

SOL PLAATJE LOCAL MUNICIPALITY



CONTRACTS PERFORMANCE MANAGEMENT POLICY

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MUNICIPAL CONTRACT PERFORMANCE MANAGEMENT POLICY
LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003
CONTRACT PERFORMANCE MANAGEMENT POLICY REVIEW AND ADOPTION
PROCESS

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CONTRACT PERFORMANCE MANAGEMENT POLICY				
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A. ACRONYMS AND DEFINITIONS

In this Policy, unless the context indicates otherwise:

Accounting Officer	means the Municipal Manager referred to in section 60 of the MFMA (2003); and includes a person acting as the accounting officer.
Act or MFMA	The Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).
AMU	Asset Management Unit of the Municipality
BAC	Bid Adjudication Committee
B-BBEE	Broad-Based Black Economic Empowerment
BEC	Bid Evaluation Committee
BEE	Black Economic Empowerment
BoQ	Bill of Quantities
BSC	Bid Specification Committee
BTO	Budget and Treasury Office
CFO	Chief Financial Officer of the Municipality
CIDB	Construction Industry Development Board
Circular 62	communication from the National Treasury by means of a Circular to enhance compliance and accountability to the SCM Regulations and the MFMA of 2003.
Construction Industry Development Board (CIDB):	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.
Contingencies	a percentage of the concept budget allowed for unforeseeable programmatic and design changes that occur over the course of the execution.
Contract	The agreement that results from the acceptance of a bid by the Municipality (signed mutual agreement).
Contract Alteration	changing technical writing or input errors to the agreement of the contract without changing the scope of the contract.
Contract Amendment	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 Lifecycle	the period from the beginning of the contract, its inception, management, and termination of such contract
Contract Lifecycle Management	The process by which the municipality strengthens and taps into the value of its contract portfolio, which includes risk management,

	managing budgets and successful delivery of the project according to management expectations.
Contract Management	the administrative activities by all stakeholders involved in an agreement (SLA/SDA) or contract and include the; SCM Contract Manager, Contract Owner, Line/Project Manager, Service Provider or Suppliers, associated with contracts, and includes processes associated with the invitation to bid, Bid Evaluation, Award of Contract, Contract Implementation, Measurement of work completed, and Computation of payments. It also includes monitoring the contract relationship, addressing related problems, incorporating necessary changes or modifications in the contract, ensuring both parties meet or exceed each other's expectations, and actively interacting with the contractor to achieve the contract's objective(s).
Contract Owner	The Executive 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.
Contract Variation or Variation Order	an alteration to the scope of works in a construction or service contract in the form of addition, subtraction, substitution or omission from the original scope.
Council	Means the Council of the Sol Plaatje Local Municipality.
CSD	Central Supplier Database
Delegation (in relation to a duty)	Includes an instruction or request to perform or to assist in performing the duty.
Executive Director	Means a senior manager of the Municipality appointed in terms of section 56 of the Municipal Systems Act Delegation (in relation to a duty)
Force Majeure (Act of God)	Is the expression used to denote an irresistible superior force which might cause damage or prevent the execution of an obligation, therefore suppliers are not liable for damages caused by force majeure or for failure to carry out a contract if prevented (terms and conditions in this regard will be determined by every individual contract/s).
GCC	General Conditions of Contract
IDP	Integrated Development Plan
IUDG	Integrated Urban Development Grant
KPI	Key Performance Indicators
Line/Project Manager	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). A Line/Project Manager could also be the Project Manager.

MBD	Means the Municipal Bid Documents
MFMA	Means the Local Government: Municipal Finance Management Act, 2003 (Act no 56 of 2003)
MSA	Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)
Municipality	means the Sol Plaatje Local Municipality;
NT	The National Treasury was established by section 5 of the Public Finance Management Act.
Official (In relation to the Municipality)	means: <ul style="list-style-type: none"> • an employee of the Municipality. • a person seconded to the municipality to work as a member of the staff of the municipality; or • a person contracted by the municipality to work as a member of the staff of the municipality otherwise than as an employee.
PID	Project Initiation Documents
PIP	Project Implementation Plan
PMU	Project Management Unit
Price Escalation	Means the changes in the cost or price of specific goods or services in a given economy over a period.
Project Funding	the allocated funds to cover all costs associated with Acquisition, Implementation, Monitoring and Handover/Commissioning of the project. A project may be funded from more than one source as per the approved budget.
PSC	Means Project Steering Committee
SCC	means the Special Conditions of Contract
SCM	Supply Chain Management
SCM Contract Performance Manager	the SCM officials responsible for Monitoring, Regulating and Reporting on all contract related activities as set out in Section 116 of the MFMA.
SDA	Service Delivery Agreement
SDBIP	means Service Delivery Budget Implementation Plan
Service Level Agreement (SLA)	an agreement between a service provider and the SPM that defines the level of service expected from the service provider. This agreement is either included in the contract or serves as an addendum to the contract. The SLA is subservient in its interpretation and application to the main contract
SLA	Service Level Agreement
Standard Contract	Is a contract between two parties where the terms and conditions of the contract are set by one of the parties and the other party has little or no ability to negotiate more favourable? In the case of the municipality, standard contracts shall be initiated by the municipality as the employer

	and negotiated in good faith with the contracted service provider. For software maintenance, the contract shall be initiated by the service provider as they carry extensive knowledge of their systems, and the municipality shall cover itself in the Master Agreement on the system, software application or program developed.
Structures Act	Local Government: Municipal Structures Act, 2000 (Act No. 117 of 1996)
Users	all officials as set out in the organogram of the Sol Plaatje Municipality involved with contracts.
VAT	Value Added Tax

1. INTRODUCTION

The policy applies to all transactions undertaken by the Sol Plaatje 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 quality 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:

- (a) Goods and services outside of specification.
- (b) Cost overruns.
- (c) Poor suppliers, buyer or other stakeholder relations;
- (d) Negative public perception, and
- (e) 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 Municipality.

2. OBJECTIVES

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

- (a) “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 equitable, transparent, competitive and cost effective”.
- (b) This is consistent with section 112(1) of the MFMA, which provides that “the Supply Chain Management Policy of the Municipality must be fair, equitable, transparent, competitive, cost effective and comply with a prescribed regulatory framework...”
- (c) The Supply Chain Management Policy (SCM) ensures effective and efficient control of contracts procured through the SCM processes, thus ensuring that:
 - (i) Proper recording and enforcement of contracts throughout the contract life cycle (specifications regarding contract reviews);
 - (ii) Support is provided to the Demand Management framework as set out in Circular 62 of the National Treasury (August 2012), optimizing proper planning, resulting in effective service delivery.
 - (iii) Management of Contract Performance.
 - (iv) Compliance with the regulatory framework.
 - (v) Assistance is provided to officials in understanding their legal and managerial responsibilities with regard to contract management;
 - (vi) The optimization of the efficient use of resources and the financial sustainability of the Municipality, resulting in lower cost drivers, and
 - (vii) The continuous development of effective Management Information Systems, resulting in strategic support and risk prevention

- (d) The existence of the Contracts Management Policy is to ensure that no contract procurement of goods and services (excluding land sales or rentals of Sol Plaatje Municipal Assets, which are managed by Property Management Services), takes place outside of the SCM System.

3. LEGISLATIVE AND POLICY FRAMEWORK

- The Constitution of the Republic of South Africa, 1996
- Municipal Finance Management Act (Act No. 56 of 2003)
- Preferential Procurement Policy Framework Act (Act No. 5 of 2000)
- Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations 2017 (No. Reg 40553, 20 January 2017)
- Local Government: Municipal Systems Act (Act No. 32 of 2000)
- Local Government: Municipal Structures Act (Act No. 117 of 1996)
- Municipal Supply Chain Management Regulations, (No. 27636, Notice 868 of 2005 as amended)
- Supply Chain Management Policy of the Sol Plaatje Municipality

4. STATUTORY AND REGULATORY FRAMEWORK FOR MANAGING CONTRACTS

4.1 Application and Framework of the Contract Management Policy:

- (a) All officials and other role players in the Supply Chain Management system of the Sol Plaatje Municipality must implement this Policy in a way that gives effect to:
- (i) Section 217 of the Constitution.
 - (ii) Sections 33 and 116 of the MFMA (Act No. 56 of 2003).
 - (iii) Municipal Supply Chain Management Regulations (No. 27636, Notice 868 of 2005)
 - (iv) Supply Chain Management Policy of the Municipality
 - (v) Any other applicable legislation pertaining to the acquisition of goods and services and contract management.
- b) This Policy applies when the Municipality:

- (i) Procures goods or services.
- (ii) Disposes of goods no longer needed; and
- (iii) 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.

4.2 Adoption, Amendment, and Implementation of the Contract Management Policy:

- (a) The accounting officer must:
 - (i) At least annually review the implementation of this Policy; and
 - (ii) When the accounting officer considers it necessary, submit proposals for the amendment of this Policy to Council.
- (b) In terms of Section 62(1) (f) (iv) of the Act, take all reasonable steps to ensure that the Contract Management Policy is implemented.

4.3 Application of Policy:

The policy applies to all transactions per the Supply Chain Management processes and undertaken by the Sol Plaatje Municipality which involves a contract whether explicitly agreed in writing, or implicitly through actions.

4.4 Basis for binding the Municipality in a Contract:

- (a) The Supply Chain Management Policy of the Municipality gives guidance for the procurement of goods and services in line with various thresholds determined by monetary value. The policy stipulates that procurement of goods and services up to R30 000.00, inclusive of VAT, shall be done through a formal written price quotation evaluated based on price and specific goals. The service providers must be registered in the Central Supplier Database (CSD) and Sol Plaatje Municipality Database. Most of these quotations are for one-off delivery of such goods and services at an agreed upon point.

- (b) By accepting the quotation as submitted by service provider (municipality will issue an official order), there is a form of contract that gives rights and obligations to both parties. In these instances, it is not necessary to sign a contract, unless it is the contract for the rental of a printer or others, whereby an Invoice or order will be issued on a monthly or annual basis for 2 to 3 years with a minimum not exceeding the threshold. Such rental of a printer, landfill site assessment, audit reviews of the AFS, and Actuaries, etc. All documents pertaining to such procurement shall be in the custody of the Supply Chain and Expenditure Management Section and shall form the basis for the issuing of the official order and for payment.
- (c) Procurement of goods and services above R30 000, 00 but not exceeding R300 000.00 (inclusive of VAT) shall be advertised on the Municipal Website. The evaluation of such quotations shall be based on (80 price /20 specific goals) and Price. The evaluation of these quotes shall be conducted by Supply Chain Management Unit officials and shall inform the procuring department of the outcomes of the evaluation. Upon acceptance, an official order shall be issued to the successful bidder. Entering into a contract shall be optional at the instance of the Procuring Department for this category of procurement. The letter of appointment may be issued in this regard, stipulating specific conditions of delivery of goods/services procurement, as well as timelines involved in the delivery, depending on the contract or procurement, in most case an official order will be generated.
- (d) Procurement of goods and services above R300 000 (inclusive of VAT) shall be through an open, competitive bidding process and the specification shall be approved by the Bid Specification Committee (BSC), evaluated by the Bid Evaluation Committee (BEC) and adjudicated and recommended for the award by the Bid Adjudication Committee (BAC) to the Accounting Officer. It is compulsory to enter into a Service Level Agreement for the procurement of goods and services with a value exceeding R300 000.00. The level of complexity of the contract will

depend on the nature of services, quality, and other special conditions of delivery.

- (e) Where the above supply chain processes could not be fulfilled, an authorised deviation by the Municipal Manager, which also leads to a binding agreement between the two parties. The deviation must indicate the motivation, mitigation plan, and the timelines of the bidding process.
- (f) It is based on the above approaches that the Municipality may enter into a binding agreement between the Municipality and the service provider through an SLA.
- (g) 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 officials.
- (h) The municipal Supply Chain Management Regulations (MSCMR) permit the Accounting Officer to ratify minor non-compliances from SCM Policy by Bid Committees and Officials.

4.5 Conditions of Contract:

- (a) A contract or Agreement procured through the Supply Chain Management System of the Municipality must:
 - (i) Be in writing;
 - (ii) Stipulate the terms and conditions of the contract or agreement, which must provide for;
 - (iii) The termination of the contract or agreement in the case of breach or non- or underperformance.
 - (iv) The termination of the contract or agreement in the case of breach or non- or underperformance.
 - (v) Dispute resolution mechanisms to settle disputes between the parties.
 - (vi) A periodic review of the contract or agreement once every three (3) years in the case of a contract or agreement for longer than three (3) years, such as the banking contract/ software systems.

- (vii) The municipality's liability and indemnity exposure.
- (viii) Force majeure and
- (ix) Any other matters that may be prescribed.

(b) The relevant Executive Director, 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.

4.6 Administrative Capacity:

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.

4.7 Management of Contracts:

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

- (a) Ensure that a contract or agreement procured through the Supply Chain Management Policy of the Municipality is properly enforced.
- (b) Monitor on a quarterly basis the performance of the contractor under the contract or agreement, and the monitoring report for infrastructure projects must be submitted to PMU and SCM on a monthly basis.
- (c) The monitoring report for the goods and services project must be submitted to SCM (Manager: Risk and Performance) by the Line Manager on a monthly basis/ prior to any payments or before generating official order (whichever comes first).
- (d) No orders for Goods and services will be generated without the monitoring report for that particular month, including the payment vouchers for construction-related projects

4.8 Non-Performance of the Supplier/ contractor:

- a) If the supplier, after receiving an official order for procurement less than R 30 000 and above R 30 000 not Exceeding R 300 000, fails to deliver the goods and/or services within the timelines specified by the Project Manager and agreed by the service provider in written communication or the official order and the bid document, the Municipality shall notify the supplier and cancel the official order.

- b) Should such failure to deliver occur repeatedly, resulting in the cancellation of two (2) subsequent official orders for the same or similar reason, the contract shall be terminated. In such cases, at the discretion of the SCM, the municipality may consider other relevant procurement alternatives to compensate for the terminated contract.
- c) If the lowest bidder (quotations below R30 000) is non-tax compliant before generating an official order for **goods and services**, the bidder will be notified and given 7 days to correct the tax status. In case of emergency or the urgent items to be procured the SCM will generate an official order to the responsive second lowest bidder and tax matter must be verified and must be tax compliant.
- d) If the bidder is non-tax compliant before the payment of the **infrastructure project** the bidder will be notified and give 7 days to correct the tax status.
- e) **For the infrastructure projects and goods and services**, if the contractor/service provider fails to perform the work as awarded to his/her company, the municipality will inform the contractor through letter about the unsatisfactory and the non-performance as first warning and a second warning. All the non-performance activities must be recorded, and the contract will be terminated considering relevant clauses on SLA or GCC.

4.9 Non-Performance and Contract Termination Procedure

In the event that a contractor or service provider fails to meet their contractual obligations, including but not limited to poor performance, failure to deliver services or goods in a timely manner, or any other breach of contract, the following process shall be followed:

1. **Engagement meeting:** The municipality will engage with the supplier and issue a **First Warning Letter:** The contractor or service provider will be issued a formal written notice highlighting the specific areas of non-compliance or dissatisfaction. This letter will serve as a first warning and will outline expectations for corrective actions within a specified timeframe.
2. **Second Warning Letter:** Should the contractor or service provider fail to demonstrate satisfactory improvement or continue to underperform, a second formal warning will be issued. This letter will reiterate the concerns previously raised, reinforce the seriousness of the matter, and advise that failure to remedy the situation may result in termination of the contract.
3. **Final Notice and Termination:** If no satisfactory corrective action is taken following the second warning, a third and final letter shall be issued, terminating the contract in accordance with the relevant provisions of the agreement and applicable legal and regulatory frameworks.

This process aims to ensure fairness, transparency, and accountability in contract management while safeguarding the interests of the organization.

4.10 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 recognises seven steps in Contract Lifecycle Management as elaborated below:

- (a) Contract Requisitioning – this is the first action of defining the purpose and request.
- (b) Authoring – 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.
- (c) 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.
- (d) Approval- routing the contract document and the necessary attachments for review and approval. The Line/Project Manager must approve the draft contract prior to the final version being submitted to the Accounting Officer or his delegate for signature.
- (e) Execution – the process of allowing the contracted service provider to perform duties as outlined in the contract document. The Line/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.
- (f) Obligations Management – involves that deliverables are being met and maintain compliance at all times. The Line/Project Manager must ensure that all deliverables are quality assessed and controlled.
- (g) 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 Line/Project Manager must prepare a report and motivation accompanying such proposal for the approval of the Contract Owner and complying with the relevant clause.

- (h) Audit and Reporting – access to the entire contract for audit tracking, reporting and easy integration with other systems. It is the responsibility of the Line/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.
- (i) Renewal Clauses – contract extensions after the expiry dates. The Line/Project Manager must advise the Contract Owner (Municipal Manager) within 30 days regarding the renewal clauses and the financial implications thereof and final approval must be granted by the Municipal Manager.

4.11 Amendment of Contracts:

- (a) A Contract or Agreement procured through the Supply Chain Management Policy of the Municipality may be amended by the concerned parties to the contract, in exceptional circumstances in order to mitigate abuse, in perception after the fact, to prevent financial inefficiencies and influence financial sustainability.
- (b) 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, original contract has been signed. The MFMA requires that the reasons for the proposed amendment must be tabled in Council; and the local community has been given reasonable notice of the intention to amend the contract or agreement; and have been invited to submit representations to the Municipality.
- (c) Amendments of contracts where the expansion or variation is not more than (National Treasury Circular 62):
 - (i) 20% (construction-related goods, services and/or infrastructure projects), and
 - (ii) 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.

- (d) 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.
- (e) Amendments of contracts where the Expansion or Variation is more than the threshold prescribed by the 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.
- (f) 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.
- (g) No agreement to amend or vary a contract shall be valid and of any force unless such agreement to amend or vary is entered into writing and signed by the contracting parties.
- (h) 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).

4.11.1 Procedures for contract amendment:

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

- (a) The Line/Project Manager shall prepare a report to the 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:
 - (i) Short description of the project;
 - (ii) Project status;
 - (iii) Summary of Contractors performance;

- (iv) Project budget and expenditure to date;
 - (v) Proposed amendment (scope, area, associated costs, budget);
 - (vi) Reason for amendment contrary to inviting bids for the new scope;
 - (vii) Benefits arising from the amendment;
 - (viii) Cost implication and funding of such costs.
- (b) The Head of the Supply Chain Management Division must provide comments related to validity of the contract in 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.
- (c) 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.
- (d) Should the Municipal Manager support the proposed amendment, the CFO shall prepare an item for the Municipal Council using the motivation provided by the Line/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.
- (e) Once the comments are received, the Head of SCM and the CFO will advise the Municipal Manager and the Executive Director concerned.
- (f) Contract amendment shall require the signing of the addendum to the original contract by all contracting 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.
- (g) For Grant 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.

4.12 Contract Variation:

- (a) A variation order register must be developed, maintained and kept by the PMU Manager and the SCM.
- (b) 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. 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. Issues of quality, subsequent maintenance costs and materials and the completion period must be considered prior to agreeing with the variation.
- (c) The process shall entail a request letter from the Contractor to the Line/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.
- (d) The variation must be considered by the Contract Owner concerned, and once agreed upon, the Contract Variation Agreements shall be signed by all parties concerned. The Executive Directors shall inform the Chief Financial Officer for to assess the impact of the variation on the project for Assets Management and SCM purposes and information.
- (e) 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.
- (f) All the variations must be approved by the Accounting Officer.

4.12.1 Procedures for Contract Variation:

Activity	Responsible Person
The Contractor or Service Provider shall propose a variation order to the Line/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 Line/Project Manager shall consider the request and present it to the Executive Director responsible for obtaining concurrence.	Line Manager
Verify / recommended and comments in the variation by the PMU office	PMU
Budget verification	Budget Office
SCM will verify if the contract is still valid and the percentage is in line with the threshold	Line Manager
Comments by the CFO.	CFO
The Line Manager shall submit the variation to the Accounting Officer for approval.	Line Manager
The Service Provider shall be informed of the acceptance of the variation and all necessary documents shall be signed and filed.	Line Manager

4.13 Contract Contingencies:

- (a) 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.
- (b) 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.

- (c) The contingency is brought to the attention of the Line/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 Line/Project Manager and approved by the relevant Executive Director. 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. Contingency fees are normally set at a percentage not exceeding 10% of the project costs as per the bidding document.
- (d) 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.

5.1 Maintenance and Contract Administration

- (a) Contract Administration includes all administrative duties associated with a contract once it is adjudicated and implemented. No rights in terms of an awarded contract will accrue before the SCM appeal period and/or appeal has been finalised.
- (b) The contract should be signed by all parties concerned (The relevant official should also ensure that the suppliers have the delegated powers to sign and amend the Contractual Agreement). The contract will only be enforceable after all the signatures of the relevant parties are documented and the date of such enforcement shall be the date of the last authorised signature.
- (c) A signed Service Level Agreement must be compiled and signed which will incorporate all the relevant sections of the tender documentation.
- (d) All once-off purchases shall have a specified end delivery date.

5.2 Processing of Payments by the Expenditure Section

- (a) For Civil Contracts, all invoices shall be delivered to the Engineer responsible together with the Consultant report detailing the BoQ used during the period the invoice applies. After satisfying themselves with the contents of the invoice, the Consultant Report, and an Engineers Certificate shall be completed accordingly within the department by Line Manager and be submitted to Expenditure Section.
- (b) The SCM must register all the civil contract in the system and inform the Expenditure sections for all the new awards.
- (c) The PMU will link the job for the contract in the civil module for each new financial year.
- (d) The PMU will link all the budget jobs in the system.
- (e) SCM will capture all the extension of the contract after received all the relevant documentation for extensions of the tender.

- (f) Upon completion of the Engineers Certificate, a voucher for payment shall be completed and presented to the Budget and Treasury Office to confirm the vote number.
- (g) All vouchers shall be signed by the Engineer or Line/Project Manager and approved by the Executive Director/ Accounting Officer, which must be submitted to Expenditure Section for verification of validity of the contract (CSD report requirements and Municipal Rates & Services). All payment documents shall be forwarded to the Expenditure Division by the Line Manager for processing.
- (h) All queries regarding the payment shall be directed to the Engineer responsible for the function. The Expenditure Section shall complete the payment reference number on the voucher and forward yellow copy to Assets Management Unit (for use in capitalisation 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 Certificates per project follow a chronological order and that the line item used is consistent throughout the project execution and payment period.
- (i) Virements on the Capital Budget shall be done by the Chief Financial Officer in line with Council resolutions.

5.3 Contractor Performance Reporting:

- (a) The reporting of the contractor's performance is the responsibility of the Line/Project Manager.
- (b) The reporting should emanate from the Governance Structure (Project Steering Committee (PSC)) which have been established for the management and monitoring the performance of the contract (project).
- (c) The establishment of the Governance Structure (Project Steering Committee (PSC)) must form part of the terms and conditions of the SLA.

- (d) The SLA will be developed by the Line/Project Manager in consultation with the Legal Advisor of the Municipality.
- (e) Once the SLA have been finalised by the Line/Project Manager and Legal Advisor, it must be submitted to SCM for finalisation of contract documentation.
- (f) It is imperative that upon signing the Contract and Service Level Agreement that a project scorecard is completed as well. The project scorecard shall indicate the following;
 - (i) Tender
 - (ii) Tender description as per register Procurement Plan
 - (iii) Key Performance Area
 - (iv) Key Strategic Objective
 - (v) Key Performance Indicator
 - (vi) Key Activities and Milestones
 - (vii) Project Performance Evaluation Scorecard
 - (viii) Project Plan
 - (ix) Project Deliverables.
- (g) The above shall be used to appraise the project progress as well as the contractor.

5.4 Contract Administration:

Contract Administration is the function of the Line/Project Manager and shall be overseen by the Executive Director responsible. Contract Administration includes the following activities and responsibilities:

Contract Initiation	Through the SCM Processes
Negotiations	Including SCM Practitioners and BTO Officials and CFO
Appointment of Contractor/Service Provider/Consultants	Municipal Manager
Contractor Engagement and Authoring of Service Level Agreement	Line Manager and Legal Advisor
Service Level Agreement	Line Manager, Executive Director & Legal Services and signing with the Service provider by the SCM.
Contractor Invoices	Line Manager, Executive Director, BTO and Expenditure Section
Contractor Performance Reporting	Line Manager, PMU, SCM and Executive Director
Contract Amendment/Variation/Contingencies	Line Manager, PMU, Head of SCM, CFO, ED, & MM
Termination of contract	Line Manager, Executive Director, Head of SCM/ Municipal Manager, Legal Advisor
Project Close-Out	Line Manager, Assets Management, IDP Manager, ED, & PMU

5.5 Closing of contract and project sign off:

- (a) Once the terms and conditions of the contract had been fulfilled, the Contractor and Line Manager will prepare a Project Completion Certificate with the following details;
- (i) Date of commencement of the project
 - (ii) Project costs (list of all invoices submitted and the value of each)
 - (iii) Retention fees held and the release date of such
 - (iv) Project successes and challenges
 - (v) List of all variations, amounts and summary of details
 - (vi) BoQ of materials used (actual quantities versus budgeted quantities)
 - (vii) Prices (actual prices versus budgeted prices)
 - (viii) Actual timeliness of delivery under contract vs contracted timeframes
 - (ix) Review of procurement methods

- (x) Risk strategies
 - (xi) Any warranties certificates, guarantees and Standard Operating Manual where necessary
 - (xii) Confirmation of the satisfactory completion of all obligations by the other party per the contract.
- (b) All the above shall be part of the Project Certificate. The certificate shall be submitted to the Assets Management Unit for unbundling of work in progress and capitalisation.
- (c) The completion report or close-up report must be submitted to the SCM Contracts by the Line/Project Manager on completion of the project/contract.

5.6 Classification of Contracts

The Line Manager must classify the contract or groups of contracts according to the level of management intervention required, such classification should consider on the Procurement Plan per registration of the project.

- (i) Nature of Contract
- (ii) Strategic importance of the goods and services being purchased
- (iii) Contract value
- (iv) Contract duration, and
- (v) Contract complexity

6. Reporting of Bad Performance and Remedial Action

- (a) During monthly reporting, the Line/Project Manager is expected to report any concerns of performance, quality and communication from the service provider's side. In the scorecard, indication must also be made of achievement of timelines and staying within the budget without compromising quality.
- (b) The Line/Project Manager may recommend to the Executive Director and with motivation, to terminate the contract for various reasons. The Executive Director 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.

- (c) A letter to terminate a contract shall be issued only on instruction by the Contract Owner (Municipal Manager) and through the Legal Section after having complied with any provisions contained for the remedy of breach and taking cognisance of repercussions and costs after consultation with the CFO.
- (d) SCM will only consider termination of the contract upon receipt of a written approval from the Contracts Owner (Municipal Manager) supported by the Legal Advisor.
- (e) All stakeholders involved in these discussions must firstly consider any remedial action to prevent or avoid termination or litigation. The Contract Owner (Municipal Manager) may serve a 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.

7. Blacklisting of Service Providers

- (a) Bidders or contractors shall be reported to National Treasury for blacklisting under the following circumstances:
 - (i) Failure to disclose honestly, the relationship of the company, its shareholders, owners, and/or directors with any Organs of State
 - (ii) Falsified certificates,
 - (iii) Termination of contracts due to breach of contract
 - (iv) If the supplier committed any act of corruption or fraudulent during the bidding process or during the execution of the contract.
 - (v) The Municipal Manager will be informed regarding any information in contradiction with Regulation 38, and the Municipal Manager will inform the National Treasury, and the Provincial Treasury.

12.1 Performance Guarantees, Warrantees, Securities and Sureties

- (a) Guarantees of an insurance company or bank and retention monies required in engineering and construction contracts shall be in accordance with the provisions of the CIDB Standard for Uniformity in Construction Procurement – refer to Best Practice Guideline A2: Applying the procurement prescripts of the CIDB in the Public Sector dated December 2007: Edition 5 for the Minimum levels of securities generally provided for in engineering and construction contracts.
- (b) If, during the warranty period, goods do not comply with the requirements because of faulty material used during manufacture, or faulty finishing, or any deficiency, latent or otherwise, the contractor shall be requested without delay, by registered mail, to replace or repair the goods depending on the circumstances. Supplies replaced or repaired or services rendered shall be warranted for the same period as the original supplies or services. See the general conditions of contract in connection with warrantees.

14. **CESSION AND ASSIGNMENT OF CONTRACTS (will be treated with the new updated treasury regulation and circular)**

The application of Cessions and assignments is not valid according to MFMA Circular 120, Sect 2.3 and be seen to contradict Section 217 of the Constitution of the Republic of South Africa, 1996 (the Constitution) which stated fairness, transparency and competitiveness in that a contract may be executed by a person that was not the appointed bidder in a competitive bidding process or a payment may be made to a person who is not the contracted supplier / service provider.

- (a) Cession is permissible within the SCM legal prescripts. However, it is important that the application of cession in public procurement is carefully regulated to limit possible instances of abuse through fronting arrangements and similar processes. It is for this reason that the application of cession be limited only to those cession agreements in favour of registered Financial Services Providers (FSP) and state institutions

established for the express purpose of providing funding to businesses and entities (State Institution).

- (b) Therefore, cession shall only be applicable as per MFMA Circular and relevant legislation.
 - (i) Cession must only be applicable to the transfer of right to payment for services rendered by a service provider to an FSP or State Institutions.
 - (ii) The written request for cession must be by the service provider and not a third party; and
 - (iii) The written request by the service provider must be accompanied by the cession agreement.

15. POLICY REVIEW AND IMPLEMENTATION PROCESS

- (a) The Policy shall be reviewed, in line with any changes in the legislation affecting this policy, such amendments shall be submitted to the Council for approval.
- (b) This policy will come into effect on the date of Council approval or in the new financial year.