

SOL PLAATJE LOCAL MANAGEMENT



Contract Performance Management Policy

Approved by Council: 30 June 2020

Resolution: C129/06/20

**SUPPLY CHAIN MANAGEMENT POLICY REVIEW AND ADOPTION
PROCESS**

Adoption and Review	Council Resolution Date	Council Resolution number
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Council resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the **CONTRACT PERFORMANCE MANAGEMENT POLICY of the Sol Plaatje Municipality**

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CONTRACT PERFORMANCE MANAGEMENT POLICY

SOL PLAATJE LOCAL MUNICIPALITY

1. PRE-AMBLE

The policy applies to all transactions undertaken by the Sol Plaatje Local Municipality which involves 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 VAT and 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 directorates following a centralised strategy of

contract management. This policy must be read in conjunction with the SCM Policy of the Sol Plaatje Local Municipality.

2 DEFINITIONS:

In this Policy, unless the context indicates otherwise:

Accounting Officer <i>(in relation to a municipality)</i>	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)
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 Champion	Means the official/ Line Manager 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 Management	Means the holistic term of all role players involved in an agreement (SLA/SDA) or contract and include the; SCM contract manager, contract owner, contract champion and supplier.
SCM Contract Performance 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.

Contract Owner	Means the deputy director, senior manager or manager, as the case may be, that is ultimately accountable for all activities during the life cycle of the contract. The Contract Owner can also be seen as the Budget holder.
Director	Appointment according to sect 56 of the Systems Act
Delegation (in relation to a duty)	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 (In relation to a municipality)	means: <ul style="list-style-type: none"> • an employee of a municipality; • a person seconded to a municipality to work as a member of the staff of the municipality; or • a person contracted by a municipality to work as a member of the staff of the municipality otherwise than as an employee.
Users	Means all officials as set out in the organogram of the Sol Plaatje Local Municipality involved with contracts.

3. ABBREVIATIONS:

BEE	Black economic empowerment
B-BBEE	Broad-Based Black Economic Empowerment
GCC	Means General Conditions of contract.
MSA	Means Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
NT	Means National Treasury established by section 5 of the Public Finance Management Act.

SCC	Means Special Conditions of Contract.
SCM	Means Supply Chain Management
SDA	Means Service Delivery Agreement.
SLA	Means Service Level Agreement.

4. OBJECTIVES:

4.1 The objectives of this policy are to give effect to Section 217 of the Constitution of South Africa (1996) that stipulate:

4.1.1 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 do so in accordance with a system which is:

4.1.1.1 Equitable

4.1.1.2 Transparent

4.1.1.3 Competitive

4.1.1.4 Cost-effective and

4.1.1.5 Fair

4.2 The effective and efficient control of contracts procured through the SCM system ensuring:

4.2.1 proper recording and enforcement of contracts throughout the contract life cycle (specifications to contract reviews);

4.2.2 support to the demand management framework as set out in Circular 62 of National treasury (August 2012), optimizing proper planning, resulting in effective service delivery; 4.2.3 Management of Contract Performance;

4.2.3 compliance with the regulatory framework;

4.2.4 to assist officials in understanding their legal and managerial responsibilities with regards to contract management;

4.2.5 the optimization of efficient and sustainable financial wellbeing of the municipality, resulting in lower cost drivers, and

4.2.6 the continuous development of effective Management Information systems, resulting in strategic support and risk preventions.

4.3 To ensure that no contract procurement of goods and services (excluding land sales or rentals of Sol Plaatje Local Municipal Assets, which are managed by Property Management Services), takes place outside of the SCM System.

5 STATUTORY AND REGULATORY FRAMEWORK FOR MANAGING CONTRACTS

5.1 Application and Framework of the Contract Management Policy 5.1.1

5.1.1 All officials and other role players in the Supply Chain Management system of the Sol Plaatje Local Municipality must implement this Policy in a way that gives effect to:

5.1.1.1 Section 217 of the Constitution;

5.1.1.2 Section 116 of the MFMA;

5.1.1.3 Section 33 of the MFMA;

5.1.1.4 SCM Policy;

5.1.1.5 SCM Regulations

5.1.1.6 Any other legislation pertaining to SCM.

5.1.2 This Policy applies when the Municipality:

5.1.2.1 procures goods or services;

5.1.2.2 disposes of goods no longer needed; and

5.1.2.3 Selects service providers and suppliers to provide assistance in the provision of municipal services including circumstances where Chapter 8 of the Municipal Systems Act applies.

5.2 ADOPTION, AMENDMENT AND IMPLEMENTATION OF THE CONTRACT MANAGEMENT POLICY

5.2.1 The accounting officer must:

5.2.1.1 at least annually review the implementation of this Policy; and

5.2.1.2 When the accounting officer considers it necessary, submit proposals for the amendment of this Policy to Council;

5.2.1.3 In terms of section 62(1) (f) (iv) of the Act, take all reasonable steps to ensure that the Contract Management Policy is implemented.

5.3 CONDITIONS OF CONTRACT

5.3.7 A contract or agreement procured through the Supply Chain Management System of the Municipality must:

5.3.7.1 be in writing;

5.3.7.2 stipulate the terms and conditions of the contract or agreement,
which must provide for:

5.3.7.3 the termination of the contract or agreement in the case
of non- or

underperformance;

- dispute resolution mechanisms to settle disputes between the parties;
- 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;
- the municipality's liability and indemnity exposure;
- Vis Major; and
- any other matters that may be prescribed

5.4 ADMINISTRATIVE CAPACITY

5.4.1 The relevant Senior Manager, with delegated powers from the Municipal Manager, must establish capacity in his/her directorate to assist the accounting officer in carrying out the duties set out in section 116(2) of the MFMA.

6 CONTRACT PERFORMANCE MANAGEMENT

6.1 MANAGEMENT OF CONTRACTS

6. 1.1 The Accounting Officer and delegated officials must take all reasonable steps to:

6.1. 1.1 Ensure that a contract or agreement procured through the supply chain management policy of the municipality is properly enforced;

6.1.1.2 Monitor on a monthly basis the performance of the contractor under the contract or agreement.

6.1.1.3 Administrate the contract with the necessary competencies and delegations, ensuring effective management of contracts.

6.1.2 The PMU Manager/IDP Manager must ensure that Contract Champions (Line / Project

Managers) submit suppliers' performance reports to the SCM Contract

Performance Manager within **5 business days** after the end of each month.

6.1.3 The SCM Contract Performance Manager submits a consolidated suppliers' performance

report to the Chief Financial Officer within **10 business days** after the end of each month for purposes of Section 116 (2)(b) of the Act.

6.1.4 The SCM Contract Performance Manager submits a consolidated suppliers' performance

report on the performance of contracts or agreements for purposes of Section 116 (2)(d), to the CFO and Accounting Officer within **15 business days** of the end of each quarter.

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6.2 BASIS FOR BINDING THE MUNICIPALITY IN A CONTRACT

6.2.1 The Supply Chain Management Policy of the municipality gives guidance for procurement of goods and services as per various thresholds determined by the monetary value. The policy stipulates that procurement of goods and services up to R30 000.00 inclusive of VAT shall be done through written quotations evaluated based on price only, preferably from the service providers registered on the SPM database

6.2.2 The level of complexity of contract will depend on the nature of services, quality and other special conditions of delivery.

6.2.3 Where the above supply chain processes could not be fulfilled, an authorized deviation by the Municipal Manager also leads to a binding agreement.

6.2.4 It is based on the above approaches that an official of the municipality may enter into a binding agreement between the municipality and the service provider.

6.2.5 Appointment of a service provider without following the above procedures may lead to invalid contracts, and the official involved may be held responsible for financial misconduct and be subjected to Disciplinary action, and the resultant expenditure will be irregular and may be recovered from such official.

6.2.6 Local Government Supply Chain Management Regulations permits the Accounting Officer to ratify minor non-compliances from SCM Policy by Bid Committees and Officials

6.3 CONTRACT LIFECYCLE MANAGEMENT

Contract Lifecycle is a back to back process of acquisition to the award of contract. The cycle further entails execution, closure and handover of the project to the relevant official representing the municipality.

The Municipality recognizes the following steps in contract lifecycle management as elaborated below:

6.3.1 Contract requisitioning – this is the first action of defining the purpose and request

6.3.1.1 Authorizing – this involves the development of the contract documentation, version control and validation. Legal experts or suitably experience Officials must be involved in authoring the contract.

6.3.1.2 Negotiation – the ability to analyse the versions of contracts and the relevant attachments as influenced by the discussions between the parties to the contract. The Accounting Officer may appoint an Official to assist in the negotiations or may make use of external experts depending on the complexity of the service and contract.

6.3.1.3 Approval- routing the contract document and the necessary attachments for review and approval. The Project Manager must approve the draft contract prior to the final version being submitted to the Accounting Officer or his delegate for signature.

6.3.1.4 Execution – the process of allowing the contracted service provider to perform duties as outlined in the contract document. The Project Manager must

ensure that the performance by the other party is not delayed or impeded in any way where it is within the Municipality's control.

6.3.1.5 **Obligations management** – involves that deliverables are always being met and maintain compliance. The Project Manager must ensure that all deliverables are quality assessed and controlled.

6.3.1.6 **Contract amendment** – process of keeping track of original terms in addition to current obligations to deliver on the contract. Where any such amendment is proposed, the

Project Manager must prepare a report and motivation accompanying such proposal for the approval of the Contract Owner and the furtherance of complying with clause 4.4.

6.3.1.7 **Audit and reporting** – access to the entire contract for audit tracking, reporting and easy integration with other systems. It is the responsibility of the Project Manager to ensure that a comprehensive file to auditing standards are kept in a safe place and that access to such file is available by authorised personnel.

6.3.1.8 **Renewal** – contract extensions after the expiry dates. The Project Manager must advise the Contract Owner in good time regarding the renewal clauses and the financial implications thereof.

6.4 AMENDMENT OF CONTRACTS

6.4.1 A contract or agreement procured through the supply chain management policy of

the municipality may be amended by the parties, in exceptional circumstances in order to mitigate abuse, in perception after the fact to prevent financial inefficiencies and influencing financial sustainability.

6.4.2 In terms of Section 116(3) of the MFMA, (56 of 2003), amendments (in compliance with SCM procedures), may only be made after the initial has been signed.

6.4.2.1 The reasons for the proposed amendment have been tabled to council; and

6.4.2.2 the local community has been given reasonable notice of the intention to amend the contract or agreement; and

6.4.2.3. has been invited to submit representations to the municipality.

6.4.3 Amendments of contracts where the expansion or variation is not more than (NT Circular 62):

6.4.3.1 20% (construction related goods, services and/or infrastructure projects), and

6.4.3.2 15% (all other goods and/or services) of the original value of the contract, must be submitted directly to the Head of Supply Chain Management

Division for approval and further reference to the Bid Committees, and or Chief Financial Officer or Municipal Manager (depending on delegations) committee system for approval.

6.4.4 Amendments of contracts where the expansion or variation is more than the threshold prescribed by National Treasury (Circular 62), must be dealt with in terms of the provisions of section 116(3) of the MFMA, and are exempt from this process.

6.4.5 Amendments to the contract, without influencing the value or term of the contract, within the scope of the original terms and conditions, may be altered, provided that both parties have consensus on the amendment and the contract amendment is in writing and signed by both parties.

6.4.6 No agreement to amend or vary a contract shall be valid and of any force unless such agreement to amend or vary is entered in writing and signed by the contracting parties.

6.4.7 When an amendment has a budgetary implication for a term longer than 3 (three) years, section 33 of the MFMA will apply to this amendment (Section 116 (3) of the MFMA will be followed with section 33, when amending an existing contract for longer than 3 years).

6.5 PROCEDURES FOR CONTRACT AMENDMENT

Contract amendment may include change in some elements of scope of work as a result of unforeseen circumstances, change in area of work, or change in the number of units or materials for the benefit of the organization.

6.5.1 The Contracts Champions (Line Managers) shall prepare a report to The Contract Owner (Municipal Manager/Executive

Director) motivating the need for contract amendment or adjustment.

The Motivation will be prepared in a prescribed format with the following Information as mandatory:

- (a) Current project in brief
- (b) Project status
- (c) Contractor performance is summary
- (d) Project Funding and expenditure to date
- (e) Proposed amendment (scope, area, associated costs, funding)
- (f) Reason for amendment contrary to inviting bids for the new scope
- (g) Benefits arising from the amendment
- (h) Cost implication and funding of such costs

6.5.2 The Head of the Supply Chain Management Division must provide their Written professional opinion of the compliance with the Supply Chain Management Policy as well as the Municipal Finance Management Act. The Executive Director in whose purview the contract resides and for whom the amendment report has been prepared shall submit the completed report under their signature to the Chief Financial Officer.

6.5.3 The CFO will then in turn solicit the approval of such from the Municipal Manager upon the CFO's satisfaction that the report is complete and sufficiently substantiated.

6.5.3.1 Should the Municipal Manager support the proposed amendment the CFO shall prepare an item for the Municipal Council using the motivation provided by the Contracts Champions (Line Managers) / Project Manager and Executive Director initially. The Head of SCM shall facilitate the notification to the public with regards to the amendment and receive any objections or comments.

6.5.3.2 Once the comments are received, the Head of SCM and the CFO will advise the Municipal Manager and the Executive Director concerned.

6.5.3.3 Contract amendment shall require signing of the addendum to the original Contract by all parties to the contract. It should however be noted that amendments should be made in line with the allocated budget as per the approved budget for the project/service. If the amendment requires additional funding, the above process can only resume once funds are confirmed in respect of the work to be done.

6.5.3.4 For MIG funded projects, confirmation must be obtained from the PMU Office with regards to approved funding on the project and procedures for Budget Maintenance must be fulfilled prior to taking the recommended steps for Contract Amendment.

6.6 CONTRACT VARIATION

6.6.1 Contract variation refers to the variation of actual work that needs to be done or the methodology, approach or resources planned to be used in the execution of the project.

6.6.2 Contract variation shall be initiated by the appointed contractor after demonstrating the benefits of varying the original contract bills of quantity or other inputs used in the implementation of the contract agreement.

6.6.3. Issues of quality, subsequent maintenance costs and materials and the completion period must be considered prior to agreeing with the variation.

6.6.4. The process shall entail a request letter from the contractor to the Project Manager, and the request shall entail cost and benefits of the variation, financial implications, advantages of the variation and the impact or implications on quality of the product/service at the end of the day.

6.6.5 The variation must be considered by the Contract Owner (Line Manager) concerned, and once agreed upon, the Contract Variation Agreements shall be signed by all parties concerned. The Technical Director/ Manager shall inform the Chief Financial Officer to assess the impact of the variation on the project for Assets Management and SCM purposes and information.

Where contract variation requires additional funding, not exceeding 20% of the contract value, which is within the approved budget for current and subsequent year for that line item or project, reference will be made to Accounting Officer's guidelines for implementing Supply Chain Management Regulation. The request shall be approved by the Accounting Officer on recommendation of the Chief Financial Officer.

6.6.6 PROCEDURES FOR CONTRACT VARIATION

Activity	Responsible person
The contractor or service provider shall propose variation order to the Project Manager responsible and overseeing the contractor, with a full cost-benefit analysis, financial implications, future maintenance costs and availability of parts/materials	Contractor/Service provider
The Project Manager shall consider the request and present such to the Technical Director/ Manager responsible to obtain concurrence	Project Manager / Line Manager
The concurrence shall be presented to the Budget and Treasury Office (CFO) with all the inputs received thus far for recommendation to approve to the Accounting Officer	Executive Director /CFO
The Technical Director/Manager and CFO shall submit the variation to the Accounting Officer for approval	Executive Director /CFO

The Service Provider shall be informed of the acceptance of the variation and all necessary documents shall be signed and filed	Project Manager / Line Manager
The Accounting Officer shall submit the approved contract variation order to municipal council for noting	Municipal Manager

6.7 CONTRACT CONTINGENCIES

6.7.1 A contingency clause is a provision in the contract that requires a specific event or action to take place for a contract to be considered valid. A contingency clause should clearly outline what the condition is, how the condition is to be fulfilled and which party is responsible for it.

6.7.2 In construction contracts, contingencies are those unforeseen conditions experienced during contract execution. These conditions need to be dealt with to enable the contractor to proceed with executing the scope of work as per the agreement.

6.7.3 The contingency is brought to the attention of the Project Manager responsible for that work, and upon assessment agree that the circumstances are indeed a contingency. A recommendation to proceed with work aimed at resolving the contingency shall be made by the Project Manager and approved by the relevant Technical Director/Manager.

6.7.4 The approval shall be in writing, and once signed off by all parties, it shall be communicated to the Chief Financial Officer to ensure that the correct budget/line item is used for the

processing of invoices against the contingency budget as per the signed agreement.

6.7.5 Contingency fees are normally set at a percentage not exceeding 10% of the project costs as per the bidding document.

6.7.6 Where contingencies are expected to exceed 10% or the contract terms conditions, the CFO must be notified so as to provide professional advice on the process which must be followed in this regard.

6.8 CONTRACT BUDGET ADJUSTMENT

6.8.1 Projects whose costs are not time bound like consultancy services and similar advisory services executed through use of human resources to execute and budgeted for in the capital budget, can only be adjusted by way of council resolution, through an adjustment budget or through adhering to MFMA Section 29 – Unforeseen and unavoidable expenditure.

6.8.2. A differentiation should be made between project budgets overrun or over-expenditure and additional funding required as a result of contract value as per the winning bid price offer. In cases of projects funded under capital budget, the following process must be followed:

Where the amount that the project is awarded for exceeds the budget - Capital	
Confirmation of funding of project	Chief Financial Offer
Successful bidder price exceeds the budget	Negotiate scope reduction to align award amount with available funds

Successful bidder price exceeds the budget	An award can only be made once there is confirmation that the quoted price is fully funded in either current year's budget, or will be funded through an adjustment budget or in the following year's budget.
Where the project is overspending	
Oversee project implementation against project plan which is addendum to the Service Level Agreement entered into	Project Manager / Line Manager
Monitor claims against BoQ or project costing as per MBD3.1	Project Manager / Line Manager
Query any claims that exceed BoQ as per tender documents upon receipt of invoices	Project Manager / Line Manager
Obtain clarification from Contractor/Consultants on claims/quote variations, and the impact of the variation on entire project budget/costs	Project Manager / Line Manager
If clarification is satisfactory, report in writing to Budget and Treasury Office (CFO) the implications of the variances	Executive Director
Approval of invoice for payment	CFO
Perform project budget forecast	Executive Director and CFO
Advise CFO on projections and for noting for budget adjustment	Executive Director

7. MAINTENANCE AND CONTRACT ADMINISTRATION

Technical Contract administration is the function of the Project Manager and shall be overseen by the Technical Director/Manager responsible. SCM Contract administration includes the following activities and responsibilities:

Contract Initiation	Through SCM Processes
Negotiations	Including PMU, Line Manager, SCM Practitioner (BAC), BTO Officials

	and CFO
Appointment of Contractor/Service Provider	Municipal Manager
SLA Meetings with Legal Section	Project Manager and SCM Contracts Management
Contractor Invoices	Project Manager, Technical Director/Manager, Expenditure Section and SCM Contracts Management
Contractor Performance Reporting	Project Manager, Technical Director/Manager and SCM Contracts Management
Contract Amendment/Variation/Contingencies	Project Manager, Technical Director/Manager, CFO, Municipal Manager and SCM Contracts Management
Termination of contract	Executive Manager/Head of SCM, CFO, Municipal Manager and SCM Contracts Management
Project Close-Out	Project Manager, Assets Management, IDP, PMU Manager and SCM Contracts Management

7.1 Contract administration includes all administrative/technical duties associated with a contract once it is adjudicated and implemented.

- 7.2 No rights in terms of an awarded contract will accrue before the SCM appeal period and/or appeal has been finalised.
- 7.3 The contract should be signed by all parties concerned (The relevant SCM official should also ensure that the suppliers have the delegated powers to sign and amend the contractual agreement).
- 7.4 The contract will only be enforceable after all the signatures of the relevant parties are documented.
- 7.5 A signed service level agreement (if applicable) must be compiled and signed which will incorporate all the relevant sections of the tender documentation.
- 7.6 All once-off purchases shall have a specified end delivery date.
- 7.7 Processing of payments procedures for civil contracts,
- 7.7.1 all invoices shall be delivered directly to the Engineer/Project Manager responsible together with the Consultant report detailing the BOQ used during the period the invoice applies.
 - 7.7.2 After satisfying themselves with the contents of the invoice, the Consultant Report, and an Engineers/Project Managers Certificate shall be completed accordingly within the department.
 - 7.7.3 Upon completion of the Engineers/Projects Managers Certificate, a voucher for payment shall be completed and presented to the Budget and Treasury Office (BTO) to confirm the vote number and that the contractor is being paid as per the Bid Adjudication Minutes.
 - 7.7.4 After payment is finalized by Expenditure, details of payment must be forwarded to SCM Contracts Management for performance compliancy

7.7.5. These documents shall be prepared in triplicate (white, blue, yellow) with all signatories on all documents.

- ✦ All vouchers shall be signed by the Engineer/Project Manager or Divisional Head and approved by Executive Director, which must first be submitted to Supply Chain Management (Acquisition Manager) for verification of validity of the contract and status of suppliers' company profile (CSD) requirements and Municipal Rates & Services.
- ✦ All payment documents shall be forwarded to the Expenditure Division by Supply Chain Management (Acquisition Manager) for processing.

7.7.6 All queries regarding the payment shall be directed to the Engineer (Line Manager) responsible for the function.

- ✦ The Expenditure Section shall complete the payment reference number on the voucher and forward yellow copy to Assets Management Unit (AMU) (for use in capitalization and unbundling of assets).
- ✦ AMU shall liaise with BTO for the completion of commitments and grants registers.
- ✦ The Expenditure Section shall update the Civil Contracts Register and ensure that the Engineers (Line Manager) certificates per project (Tender Number), follow a chronological order and that the line item used is consistent throughout the project execution and payment period, and
- ✦ a copy of the Civil Contracts Register be forwarded to SCM Contracts Management **monthly before the 15th of the following month** for reporting purposes to the Chief Financial Officer.
- ✦ Virements on the capital budget shall be done by the Chief Financial Officer in line with Council resolutions.

8. CONTRACTOR PERFORMANCE REPORTING

8.1 PROJECT SCORECARD/CHART

It is imperative that upon signing the Contract and Service Level Agreement that a project scorecard/chart is completed as well. The project scorecard/chart shall indicator the following;

- Key Performance Area
- Key Strategic Objective
- Key Performance Indicator
- Key Activities and milestones
- Project performance evaluation scorecard
- Project Plan
- Project deliverables

The above shall be used to appraise the project progress as well as the contractor. The scorecard/chart shall be submitted with all payment's documents. The Expenditure Section shall forward the project scorecard/chart to Head of SCM and SCM Contracts Management for the purposes of compiling project performance and contractor performance reports.

The Head of SCM shall submit to the CFO, monthly a consolidated project and contractor performance report. The CFO may further interact with the Technical Director/Managers on any matters requiring their attention as per the report submitted by Head of SCM. The Project Manager shall include this report when report on Performance Management System monthly and shall be part of the project file.

8.2 CLOSING OF CONTRACT AND PROJECT SIGN OFF

Once the terms and conditions of the contract had been fulfilled, the Project Engineer / Consultant will prepare a project completion certificate with the following details;

8.2.1 Date of commencement of the project

8.2.2 Project costs

- 8.2.2.1 list of all invoices submitted and the value of each
- 8.2.2.2 proof of all invoices submitted
- 8.2.3 Retention fees held and the release date of such
- 8.2.4 Project successes and challenges
- 8.2.5 List of all variations amounts and summary of details
- 8.2.6 BOQ of materials used
- 8.2.7 Any warranties certificates guarantee and Standard Operating Manual where necessary.
- 8.2.8 Confirmation of the satisfactory completion of all obligations by the other party per the contract.

All the above shall be part of the project certificate/chart. The project certificate/chart shall be submitted to the Assets Management Unit for unbundling of work in progress, capitalization and

Copy of the project certificate/chart be submitted to SCM Contracts Management for CPM compliancy

8.3 OCCUPATIONAL HEALTH AND SAFETY (OHS) COMPLIANCE

Reference should be made to the **Generic occupational health and safety specification for construction work contracts** which will be provided to all service providers upon appointment by the municipality.

This health and safety specification in respect of a construction work contract:

- a) Provides the overarching framework within which the contractor is required to demonstrate compliance with certain requirements for occupation health and safety established by the Occupational Health and Safety Act of 1993 during construction;
- b) Establishes the manner in which the contractor is to manage the risk of health and safety incidents during the construction stage; and

- c) Establishes the manner in which the employer's health and safety agent will interact with the contractor.

8.4 REPORTING OF UNDER-PERFORMANCE AND REMEDIAL ACTION

During monthly reporting, the Project Manager is expected to report any concerns of performance, quality and communication from the service provider's side to PMU, the Technical Director/Manager, Legal Section and SCM Contracts Management. In the scorecard, indication must also be made of achievement of timelines and staying within the budget without compromising quality.

8.4.1 The Project Manager may recommend to the Technical Director/Manager and with motivation, to terminate the contract for various reasons.

8.4.2 The Technical Director/Manager will in turn consult with the Legal Section.

Notwithstanding the above, prior to any legal action in whatever way, it is the Policy of the Municipality to always consider the impact to the community and the interests of the municipality, of any action it may take when invoking any legal or other remedies against a party in breach of such contract.

8.4.3 A letter to terminate a contract shall be issued only on instruction by the Contract Owner and through the legal section after having complied with any provisions contained for the remedy of breach and taking cognizance of repercussions and costs after consultation with the CFO.

8.4.4 All the team members involved in these discussions must firstly consider any remedial action to prevent or avoid termination or litigation. The Municipal Manager may serve as Dispute Resolution Mechanism in such cases where the

relationship is breaking down or performance is beyond tolerance and impacts on project execution and financials associated with the project.

8.4.5 Final approval report to be submitted to SCM Contracts Management

9. BLACKLISTING OF SERVICE PROVIDERS

Bidders or contractors shall be reported to National Treasury for blacklisting under the following circumstances;

- Failure to disclose honestly, the relationship of the company, its shareholders, owners, and/or directors with any organs of state.
- False CIDB or fraudulent CIDB Certificates.
- False or fraudulent tax clearance certificates
- False or fraudulent municipal accounts
- Termination of contracts due to breach of contract

9.1. As soon as one of the above instances is found, the Chief Financial officer shall communicate with the service provider/contractor affected to confirm the information obtained against such.

9.2 Once the finding is confirmed, a report from the Project Manager responsible for that contract or service level agreement must be obtained with regards to the project status.

9.3 The service provider may be requested to finish the project as soon as it is practical and vacate the site with immediate effect.

9.4 Such service provider will also be blacklisted using the municipality internal blacklist register controlled by the Head of SCM and the Bid Committees shall be informed of the

Blacklisted Bidders to avoid making further awards to the company in future.

9.5 A bidder reconstituted and bearing another name shall for the purposes of this register also be considered an undesirable bidder where the service providers consist of substantially the same components (including human resources and directors or owners) which gave rise to the blacklisting of first instance.

9.6 Only the BEC, BAC and Legal Services shall have access to this report. The register shall be signed off by Head of Legal Services in the municipality.

9.7 Final approval report to be submitted to SCM Contracts Management

9.8 The blacklist register shall have the following information:

- Name of the Bidder/Company, including the Trading As name
- Company registration details
- VAT Number
- Tender reference number
- Copy of MBD4
- Report proving false declaration
- Copy of letter sent to the Bidder and their response if any
- Letter of notice of blacklisting

10. ROLES AND RESPONSIBILITIES OF OFFICIALS:

10.1 Head of Supply Chain Management Division or his/her delegate:

10.1.1 The Head of Supply Chain Management Unit or his/her delegate, being the Contracts Performance Manager is the SCM official responsible for system administration, status and SCM performance reporting on all contracts related activities.

10.1.2 For the purposes of Contract Management activities performed by the relevant role players, the SCM Contract Performance Manager will monitor and report on the following activities:

10.1.2.1 Identification and classification of contracts for management purposes in terms of the SCM processes;

10.1.2.2 Recognition, measurement and disclosure;

10.1.2.3 Oversight of contract management as is provided for in this policy;

10.1.2.4 Document and information management;

10.1.2.5 Relationship management

10.1.2.6 Performance management;

10.1.2.7 Contract risk management.

10.2 CONTRACT CHAMPION MANAGEMENT (LINE MANAGERS)

10. 2.1The Contract Champion (Line Managers) is responsible for the following activities:

10.2.1.1Ensuring that all the necessary legal formalities in entering into the contract are adhered to

10.2.1.2. Ensuring that purchase orders are processed on the financial procurement

system in accordance with the pricing schedule;

10.2.1.3. Maintaining adequate records (paper and/or electronic) in enough detail on

an appropriate contract file to provide an audit trail;

10.2.1.4. Inform the Asset Management section and the Expenditure Department of

the location of newly procured assets for asset register and insurance purposes; and

10.2.1.5. Where appropriate, in terms of Council's Delegations, authorise invoices due for payment.

10.2.1.6. To take appropriate action in consultation with the Contract Owner

(Municipal Manager/Executive Directors), Legal section and the SCM Contract Performance Manager, where a contractor is underperforming or is in default or breach of the contract.

10.2.1.7. Ensure performance of suppliers is managed appropriately to the terms and conditions of the contract.

10.3 CONTRACT OWNER (MUNICIPAL MANAGER/EXECUTIVE DIRECTORS)

10.3.1 The Contract Owner (Municipal Manager/Executive Directors) is responsible for ensuring that Contract Champions (Line Managers) are assigned to all contracts.

10.3.2 The Contract Champion (Line Manager) is ultimately responsible for management of the activities.

11. RECORD KEEPING

- 11.1 Proper records regarding all aspects of the contract must be maintained and kept in accordance with relevant legislation.
- 11.2 All communication related to contracts/tender must be linked to the master document tender number on the electronic procurement system of the Municipality, by the relevant official.
- 11.3 Safe custody of all contract documents must be enforced by all relevant users.
- 11.4 Contract Champions (Line Managers) and SCM Contract Management office are responsible for the electronic capturing of the contract information and maintenance thereof on the Contract Management system.
- 11.5 The original signed contract must be sent to the records department (by the SCM Contract Management office) for safekeeping and storage.
- 11.6 The Records Department is responsible for the administration of archived contract documentation.

12. PROJECT IMPLEMENTATION COMPLIANCY/REQUIREMENTS

12.1 Project Management Unit (PMU)Office

- 12.1.1. The Project Management Unit oversees project implementation, grant expenditure and related reporting to the transferring department. The Unit is

more concerned about qualitative reporting on the project as such, project designs, materials usage, and site meetings are coordinated with the PMU.

12.1.2. The PMU is the custodian of layout plans/designs of projects (civil/town planning/engineering).

12.1.3. Minutes of site meetings/briefing sessions (compiled by Line Manager) must be submitted to PMU for comments which may be useful in future meetings, bringing management's perspective on contractor performance, quality and timelines concerned.

12.1.4. Final approval report by PMU Manager to be submitted to SCM Contracts Management

12.1.5. The Project Management Unit (PMU) must conduct quarterly meetings with relative Contracts Champions (Line Managers), IDP section and the SCM Contract Performance Management

12.2 INTERNAL AUDIT

12.2.1. The Internal Audit Unit is responsible for assurance audit in as far as performance management and internal controls are concerned. The section is responsible to test the level of compliance with regards to this policy and may inspect project files and test completeness in as far as documents and reporting is concerned. Part of the assurance

- 12.2.2. Procedures is to check the validity of contracts and the level of risk exposure of the municipality and how the contract mitigates this risk.
- 12.2.3. MFMA Circulars also guides that the Municipal Manager may request the Internal Audit to validate the capability of the service provider in executing a project by testing its functionality, experience as well as financial resource strength necessary.
- 12.2.4. As part of auditing performance, the Internal Audit Section may assess the adherence to the PID or PIP and make recommendations to management.

12.3 EMPLOYER'S HEALTH AND SAFETY AGENT OR HIS/HER DELEGATE

- 12.3.1. Audit the contractor's compliance with the requirements of the Generic occupational health and safety specification for construction work contracts prior to the commencement of any physical construction activities on the site;
- 12.3.2. Accept or reject the contractor's health and safety plans, giving reasons for rejecting such plans;
- 12.3.3. Monitor the effective implementation of all safety plans;
- 12.3.4. Conduct periodic and random audits on the health and safety file to establish compliance with the requirements of this specification;

12.3.5. Visit the site at regular intervals to conduct site inspections, and based upon such visits issue, wherever necessary, Improvement Notices, Contravention Notices and Prohibition Notices, to the contractor or any of the contractor's subcontractors with a copy to the contract

13. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS

Sol Plaatje Local Municipality may not enter into any contract that will impose financial obligations beyond the three years covered in the annual budget for that financial year, unless the requirements of Section 33 of the Municipal Finance Management Act have been fully complied with.

13.1 RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES:

The accounting officer is responsible to establish a dispute resolution mechanism as per paragraph 5.3.1.2. and also as required by section 116(1) of the MFMA and paragraph 50 of the SCM Policy.

14. CONTRACT PRICE ESCALATIONS:

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

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

14.3 The Contracts Champion (Line Managers), User 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 stakeholders to access.

14.4 No contract price escalation for consulting services shall be allowed.

15. PERFORMANCE ON CONTRACTS:

In terms of the SCM Policy and the Municipal Systems Act, the Accounting Officer must implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved in terms of the Performance Management System Implementation Policy (Paragraph 9).

15.1 MUNICIPALITY'S PERFORMANCE:

15.1.1 The municipality is required to pay creditors within 30 days of receiving all relevant invoice statements.

15.1.2 The municipality is also required to create a favourable environment to receive services and goods without preventing the supplier to perform their duties.

15.1.3 All parties involved must perform according to the terms and conditions of the relevant contract, while the contract is alive.

15.2 SUPPLIER PERFORMANCE:

15.2.1 **The supplier of goods and services** is required to perform as per terms and conditioned agreed upon and should inform the

municipality if circumstances prevents them to perform, with reasons provided, within **5 working days** (to be included in all contracts).

15.2.2 **For all relevant deviations** from the agreed terms and conditions of any contract, the key performance indicators (KPI's) should be reviewed as well as the alignment with the strategic objectives established in the IDP.

15.2.3 **Supplier's performance will be reviewed** by Sol Plaatje Local Officials / Contracts Champions (Line Managers) on a monthly basis (**every 25th of the month**) giving effect to section 116 of the MFMA, 2003 and the Performance Management System Implementation Policy.

15.2.4 The Contract Owner (Municipal Manager/Executive Directors) must ensure that Contract Champions (Line Managers) submit suppliers' performance reports to the SCM Contract Performance Manager within **5 business days after the end of each month**.

15.2.5 **Prescribed procedures** to evaluate service providers must be complied with. (Refer to the Performance Management Framework Policy)

The following procedures need to be followed:

1. The requirements of this policy must be included in the contract of the service provider.
2. The performance of the service provider under the contract or **service level agreement must be assessed monthly** by the Contract Champion (Line Manager)

3. The assessment must be completed in the contract management system.
4. The Contract Champion (Line Manager) must complete the Service Provider Assessment on the Contract Management System at the end of each month.
5. The quarterly assessment and reporting must be completed within **15 working days** after the end of each quarter. (Refer to the Performance Management Framework Policy, paragraph 9.2.1).
6. The Contract Champion (Line Manager) must provide a copy of the assessment to the Service Provider and SCM Contract Performance Management at the end of each quarterly assessment period and on completion or termination of the contract due to non-performance by the Legal Department
7. Supply Chain Management Unit, Contract Performance Management will review the quarterly Service Provider assessments **within 20 days** after the end of each quarter and submit a summary report to the Accounting Officer / Council.
8. The Accounting Officer need to develop the necessary forms and report structures to be utilised to manage the above processes. The forms and reporting requirements need to be reviewed on a regular basis.
9. **In the instance of under-performance:** (SEE SECT 8.4)
 - a) The Municipality will facilitate support interventions to service providers in the identified areas of under-performance.

- b) Service providers who have been identified as under-performing in identified areas must be informed of these support interventions.
- c) The impact of support interventions must be monitored by the Contract Champion (Line Managers). Corrective action should be documented in writing within the Contract Management System and copies be submitted to the Legal Section and SCM Contracts Management
- d) The records of the support interventions must be documented by the Contract Champion (Line Managers), signed by both parties and appropriately filed in the Contract Management System and copies submitted to the Legal Section and SCM Contracts Management for audit purposes.

16. REVIEW OF CONTRACTS

16.1 In terms of section 116 (1) of the MFMA, a contract or agreement procured through the Supply Chain Management system must have a periodic review once every three years in the case of a contract or agreement that are longer than three years.

16.2 In terms of section 4.5.6 of the National Treasury Contract Management Guide (2010) the Contract Owner (Municipal Manager/Executive Directors) or Contract Champion (Line Managers) must regardless of whether a contract is being closed or renewed, a review process report should be undertaken to various levels of detail depending on the

classification of the contract and be submitted to SCM Contracts Management.

This review report will focus on performance under the contract and consider at least the following:

- actual quantities, prices, total values vs. budgeted quantities, prices, total values;
- actual timeliness of delivery under the contract vs. contracted timeframes;
- actual service levels or specifications of goods and services vs. those contracted;
- review of procurement or sales methods;
- future budgets;
- change supplier, buyer or other stakeholder;
- outsourcing opportunities; and
- risk strategies.

16.3 The Contract Owner (Municipal Manager/Executive Directors) or Contract Champion (Line Managers) must conduct, as appropriate, within **3 months** after the expiry of contracts, post contract reviews. The renewed period of a contract can only occur once after the expiry of the contract date **with 3 months**.

17. IMPLEMENTATION AND REVIEW PROCESS

- a) At least annually review the implementation of this Policy; and
- b) When the accounting officer considers it necessary, submit proposals for the amendment of this Policy to Council;

c) This policy will come into **effect on 1 July 2019**;

d) Reviewed on a yearly basis