throughout West Rand District Municipality (hereinafter referred to as WRDM), which are aligned to national and international best practice frameworks. It describes the processes and assigns responsibilities to effectively administer contracts from –

- 5.1 Preparation of contracts;
- 5.2 Development and Maintenance of contract register;
- 5.3 Monitoring of payments;
- 5.4 Control contract variation and price adjustment;
- 5.5 Assess and monitoring performance; and
- 5.6 Manage contract disputes and close out of contracts.

The policy aims to ensure that:

- a. All decisions taken by the WRDM by means of Management / Mayoral or Council Resolutions, which emanated in transactions, that involves a contract, whether explicitly agreed to in writing or implicitly implied through actions must be complied with. (Including donations, land sales or leases, MOUs between WRDM and other stakeholders, etc.).
- b. That effective and efficient control of goods or services procured through the SCM system must be secured by a contract.
- c. Proper recording, management, review and enforcement of contracts throughout the contract life cycle, are complied with.
- d. Risk is minimised when WRDM enters into and manages contracts by facilitating WRDM's business.
- e. Quality performance and value for money is achieved, in line with expectations to optimize the efficient and sustainable financial wellbeing of the WRDM, resulting in lower cost drivers.
- f. Supplier and industry engagement is maximised to ensure that a competitive and willing market exists.
- g. Good contract management by all stakeholders involved is realised for good financial management and contributes greatly to the effectiveness and efficiency of service delivery and that it gives strategic direction to all departments following a centralised strategy of contract management.

This policy must be read in conjunction with the SCM Policy of WRDM.

## **6. STATUTORY AND REGULATORY FRAMEWORK FOR MANAGING CONTRACTS**

### **6.1 Application and Framework of the Contract Management Policy**

- 6.1.1 All officials and other role players in the Supply Chain Management system of the West Rand District Municipality must implement this Policy in a way that gives effect to:
  - 6.1.1.1 Section 217 of the Constitution;
  - 6.1.1.2 Section 116 of the MFMA;
  - 6.1.1.3 Section 33 of the MFMA;
  - 6.1.1.4 SCM Policy;
  - 6.1.1.5 SCM Regulations
  - 6.1.1.6 any other legislation pertaining to SCM.

## **7. APPLICATION, ADOPTION AND AMENDMENT OF THE POLICY**

### **7.1 This Policy applies when the Municipality:**

- 7.1.1 procures goods or services;
- 7.1.2 disposes of goods no longer needed; and
- 7.1.3 appoints service providers and suppliers to provide services to the municipality
- 7.1.4 provides funding to beneficiaries; and
- 7.1.5 selects service providers and suppliers to provide assistance in the provision of municipal services including circumstances where Chapter 8 of the MSA applies.

### **7.2 Adoption, Amendment and Implementation of the Contract Management Policy**

- 7.2.1 The accounting officer must:
  - 7.2.1.1 at least annually review the implementation of this Policy; and
  - 7.2.1.2 when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to Council;
  - 7.2.1.3 in terms of section 62(1) (f) (IV) of the Act, take all reasonable steps to ensure that the Contract Management Policy is implemented.

## **8. CONDITIONS OF CONTRACT**

### **8.1 A contract or agreement procured through the Supply Chain Management System of the Municipality must:**

- 8.1.1 be in writing;
- 8.1.2 stipulate the terms and conditions of the contract or agreement, which must provide for:
  - 8.1.2.1 the termination of the contract or agreement in the case of non- or underperformance.
  - 8.1.2.2 dispute resolution mechanisms to settle disputes between the parties;
  - 8.1.2.3 a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and
  - 8.1.2.4 Every service provider/contractor employed by the municipality who will require the service of labourer or general workers must source these only from the residence of the municipality.
  - 8.1.2.5 any other matters that may be prescribed

## 9. CONTRACT MANAGEMENT LIFECYCLE

The lifecycle of the contract management commences with setting direction, high level objectives and policies for the municipality. This leads to the identification of the needs of the municipality that can be fulfilled by the acquiring of goods, works and/or services to fulfil the need. Once the service is acquired, contract management comes into effect. An ongoing analysis of the municipal needs is critical to ensure that goods, services and works are what the municipality needs.

An effective contract management lifecycle constitutes the following:

- Planning,
- Contract arrangement,
- Administration,
- Performance management and
- Close-out.

### 9.1 STAGE 1: PLANNING

This stage refers to consideration of contracts during the planning and budgeting processes. These processes will identify the need for contract creation and timeframes for implementation to ensure that delivery of goods and services occurs as approved in the budget.

During the strategic planning phase of the municipality, goods, works and services required to execute the identified functions are determined and captured in the procurement plans. The procurement plan document provides detailed information about the description of goods, services and works, estimated value, envisaged date of advertisement and closing bid date and date of award including the responsible office.

Contract management unit/ function must, in consultation with the Acquisitions Unit, be responsible for monitoring contracts in line with the project listed in the procurement plans and approved budgets.

The contract management unit/ function must monitor contracts according to the approved procurement plan after award, which will lead to significant improvement on service delivery.

Contract planning should also cover the entire Service Delivery Budget Implementation Plan (SDIBP) period and beyond, where applicable.

### 9.2 STAGE 2: CONTRACT ARRANGEMENT

This stage refers to the arrangement of signing the contract, making it legally enforceable and formalising the terms and conditions concluded between the parties in the contract.

The unit/ function responsible for must arrange for the signing of the contract as follows:

- 9.2.1 Issue an appointment letter and the successful bidder must submit the acceptance letter;
- 9.2.2 Submit the tender document and appointment letter to the Legal Services Division to commence with the drafting of the Service Level Agreement (SLA);
- 9.2.3 The Legal Services Division shall liaise with the user department and SCM to clarify the contents related to the scope of works and duration of contract, where applicable;

- 9.2.4 The SLA must be legally sound and vetted by the Legal Services Division prior to signing by all parties and ensure that the SLA is fully signed and complete before submission to user departments and the SCM Division;
- 9.2.5 Capture contract award details on a Contract Management system (if available) and/or in the Contract Register (CR);
- 9.2.6 The signed document must reside with the municipal records unit, a copy of which must be scanned and archived by the SCM Division;
- 9.2.7 A copy of the signed contract must also be issued to the end-user to prepare other necessary logistical arrangements;
- 9.2.8 SLAs are negotiated agreements for the delivery of specified services between the contractor and the municipality. An SLA is not compulsory and is solely at the discretion of the end-user department, particularly if the specifications in the tender document are not sufficient. The SLA specifies services or goods required and the level of quantities and quality of the service delivered. The SLA must be negotiated at the commencement of a contract and involves the understanding of the needs and constraints of both parties.
- 9.2.9 The purpose of developing SLAs and setting service levels is to enable the municipality to monitor and control the performance of the service received from the contractor against agreed standards.
- 9.2.10 Service levels should be agreed upon by both parties and they must be –
- 9.2.10.1 Established in line with the TOR/ specifications which contain the scope of work;
  - 9.2.10.2 Prioritised by the municipality in order of importance and on an agreed scale for example: critical, major, urgent, important, minor easily monitored, such as objectives, tangibles and quantifiable;
  - 9.2.10.3 Concluded within the shortest possible timeframe (at least 30 days, unless if there are matters that
  - 9.2.10.4 Included in the bid document, if possible, to allow bidders to have enough time to review the SLA. propel the delay) after the award of a contract as the best practice; or
  - 9.2.10.5 Unambiguous and understandable by all parties;
  - 9.2.10.6 Open for re-negotiation if justifiable to do so. The contractor and the municipality must jointly identify a statement of expectations and ability, the cost of receiving the service and the basis for the calculation of costs.
- 9.2.11 The contractor is accountable for the quality and performance levels of the services and availability thereof. The principle objectives of a SLA is that both parties understand the basis and intent of the terms and conditions under which the services are to be delivered.
- 9.2.12 The definition of terms should be an integral part of the negotiations and discussion process between the two parties. If there are other terms identified during discussions that are not in the list of defined terms, they must be included. Negotiations must include the following conditions:
- Not allow any preferred bidder a second or unfair opportunity;
  - Not be to the detriment of any other bidder; and
  - Not lead to a higher price than the bid submitted.

### 9.3 STAGE 3: CONTRACT ADMINISTRATION

This stage is important in Contract Management and overlaps with monitoring and performance assessment. It encompasses various activities that need to be completed on a day to day basis, including amongst others –

#### 9.3.1 Contract Register

All signed contracts must be registered in the Contract Management System/ Tool (if available) to enable easy retrieval and identification of all contractual arrangements.

Contracts that are partially executed, signed by one party, may be registered into the Contract Management System prior forwarding to the other parties for signature. The Contract Management unit/ function must ensure that all signatures are obtained and contracts are updated in the system or tool.

The Contract Register must be used to monitor expiry dates in order to notify end-users to commence with the procurement on time, at least 6 or 12 months prior to the expiry of the contract.

Effective contract register must have the following –

- Contract number, name of contractor, description, date of award, commencement and end date (and extension dates), contract value, contract duration, status of contract, department (end-user), project manager and contact details.

The Contract Register detailing the status of contracts must ideally be provided every month on the following:

- Valid contracts in place;
- Contracts due to expire in six or twelve months;
- Contracts extended;
- All expired contracts;
- Contract variation;
- Contracts captured on the system (where applicable);
- Value of commitments;

The Municipal Manager must quarterly report to the municipal council on the performance of the contractors.

#### 9.3.2 Contract Payment

Payments should be made in accordance with the provisions of the contract after delivery. Budgets must be confirmed by the end-user before effecting payments.

Delivery notes or payment certificates must be attached to ensure that the end-user has certified that the work has been done satisfactorily and met the required standards of performance (e.g. Goods Received Voucher (GRV), Payment certificates and etc.)

Payments for satisfactory performance should be settled within 30 days from the date of receipt of an invoice or in the case of civil claims, from the date of settlement or court judgment. This implies that amounts owing must be paid within 30 days from receipt of an invoice if goods, works or services were delivered to the satisfaction of the end-user department.

Payments outside the prescribed period of 30 days from receipt of invoice are deemed to be contraventions and may be reported as such by the Auditor-General as part of its audit findings.

Interests incurred on late payments must be declared fruitless and wasteful expenditure and should also be disclosed in the Annual Financial Statements.

In the event that only part of the invoice is disputed/queries, arrangements should be made to pay that portion of the amount payable which is not subject to dispute, and separately take an action to remedy the disputed amount.

### 9.3.3 Contract Variation

It is generally recognized that, in exceptional cases, the Accounting Officer may deem it necessary to expand or vary orders against the original contract. The reasons for the variation should be clearly documented and should occur in defined circumstances.

A variation is mostly issued when extra work is added to the project after the contract has been signed. In such instances, the specifications committee must approve the additional work, subsequently the adjudication committee must assess deliverables and value for money, prior to approval by the Accounting Officer.

In order to mitigate against such practices, the Accounting Officer of the municipality may expand or vary the contract **by not more than**:

- 20% for construction related goods, services and/or infrastructure projects and
- 15% for all other goods and/or services of the original value of contract.

Amendments of contracts where the expansion or variation is more than the threshold of this policy, must be dealt with in terms of the provisions of Section 116(3) of the MFMA, and are excluded from the process, as described above.

An expansion or variation in excess of the threshold where the contract procured through the Supply Chain Management Policy of the Municipality must be amended by the parties to accommodate the expansion or variation.

The reasons for the proposed amendment should be tabled before the Municipal Council. The local community should also be given notice of the intention to amend the contract, including the invitation to submit representations to the municipality.

Such reports must include among others, the contract number, description, name of the contractor, original contract amount, value and percentage of the variation and the reasons thereof.

End users need to ensure that contract variations are not of such a level that they significantly change the contract requirement and/or substantial parts of the original transaction. If this is the case, it may be necessary to undertake another procurement process if the revised arrangements are substantially different to those selected through the original procurement. However, the municipality should be aware of the impacts associated with amendments, namely, financial resources and litigations.

No variation or modification of the terms of the contract may be made except by written consent signed by the contracted parties.

The municipality should recognize the impact that variation orders may have and should therefore endeavour to restrict the application to the absolute minimum through planning, comprehensive scope of work or Terms of References when inviting bids or quotations.

The Contract Management Unit/Function must further issue a letter of amendment/addendum to the contractor and also inform the end-user for necessary preparation (i.e. purchase requisition to create an order or job instructions).

Upon approval, the Contract Management Unit/Function must update the contract register and if applicable in the Contract Management System.

#### **9.3.4 Contract secured by other organs of state or municipalities**

The end-user department shall make a request from the Contract Management Committee (if applicable) that will make a recommendation for approval by the Accounting Officer for contracts secured by other organs of state or municipalities.

The Accounting Officer should prior approval satisfy him/herself that the applicable procurement processes were followed by obtaining any other information, including but not limited to the following document from the organ of state or municipality:

- The Bid Advertisement;
- BSC, BEC and BAC appointment letters;
- BSC attendance register, report and minutes;
- BEC attendance register, report and minutes;
- BAC attendance register, report and minutes
- Acceptance letter, Contract documents and/or Service Level Agreement

The municipality must enter into a separate Service Level Agreement in line with the specification and Terms of Reference of goods or services between the consenting service provider and the requesting municipality may not exceed the contract period concluded in the original contract of the organ of the state or municipality.

#### **9.3.5 Contract Price Adjustment**

Contractual conditions must stipulate circumstances under which the adjustment shall be considered and the process to be followed.

When prices are subjected to adjustment as a result of escalation in price of labour and material, the contractor must indicate the various elements of the contract price that will escalate (e.g. labour, transport, fuel, and etc.). The baseline date and relevant index and index numbers which were used in the calculation of the price.

Where a firm price is quoted, an application for an adjustment of price will not be considered.

However, if the increased price is as a result of unforeseen circumstances beyond the control of the contractor and could lead to his/her downfall such an application may be considered

(only statutory increases and cost factors). Such adjustments may be to the disadvantage of the municipality; thus they must be reported to Council.

The contractor must submit a letter to the end-user requesting a price adjustment together with documentation substantiating or motivating for the adjustment. The adjustment should be in line with terms and conditions of the contract and according to price schedules and costs.

The end-user must submit a request to the Contract Management Unit/Function (if applicable) for preparation (price adjustment calculation) and send to the Contract Management Committee for consideration, subsequently to the Accounting Officer for approval.

The amendment letter must be issued to the contractor and end-user department on acceptance of the price adjustment.

The contract register must be updated on the applicable Contract Management System (if available).

#### **9.3.6 Contract expiry notification**

The Supply Chain Management in collaboration with Contract Management Unit/Function is responsible to ensure that timeous arrangement is made to notify end-users when a contract will expire within 6 months or 12 months prior to expiry. Communication with the end-users must be in writing and documentation must be properly filed.

#### **9.3.7 Extension of contract**

Extension of a contract is undesirable because it often leads to uncontrollable increases in the contract price and it can also be a contributing factor to circumventing procurement processes. Lack of proper planning does not constitute a justifiable reason for dispensing with prescribed bidding processes by extending contracts.

Where justifiable reasons are provided for extending a contract, the end-user department shall make an application to the Contract Management Committee through the Contract Management Unit/Function for consideration. The SCM shall prior the application for extension of contract approach contractors with the notice of intention to extend the contract for the contractor to indicate whether they are prepared to extend the contract period.

Approval to extend the contract should be requested before the expiry date of the contract taking into account the existing terms and conditions of the contract. The terms and conditions of the extended contract must remain the same.

The contract register will be updated and the applicable Contract Management System.

### **9.3.8 Transversal contracts**

Transversal contracting enables the municipality to purchase goods and services from a central list of approved suppliers who have been vetted for cost and quality.

The municipality will be responsible for Contract Management, placing purchase orders against transversal contracts, paying suppliers for goods/services rendered satisfactorily according to the terms and conditions of the contract, monitoring and reporting supplier performance according to the terms and conditions set out by the Master Agreement from the National Treasury.

### **9.3.9 Records management**

The updated version of the contract must incorporate any variations and correspondence related to the contract documents and must appropriately kept with the Records Management and SCM unit.

All tender documents and contract documents relating to a specific tender must be kept at the Records Management Unit and the copies of the same documents must be kept at the SCM Unit.

## **9.4 STAGE 4: CONTRACT PERFORMANCE MANAGEMENT**

Performance management involves, performance monitoring, collecting data on performance, performance assessment, deciding whether performance meets the municipality needs and taking appropriate action – such as understanding and extending features of good performance, correcting areas of under-performance, or amending contract requirements to meet changing needs.

A contract procured through the Supply Chain Management Policy of a municipality must stipulate the terms and conditions of the contract, which must include provisions for a periodic review of the contract once every 3 years in the case of a contract longer than 3 years to determine value for money.

User departments must monitor on a monthly basis, the performance of the contractor and consolidate all information for submission to the SCM unit for reporting purposes done on a quarterly basis.

Performance management must be undertaken throughout the lifecycle of the contract and all contracts, whether simple or complex. Along with performance indicators and standards, arrangements for monitoring and assessment must be set out and agreed upon in the contract along with remedial action plans on non-performance.

The performance monitoring and assessment arrangements should also be reviewed at the contract start up stage and any necessary plans, tools or systems developed. Systematic monitoring underpins performance assessment and these do not occur in isolation from one another.

Poor performance should be recorded appropriately after engagement with the contractor whereby a remedial action plan is put in place. The action plan may include the following steps:

- Identification of the problem by determining the cause of non-performance
- Set goals by establishing clear, measurable and achievable goals
- Establishing a platform for open communication between the municipality and the service provider/ supplier
- Documenting the process and all discussions
- Setting up realistic timelines for improvement
- Tracking progress through the use of available data to measure progress and ensure that the plan is effective and that the municipal objectives are realised

It should be taken into account that if proper records are not kept, such non-performance cannot be deemed a sound reason for passing over such a contractor when evaluating future bids. In addition to any contractual or other remedies that may be pursued, the municipality may commence action in terms of Municipal Supply Chain Management Regulations, thus the Accounting Officer or delegated official must:

- Inform the contractor or person(s) by registered mail or by delivery of the notice by hand of the intention to impose the restriction, provide the reasons for such decision and the envisaged period of restriction;
- Allow the contractor and/or person(s) fourteen (14) calendar days to provide reasons why the envisaged restriction should not be imposed;
- If requested, allow the contractor and/or person(s) the right to present evidence in person and consider reasons submitted by the contractor;
- Impose the restriction or amended restriction;
- Inform the contractor and/or person(s) of the decision; and
- Inform the National Treasury within five (5) working days of such restriction, particulars of the person(s) to be restricted, (including, where applicable, names of the restricted persons, identity numbers, trade name of enterprises, company registration numbers, income tax reference numbers and vat registration numbers), the reason(s) for the restriction, the period of restriction and the date of commencement of the restriction.

The following are the reports to monitor performance of contracts on a monthly basis:

- (a) Progress reports
  - The end-user will complete a progress report indicating the stage of contract, achievement of milestones as per contract agreement, response time and deliveries within the contract period, quality of work, payments, poor performance, and actions.
  - The progress report will be regularly submitted to the unit/function responsible for performance management for deliberations, recording discrepancies and filing (submission of progress reports will be determined by the nature and timeline of the project).
- (b) Expenditure report
  - The Expenditure Unit and User department must, on a regular basis, extract the expenditure report where the contract value will be verified against the progress payments and validity of the contract;
  - Discrepancies identified should be communicated timeously to the end-user and CFO to curb irregular expenditure.

#### 9.4.1 Administrative capacity

The relevant Executive Director designated thereto must establish capacity in his/her department to assist the accounting officer in carrying out the duties set out in Section 116(2) of the MFMA.

#### 9.4.2 Management of contracts

- 9.4.2.1 The Accounting Officer and delegated officials must take all reasonable steps to:
- 9.4.2.2 ensure that the SLA process is properly enforced and managed.
- 9.4.2.3 ensure that a contract or agreement procured through the SCM process or a Council Resolution is properly enforced.
- 9.4.2.4 monitor on a monthly basis the performance of the contractor / lessee or beneficiary under the contract or agreement.
- 9.4.2.5 administer the contract with the necessary competencies and delegations, ensuring effective management of contracts.
- 9.4.2.6 The relevant Executive Director must ensure that each contract owner in his/her department submits suppliers' performance reviews to him/her of all contracts under his/her control before the end of every month.
- 9.4.2.7 The Executive Director must submit a consolidated performance review report to the SCM Manager **within 3 working days after the end of each month** for purposes of Section 116(2)(b) of the Act.
- 9.4.2.8 The SCM Manager must submit a consolidated performance review report of contracts or agreements for purposes of Section 116(2)(c), to the Accounting Officer within 5 working days after the end of each month.
- 9.4.2.9 The Accounting Officer must submit quarterly a consolidated performance review report on the performance of contracts or agreements for purposes of Section 116(2) (d), to Section 80 committee, Maycom and Council.
- 9.4.2.10 The Accounting Officer is responsible for signing of SLA's / Contracts with the relevant Service Provider.
- 9.4.2.11 The Accounting Officer may delegate his responsibility for signing of SLA's/ Contracts to an Executive Director in line with the Delegation of Powers.

### 9.4.3 Contract relationship management

It is important to establish and maintain a constructive relationship with the contractor and have regular communication. Providing positive and constructive feedback will assist in maintaining such a relationship.

**Overall responsibility:** Each party nominates one person with the Appropriate skills and experience as its representative to be responsible for the co-ordination and management between the parties over the life of the contract.

**Monthly performance:** Nominated representatives, including the Contractor's service delivery manager and the project management must meet formally to review performance, aimed at discussing and resolving any minor issues relating to the performance of the contract.

**Contract management:** Where possible, at least quarterly, or regularly have a formal meeting. The meeting must comprise of senior representatives from the end-user and the contractor. The purpose is to formally monitor performance of the contract and consider any ways in which services may be improved, amendments and resolves to service levels, where applicable, any issue that remains unresolved from the contract meetings.

**Relationship management:** Must be focused on keeping the relationship between the two parties open and constructive, resolving or easing tensions and identifying problems early.

Relationships should always be managed in a professional manner and be based on cooperation and mutual understanding taking into account the need for ethical behaviour and service delivery requirements and objectives.

Apart from formal monitoring, and in order to improve trust between the parties to the contract, it is important that the parties to maintain regular contracts for official reporting deadlines.

### 9.4.4 Contract disputes management

A contract procured through the Supply Chain Management system of a municipality must stipulate the terms and conditions of the contract, which must include provisions providing for dispute resolution mechanisms to settle disputes between the parties.

During the Contract Management phase, a disagreement becomes a dispute when it is not possible for the parties to resolve it without resorting to a formal dispute resolution mechanism. Generally, what a dispute is and when it is deemed to have occurred is defined in the contract, often in a dispute resolution clause.

Many disagreements and disputes arise when the parties cannot agree on issues related to the interpretation of contract provisions, the definition of deliverables, meeting performance standards and/or the effect of unexpected events.

It is important that any possibility of dispute or an actual dispute be recognised at an early stage and addressed as quickly as possible. Avoiding escalation of disagreements can impact on contract deliverables and reduce the costs to both parties.

Where a dispute arises, the SCM unit will obtain evidence from both parties and refer the matter to the Legal Services Unit for an opinion. The outcome and recommendation of the dispute must be submitted to the Bid Adjudication Committee for review and final recommendations made to the Accounting Officer or a delegated authority for approval.

In the case of non-performance, a letter informing the contractor that contract conditions have not been honoured should be issued, affording the contractor at least 14 days to respond. If the contractor does not respond within the specified period, the municipality shall without prejudice under the contract consider termination of the contract.

#### **9.4.5 Forms of dispute resolution**

The following forms of dispute resolution should be considered as possible options in the special condition of contracts:

- Negotiation     Negotiating between the municipality and the contractor is the most common approach for the resolution of disagreements and disputes. The intention of the negotiation is to reach a mutually acceptable solution. It is important that one party does not consider they have been unduly pressured to agree to a particular solution as a result of the negotiation as this may lead to an escalation or recurrence of the dispute at a later stage.
  
- Mediation        Mediation involves the use of a neutral third party to assist in resolving the dispute. The mediator does not impose a decision on the parties in the way a court or arbitrator does but instead seeks to assist the parties to resolve the dispute themselves. Mediation is usually regarded as a faster, less formal and less costly process than court proceedings or arbitration.
  
- Arbitration      The aim of arbitration is to obtain a final and enforceable result without the costs, delays and the formalities of litigation. Arbitration proceedings are private and can be held at a mutually convenient time and the actual proceedings are less complex than litigation.
  
- Litigation        Litigation is the act or process of commencement of a lawsuit or seeking redress through the court of law. It can be an expensive and time-consuming procedure and is generally taken when other avenues of dispute resolution have not been successful or are unavailable. Other approaches to resolving disputes or contractor defaults should therefore be considered prior litigation.

#### 9.4.6 Risks related to contract management

Contract risk must be appropriately managed such that:

- All contracts set out risk identification, monitoring and escalation procedures and mechanisms which are in line with the institution's enterprise risk management.
- All contracts identify contingency plans for supplier or service provider failure.
- For key suppliers or service providers, the contract manager monitors the financial health, tax compliance and overall performance of the supplier or service provider.
- Contract terms and potential ramifications around key issues including termination, warranty, indemnity, security, confidentiality, and dispute resolution are understood by the contract manager.

#### 9.4.7 Penalties

Penalties between the municipality and the contractor may include:

- Penalties: In accordance with paragraph 22 of the General Conditions of Contract, the municipality will have the right to enforce the penalty clause on goods, works and services where the contractor fails to perform in accordance with contractual obligations.
- These penalties usually vary according to several factors, including the type of breach and its severity, duration, frequency, and effect on customers.
- The benefit of its approach is that the penalties are clear, agreed on, and more easily enforceable than a general claim for damages.

Some of the risks involved with contracts and penalty clauses to be applied per nature of contract:

Risk	Penalty Clause
Late delivery	<ul style="list-style-type: none"><li>• Where deliveries are made (after the agreed delivery date), the purchaser has the right to enforce the penalty by deducting from the contract price a sum calculated on the delivered price of delayed goods or unperformed services using the ruling prime interest rate calculated for each day of the delay until actual delivery of performance.</li><li>• In case of a delay in excess of 4 weeks, the municipality is entitled to declare the order null and void without any cost being charged for this. The statutory cases of force majeure are considered to be reasons to suspend the agreement if they make the execution of the order impossible and in so far as the supplier notifies the municipality in writing within 5 days.</li></ul>
Non delivery	<ul style="list-style-type: none"><li>• Termination of the contract if delivery does not take place within 4 weeks or cancellation of the order. (To reduce open ended commitments)</li><li>• In the event of non-delivery, and upon comprehensive justification that the contractor has been engaged to remedy the unsatisfactory performance, the municipality may impose as a penalty, a sum calculated on the delayed goods or unperformed services using the current prime interest rate calculated for each day of the actual performance.</li></ul>
Inferior quality	<ul style="list-style-type: none"><li>• Enforcement of contract conditions</li><li>• Settlement of disputes</li></ul>

Risk	Penalty Clause
Inability of contractor to perform as required	<ul style="list-style-type: none"> <li>Performance securities should be applied. The contract should dictate what must happen with the security if the contract is not to be completed and the municipality suffered losses, the performance security shall be utilized to compensate for any loss. The SCC must specify the performance security amount.</li> </ul>
Buy out transactions from transversal contracts	<ul style="list-style-type: none"> <li>When the time provided for the contractor to respond to the claim of non-performance has lapsed, the municipality can buy out and any difference in cost must be recovered from the contractor.</li> </ul>
Sub-contractors not performing	<ul style="list-style-type: none"> <li>Disputes must be resolved between the main contractor and his/her sub-contractors</li> <li>Liability and obligations are under the contractor</li> <li>Enforce termination of default</li> <li>Prohibit such suppliers/service providers from rendering any goods, service, and works in organ of state – Restrict supplier on the National Treasury’s Central Supplier Database</li> </ul>
Skills not transferred in terms of consultant’s services	<ul style="list-style-type: none"> <li>The municipality shall deduct from the contract price a percentage as a penalty for not transferring skills or for underperformed service (where applicable).</li> </ul>
Breach of contract	<ul style="list-style-type: none"> <li>Termination of default and recover any loss which the municipality suffered as a result of termination of contract.</li> </ul>
Contractor unfairly benefited using wrong preference points	<ul style="list-style-type: none"> <li>Misrepresentation of preference points constitute termination of a contract if it is justifiable and will be defensible in the court of law</li> <li>Impose a penalty of a percentage of the monetary value of the contract</li> </ul>
Prohibition of State employees doing business with state	<ul style="list-style-type: none"> <li>No contracts must be awarded to state employees</li> </ul>

#### 9.4.8 Transfer and Ceding of contracts

The General Conditions of Contract clause 19.1 dictate that the supplier shall not assign, whole or in part, its obligations to perform under the contract except with the purchaser’s prior written consent.

The Special Conditions of Contract should stipulate the conditions under which transfer/cessions shall be considered and the processes to be followed under such circumstances.

Applications for transfer/cession shall be completed and signed by both the transferor and transferee and countersigned by two parties.

Full reasons for the transfer of the contract must be provided and the transferee’s ability to carry out the contract must be established and reported to the Accounting Officer or delegate.

Unless it is otherwise in the best interest of the municipality, it is unlikely that the transfer will be approved if the municipality would suffer a loss as a result thereof or if there is an increased risk to the municipality.

The principle of fairness dictates that should the contract be transferred to another provider, it must be checked whether the number of preference points scored are at least the same or more than those scored by the original contractor. Thus, it should be indicated if the transfer would have had an influence on the award. However, the circumstances leading to the transfer must be pointed out and taken into consideration.

The contractor must raise the issue with the user department in writing where after the user department must comment on the viability of the transfer/ cession and submit the request to the SCM Unit/ CSC.

If the transfer/Cession is not viewed favourably for a justifiable reason, the SCM unit must inform the contractor of the decision in writing and provide the user department with the copies of the correspondence for filing purposes.

If the transfer/Cession is viewed favourably, the SCM unit must involve the Legal Services Unit for the purposes of drawing up the transfer/cession documentation.

The SCM unit must facilitate the signing of the transfer/cession by all parties, forward a copy to the user department and the contractor and must file the original signed transfer/cession documentation appropriately (alternatively, keep a softcopy of the document).

If the transfer/ cession is not approved, the original contractor must still be accountable to execute the contract.

#### **9.4.9 Termination of the contract and exit from the relationship**

Contract termination is the last resort to be sought by the municipality when dealing with disputes and non-performance. It should be taken into consideration that solving disputes through courts usually costs and lot of time and money.

Termination of a contract may be considered for a variety of reasons, such as, but not limited to non-compliance with contract conditions, delayed deliveries, bribery, death or sequestration/liquidation of the contractor.

If termination is considered, the following factors must be addressed to the Bid Adjudication Committee:

- The particular contract condition empowering the action for the purpose of resolving any dispute.
- What further arrangements will be made for completing the contract.
- Whether additional cost will be recovered from the contractor; and
- Payment of work already executed prior to cancellation of the contract.

The contractor should contain detailed provisions on the mechanism to terminate all or part of the contract and exit from the relationship.

The municipality may consider their rights to terminate the contracts through delegated authority if they are appropriately drafted under the following conditions:

- Failure to meet the service performance targets for critical services on a repeated basis;
- Failure to meet a certain number of service performance targets during a specified period or if the supplier has engaged in corrupt and fraudulent practices during the bidding process or the execution of the contract;
- Material breach of the terms and conditions with the breach being either irreparable or not having been remedied within a specified period;
- Major financial difficulties being encountered by the contractor (e.g. under liquidation)
- Failure to meet mandatory requirements or failure to acquire certain accreditation or licence or approval during the life of the contract.

**Exit provisions should be included in the contract to cover specific rights that will be required for termination, such as:**

- The continued provision of the services following the notification of termination;
- The right of the municipality or the new contractor, if necessary, to approach key members of the contractor's staff and to offer them jobs so as to retain the delivery capability;
- The right to perform inventory check of assets owned by municipality;
- The right to transfer ownership of assets and equipment upon termination; and
- The migration of data and systems and the provision of relevant information to the municipality or the new contractor.

Contracts must include the possibility to be terminated. This will normally include the details of timing, including the notice period (exit clause) and direction on the payment upon termination. The contract will have to state the initial term with a specified period after which either party may terminate or renew the contract, provided both parties agree to the terms and conditions.

Termination of a contract is usually detrimental to the municipality, therefore, serious thought must be given to the grounds for considering termination with legal assistance.

The contract management system (if applicable) must be updated by cancelling the contract on the system, if applicable and contract register.

## **9.5 STAGE 5: CLOSE OUT**

This stage refers to the necessary actions to end or reconsider the contractor for future contract and associated performance review. The activities associated with closing the project down, whether in accordance with the contract or as a result of early termination.

At the completion of the contract, the end-user must provide the contractor with the close-out report indicating overall performance of the contractor, stage of contract, achievement of milestones, against the original contract agreement and timelines, payment, poor performance, action and other observation.

The close out report must be maintained by the Project Manager for filing purposes, recording discrepancies and where applicable a contract register must be updated. A close-out report is applicable to contracts irrespective of contract period.

Different activities of course are associated with different forms that contract termination can take place. In the case of more complex, long-term or construction contracts ending in accordance with the original contract plan, best practice requires the need for evidence that the contract has been completed to the satisfaction of all parties. This is normally carried out in two stages:

- To ascertain internally that there are no outstanding matters, and
- To secure agreement from contractor(s) that apart from agreed ongoing liabilities, the contract(s) has ended.

The aim of the closure procedure is to provide a mechanism for managing the closure of the contract following the end of any retention or guarantee periods and the resolution of all other outstanding matters. The procedure is designed (where and applicable) to:

- Ensure completion of all administrative matters;
- Record that all technical issues have been completed;
- Determine the extent of any liquidated damages to be deducted from the contract price;
- Record the end of the retention and guarantee periods and the date of the final inspection carried out;
- Record the date of release of retention and/ or bank guarantee
- To agree on a statement of specific limits on continuing contractual obligations after completion of work and any ongoing obligations following the end of guarantees or maintenance periods;
- Transfer any assets, including data and intellectual property, and any loan items;
- Transfer operational system to the successful contractor;
- Record the process of final contract payments and a summary of the financial payments made and received;
- Summarise claims made against or received from the contractor;
- Ensure the retention of records relating to the contractor to counter any subsequent claims that may be brought. The limitation sets out the general periods for six years or twelve years according to the type of contract within which an action maybe brought.

Upon completion of this activity, agreements should have been reached on all technical and commercial aspects of the contract. The agreement should require the signature of the parties to a document which records the acceptance of the work or service, the obligations fulfilled and the price paid or to be paid.

Another important activity conducted at this stage, particularly in the case of high value, large contracts, is the preparation of a post- contract project report. This may follow a formal post-contract review, undertaken to assess the business benefits or losses from carrying out the procurement, how those benefits may be further enhanced and/ or costs and risks reduced and how the losses can be recouped and turned to benefits.

The review should also gather the lessons that can be learnt from the management processes and procedures followed during the contract and implementation in the future. The review should include the views of all stakeholders and the report should relate to the costs and benefits set out in the original business.

## **10. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS**

WRDM may not enter into any contract that will impose financial obligations beyond three years covered in the annual budget for that financial year, unless the requirements of Section 33 of the of the MFMA have been fully complied with.

## **11. CONTRACT PRICE ESCALATIONS**

11.1 An appropriate contract price adjustment formula or specified terms of escalation must be specified in the bid documents.

11.2 Escalation notification must be in writing and presented before the implementation date thereof.

10.3 Contract owners & Line departments are responsible to manage, verify and implement price escalations as per originally agreed terms and conditions set out in the specifications of the contract and keep proof of evidence to the newly agreed escalations on the system for all other relevant users & stakeholders to access.

## **12. IMPLEMENTATION AND REVIEW PROCESS**

This policy will come into effect on

This policy will be reviewed at least annually or when required by way of a Council resolution.