

# SOL PLAATJE LOCAL MUNICIPALITY



## CONTRACTS PERFORMANCE MANAGEMENT POLICY

*Final Reviewed version of March 2024*

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

<b>Adoption and Review</b>	<b>Council Resolution Date</b>	<b>Council Resolution number</b>
Original adoption	01 July 2017	Not applicable
Reviewed and amended	16 May 2019	C43 /05/19
Reviewed and amended	07 June 2022	C74/ 07/22
Reviewed and amended	25 March 2025	C17/03/25

<b>CONTRACT PERFORMANCE MANAGEMENT POLICY- 2023/24</b>				
<b>Item No.</b>	<b>Original Author(s)</b>	<b>Policy status</b>	<b>Council Resolution No</b>	<b>Date of Approval</b>
1	Betty Nkoe	5 <sup>th</sup> Review		
2	Name of Speaker Dipuo Peters	4 <sup>th</sup> Review		
3	Name of Accounting Officer (MM)	Signature	Date	
4	<b>Mr. SB Matlala</b>			

## Table of Contents

A. ACRONYMS AND DEFINITIONS.....	5
1. INTRODUCTION .....	9
2. OBJECTIVES .....	10
3. LEGISLATIVE AND POLICY FRAMEWORK .....	11
4. STATUTORY AND REGULATORY FRAMEWORK FOR MANAGING CONTRACTS.....	11
4.1 Application and Framework of the Contract Management Policy:.....	11
4.2 Adoption, Amendment, and Implementation of the Contract Management Policy: 12	
4.3 Application of Policy:.....	12
4.4 Basis for binding the Municipality in a Contract:.....	12
4.5 Conditions of Contract: .....	14
4.6 Administrative Capacity:.....	15
4.7 Management of Contracts: .....	15
4.8 Non-Performance of the Supplier/ contractor: .....	15
4.9 Contract Lifecycle Management:.....	16
4.10 Amendment of Contracts:.....	17
4.10.1 Procedures for contract amendment:.....	19
4.11 Contract Variation: .....	20
4.11.1 Procedures for Contract Variation: .....	21
4.12 Contract Contingencies:.....	22
4.13 Contract Budget Adjustment:.....	22
5.1 Maintenance and Contract Administration .....	24
5.2 Processing of Payments by the Expenditure Section.....	24
5.3 Contractor Performance Reporting:.....	25
5.4 Contract Administration:.....	26
5.5 Once-off Service Delivery Contracts: .....	27
5.6 Closing of contract and project sign off:.....	28
5.7 Classification of Contracts .....	29
6. Reporting of Bad Performance and Remedial Action .....	29

7. Blacklisting of Service Providers.....	30
8. ROLES AND RESPONSIBILITIES OF OFFICIALS .....	32
8.1 Municipal Manager:.....	32
8.2 The Chief Financial Officer:.....	32
8.3 Executive Directors:.....	33
8.4 Line/Project Manager:.....	34
8.4.1 The Line/Project Manager is responsible for the following activities:.....	34
8.5 The IDP Office: .....	34
8.6 The PMU Office:.....	35
8.7 Internal Audit:.....	35
8.8 Head of SCM or his / her delegate:.....	36
8.9 The Expenditure Manager:.....	36
9. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS	37
10 RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES.....	37
11. CONTRACT PRICE ESCALATIONS.....	38
12. PERFORMANCE IN TERMS OF CONTRACTS.....	39
12.1 Performance Guarantees, Warrantees, Securities and Sureties .....	39
12.2Unsatisfactory Performance: SPM's Role.....	39
12.3 Municipality's Performance: .....	40
12.4 Supplier Performance:.....	40
12.5 The following procedures need to be followed: .....	41
13. REVIEW OF CONTRACTS .....	41
14. CESSION AND ASSIGNMENT OF CONTRACTS .....	42
15. POLICY REVIEW AND IMPLEMENTATION PROCESS .....	43

## A. ACRONYMS AND DEFINITIONS

In this Policy, unless the context indicates otherwise:

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

	and successful delivery of the project according to management expectations.
<b>Contract Management</b>	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).
<b>Contract Owner</b>	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.
<b>Contract Variation or Variation Order</b>	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.
<b>Council</b>	Means the Council of the Sol Plaatje Local Municipality.
<b>CSD</b>	Central Supplier Database
<b>Delegation (in relation to a duty)</b>	Includes an instruction or request to perform or to assist in performing the duty.
<b>Executive Director</b>	Means a senior manager of the Municipality appointed in terms of section 56 of the Municipal Systems Act Delegation (in relation to a duty)
<b>Force Majeure (Act of God)</b>	Is the expression used to denote 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).
<b>GCC</b>	General Conditions of Contract
<b>IDP</b>	Integrated Development Plan
<b>IUDG</b>	Integrated Urban Development Grant
<b>KPI</b>	Key Performance Indicators
<b>Line/Project Manager</b>	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.

<b>MBD</b>	Means the Municipal Bid Documents
<b>MFMA</b>	Means the Local Government: Municipal Finance Management Act, 2003 (Act no 56 of 2003)
<b>MSA</b>	Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)
<b>Municipality</b>	means the Sol Plaatje Local Municipality;
<b>NT</b>	National Treasury established by section 5 of the Public Finance Management Act.
<b>Official (In relation to the Municipality)</b>	means: <ul style="list-style-type: none"> <li>• an employee of the Municipality.</li> <li>• a person seconded to the municipality to work as a member of the staff of the municipality; or</li> <li>• a person contracted by the municipality to work as a member of the staff of the municipality otherwise than as an employee.</li> </ul>
<b>PID</b>	Project Initiation Documents
<b>PIP</b>	Project Implementation Plan
<b>PMU</b>	Project Management Unit
<b>Price Escalation</b>	Means the changes in the cost or price of specific goods or services in a given economy over a period.
<b>Project Funding</b>	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.
<b>PSC</b>	Means Project Steering Committee
<b>SCC</b>	means the Special Conditions of Contract
<b>SCM</b>	Supply Chain Management
<b>SCM Contract Performance Manager</b>	the SCM officials responsible for Monitoring, Regulating and Reporting on all contract related activities as set out in Section 116 of the MFMA.
<b>SDA</b>	Service Delivery Agreement
<b>SDBIP</b>	means Service Delivery Budget Implementation Plan
<b>Service Level Agreement (SLA)</b>	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
<b>SLA</b>	Service Level Agreement
<b>Standard Contract</b>	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.
<b>Structures Act</b>	Local Government: Municipal Structures Act, 2000 (Act No. 117 of 1996)
<b>Users</b>	all officials as set out in the organogram of the Sol Plaatje Municipality involved with contracts.
<b>VAT</b>	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 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 regards 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 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) Section 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 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 only, the service providers must be registered in the Central Supplier Database (CSD) and Sol Plaatje Municipality Database. Most of these quotations are for once 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 the contract for the rental of 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 printer, landfill site assessment, audit reviews of the AFS, and Actuaries, etc. All documents pertaining to such procurement shall be in custody of 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 the award is made by the Bid Adjudication Committee (BAC) in line with the delegated powers. It is compulsory to enter into a Service Level Agreement for procurement of goods and services with the value exceeding R300 000.00. The level of complexity of 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.
- (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 by the Line Manager on a monthly basis/ prior to any payments or before generating official order (whichever comes first).
- (d) No order will be generated without the monitoring report for that particular month, and including the payment voucher for construction related projects.
- (e) The PMU and the SCM will share the monitoring report of all service provider of share point and the line manager will give access.

#### **4.8 Non-Performance of the Supplier/ contractor:**

- a) If the supplier after received the official order fails to deliver the goods and services as indicated in an official order within the timelines agreed with the LM and SCM. The municipality must inform the supplier and cancel an official order / or terminate the contract. The service can be requested from other service provider.
- b) 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 to be tax compliant.

- c) If the bidder is non-tax compliant before the payment of the **infrastructure project** the bidder will be notified and given 7 days to correct the tax status.
- d) 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 the 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 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 experienced 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.

#### **4.10 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 influencing 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 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).
- (i) The variation will be presented and approved at the BAC.

#### **4.10.1 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 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 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.
- (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 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 Integrated Urban Development Grant (IUDG) 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.

#### **4.11 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) The variation will be presented and approved at the BAC.

**4.11.1 Procedures for Contract Variation:**

Activity	Responsible Person
The Contractor or Service Provider shall propose 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 such to the Executive Director responsible to obtain concurrence.	Line Manager
The concurrence shall be presented to the Budget and Treasury Office, Assets Management Unit for their analysis.	Line Manager
The Line Manager shall liaise with the CFO with all the inputs received thus far for recommendation to approve to the Accounting Officer	Line Manager
The Line Manager and CFO shall submit the variation to the Accounting Officer for approval.	Line Manager/CFO
The Service Provider shall be informed of the acceptance of the variation and all necessary documents shall be signed and filed.	Line Manager
The PMU and SCM must be informed, and copy must circulate	Line Manager

#### **4.12 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.

#### **4.13 Contract Budget Adjustment:**

- (a) Projects where 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.

- (b) 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:

<b>Where the amount of the project awarded far exceeds the budget – Capital</b>	
Confirmation of funding of project.	Chief Financial Officer or Delegate
Successful bidder price exceeds the budget.	Negotiate scope reduction to align award amount with available funds
Successful bidder price exceeds the budget.	Approval by Municipal Manager with the commitment to adjust project funding. 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
<b>Where the project is overspending</b>	
Oversee project implementation against project plan which is addendum to the Service Level Agreement entered into.	Line/Project Manager
Monitor claims against BoQ or project costing as per MBD1.	Line/Project Manager
Query any claims that exceed BoQ as per tender documents upon receipt of invoices.	Line/Project Manager
Obtain clarification from Contractor/Consultants on claims/quote variations, and the impact of the variation on entire project budget/costs	Line/Project Manager
If clarification is satisfactory, report in writing to BTO the implications of the variances.	Line/Project Manager
Inform the CFO of imminent changes in project costs and impact on total project budget.	BTO
Approval of invoice for payment.	Senior Manager/CFO
Perform project budget forecast	Line/Project Manager and BTO
Advise CFO on projections and for noting for budget adjustment budget.	Senior Manager or Line/Project Manager and BTO

## **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 and the SCM will verify and authorise.
- (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, 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 & Head of SCM.
Contractor Invoices	Line Manager, Executive Director, BTO and Expenditure Section
Contractor Performance Reporting	Line Manager, PMU 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 Once-off Service Delivery Contracts:

(a) It is advised that for a contract appointment with a value above R200 000.00 and the nature of appointment is services related, that a Service Level Agreement be entered into for the purposes of specifying;

- (i) Nature of services (scope of work)
- (ii) Service standards and compliance requirements
- (iii) Timelines
- (iv) Claims procedures and milestones
- (v) Quality of reports
- (vi) Timeframes
- (vii) Progress report and meetings
- (viii) Contract Termination Clauses
- (ix) Address nominated by a party in a legal contract (Domicilia).

- (b) Where the contract involves delivery of goods, the appointment letter should state all of the above as preconditions, and such appointment letter will serve as an annexure to the contract. Quality and place become critical for delivery and invoicing.

## **5.6 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.

## **5.7 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) False CIDB or fraudulent CIDB Certificates
  - (iii) False or fraudulent Tax Clearance Certificates
  - (iv) False or fraudulent Municipal Accounts
  - (v) Termination of contracts due to breach of contract
  - (vi) If the supplier committed any act of corruption or fraudulent during the bidding process or during the execution of the contract

- (vii) Termination of a contract may be considered for variety of reasons, as stipulated in the general conditions of contract, such as delayed deliveries, failing to perform or if the supplier is engaged in corrupt and fraudulent activities.
  - (viii) All communication must be done in writing and such evidence must form part of the termination of the contract and must be developed and submitted by the Line Manager to the Municipal Manager and Legal Advisor.
- (b) 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. Once the finding is confirmed, a report from the Line Manager responsible for that contract or Service Level Agreement must be obtained with regards to the project status. The Service Provider may be requested to finish the project as soon as it is practical and vacate the site with immediate effect.
- (c) Such Service Provider will also be blacklisted using the SPM internal blacklist register controlled by the Head of SCM and the Bid Committees shall be informed of the Blacklisted Bidders to avoid of making further awards to the Company in future.
- (d) 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.
- (e) The Blacklist Register shall have the following information:
- (i) Name of the Bidder/Company, including the name whereby Trading as (t/a)
  - (ii) Company registration details
  - (iii) VAT Number
  - (iv) Tender reference number

- (v) Copy of MBD4
  - (vi) Report prove false declaration
  - (vii) Copy of letter sent to the Bidder and their response if any
  - (viii) Letter of notice of blacklisting.
- (f) Only the BEC, BAC and Legal Services shall have access to this report. The register shall be signed off by Municipal Manager in consultation with the Head of Legal Services of the Municipality.

## **8. ROLES AND RESPONSIBILITIES OF OFFICIALS**

### **8.1 Municipal Manager:**

- (a) The Municipal Manager appoints successful bidders, whilst the Chief Financial Officer signs and issues all letters of notices to unsuccessful bidders per bid. The appointment letter includes the signing of the MBD7 – form of contract which must be accepted by the Bidder.
- (b) In cases where a Service Level Agreement is entered into, the Municipal Manager or his delegate may sign the SLA upon advice by Legal Services of the Municipality. The Municipal Manager further delegates contracts management to the Executive Director responsible.

### **8.2 The Chief Financial Officer:**

- (a) The Chief Financial Officer is the custodian of the Supply Chain Management Policy and must ensure compliance across the organisation for all procurement financial thresholds. The Chief Financial Officer is also responsible for the updating of the Supplier Database, and by sub-delegation to the Supply Chain Management Section, issues order as per requisitions and arrange for the delivery of items.



- (b) The Chief Financial Officer is also the Chairperson of the Bid Adjudication Committee and as such must report all bids awarded to the Municipal Manager. The Chief Financial Officer must oversee the updating of the Tender and Contracts Registers and ensures completeness and compliance of such. The Chief Financial Officer may sign Contracts and Service Level Agreements as and when necessary and when delegated by the Municipal Manager to.
- (c) The Chief Financial Officer Co-ordinates Contract Performance Reporting to Council for the Municipal Manager.

### **8.3 Executive Directors:**

The Executive Director is the custodian of the contract/project and is responsible for the following activities:

- (x) Ensuring that all the necessary legal formalities in entering into the contract are adhered to;
- (xi) Ensuring that purchase orders are processed on the Financial System in accordance with the pricing schedule;
- (xii) Maintaining adequate records (paper and/or electronic) in sufficient detail on an appropriate contract file to provide an audit trail;
- (xiii) Inform the Asset Management Section of the Expenditure Department of the location of newly procured assets for Asset Register and insurance purposes; and
- (xiv) Where appropriate, in terms of Council's Delegations, authorise invoices due for payment;
- (xv) To take appropriate action in consultation with the Senior Manager and the SCM Contract Administrator, where a contractor is underperforming or is in default or breach of the contract;
- (xvi) Ensure performance of suppliers is managed appropriately to the terms and conditions of the contract.

#### **8.4 Line/Project Manager:**

- a) The Executive Director is responsible for ensuring that Line/Project Manager are assigned to all contracts.
- b) The Line/Project Manager must coordinate the signing of contracts with the relevant service provider, in line with the Delegation of Powers and Duties Policy. However, the Executive Director is ultimately accountable for the contract.

##### **8.4.1 The Line/Project Manager is responsible for the following activities:**

- (a) Proper records regarding all aspects of the contract must be maintained and kept in accordance with relevant legislation by the Line/Project Managers. All communication related to contracts must be linked to the master document on the electronic system, by the relevant official.
- (b) Safe custody of all contract documents must be enforced by all relevant users. Line/Project Manager and Senior Managers are responsible for the electronic capturing of the contract information and maintenance thereof on the Contract Management system;
- (c) The original signed contract must be kept at the SCM Contract Management office for safekeeping and storage, and a copy sent to the Line/Project Manager office for safekeeping and storage at their records department. The SCM Contracts Management office is responsible for the administration of archived contract documentation.

#### **8.5 The IDP Office:**

- (a) The IDP Office is responsible for coordinating performance reporting, as such, once a bid has been awarded, the IDP Office must be provided with the Project Implementation Plan (PIP or PID), to note the delivery timelines and milestones relevant for reporting purposes. Monthly, the IDP Office will receive a Project Scorecard pertaining to the activities of the month and these will be reported against the PIP or PID for performance

reporting purposes. Performance report Service Delivery Budget Implementation Plan per project must be forwarded to SCM Contracts Management monthly by the IDP Office for audit purposes.

- (b) The IDP Office will liaise with the Line/Project Manager with regards to targets against the actual and coordinate the Top Layer SDBIP which may incorporate indicators accomplished by way of SLA. The IDP Office may be provided with the copy of the SLA as part of the KPI file necessary for performance reporting.

### **8.6 The PMU Office:**

- (a) 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.
- (b) The PMU is the custodian of layout plans/designs of projects (Civil/Town Planning/Engineering). Minutes of site meetings 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. Project Grant Expenditure reports must be submitted on a monthly basis to SCM Contracts Management for audit purposes by the PMU office.

### **8.7 Internal Audit:**

- (a) 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 procedures is to check the validity of contracts and the level of risk exposure of the municipality and how the contract mitigates this risk.

- (b) 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.
- (c) As part of Auditing Performance, the Internal Audit Section may assess the adherence to the PID or PIP and make recommendations to management.

### **8.8 Head of SCM or his / her delegate:**

The Head of Supply Chain Management Unit or his/her delegate, through the Contracts Administrator is responsible for system administration, status and reporting on all contracts related activities.

- (a) Ensure that the SLA and contracts are signed by all relevant stakeholders involved.
- (b) Monitor on monthly basis the expiry of the contracts and the resubmission of new procurement plan.
- (c) Ensure that the established PMU / Line Manager provide the Monitoring performance management report to SCM on monthly basis and must be uploaded on the existing SharePoint.
- (d) Report to the CFO on performance of all contracts in connection with
  - (i) delayed projects,
  - (ii) suspended projects arising from objection by other bidders,
  - (iii) lack of capacity for the appointed bidder to implement the project,

### **8.9 The Expenditure Manager:**

- (a) Expenditure Management Section is responsible for the processing of payments based on terms and conditions of all contracts entered into. Expenditure Control Section must be provided with BoQ, PIP or PID, milestones and payment schedules for each contract.

- (b) The Section must make sure that the contract clearly describes the project, the cost centre, the Line/Project manager, funding sources and the responsible person so that all signatures as per the payment documents are matched with the SLA.
- (c) The Section must also test compliance with Value Added Tax Guidelines as well as with SCM compliance in so far as facilitating payment is concerned. The control of banking details of all contractors is exercised by the Demand Management Section and Expenditure Section uses the Creditor reference number for payments purposes.
- (d) The section records payments against a project based on the sequential numbering of payment certificates duly signed by the Engineer of the Line/Project Manager, referring to supply chain bid reference numbers, must be forwarded to SCM Contracts Administrator monthly. The Expenditure Section monitors progress payments made against the awarded amount and must report any over-expenditure to the Executive Director, Supply Chain Manager and CFO.
- (e) It is the function of the Expenditure Section to identify any irregular expenditure incurred and report these prior to payment to the CFO to verify if the expenditure/payment is irregular and shall receive further instruction from the CFO.

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

The 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.

## **10 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.

## 11. CONTRACT PRICE ESCALATIONS

- (a) There are requirements that must be complied with for requests for price escalation during the implementation of contracts for procurement of Goods and Infrastructure Projects under extraordinary circumstances pursuant to and in accordance with MBD 3.2.
- (b) The extraordinary circumstances refer to event or occurrence or series of events or occurrences during contract implementation which gives rise to price escalation. These occurrences or events are unforeseen and inevitable as a result of nature or Act of God.
- (c) An appropriate Contract Price Adjustment formula or specified terms of escalation must be specified in the bid documents.
- (d) Escalation notification must be in writing and presented before the implementation date thereof.
- (e) Line/Project Managers 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 they must keep proof of evidence to the newly agreed escalations on the system for all other relevant stakeholders to access.
- (f) No contract price escalation for consulting services shall be allowed.
- (g) In the case of fixed price contract, no price adjustment can be made within the first 12 months cycle by the successful bidder from the commencement date of the project.
- (h) In the case of non-fixed contract, only where local content, import exchange rate is applicable, according to MFMA circular 62, price adjustment can be made within the first 12 months cycle by the successful bidder through a written application given reasons for such adjustment.

## **12. PERFORMANCE IN TERMS OF 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).

### **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.

### **12.2 Unsatisfactory Performance: SPM's Role**

- (a) Unsatisfactory performance shall be communicated to contractors in writing compelling the contractor to perform according to the contract and thus to rectify or to restrain from unacceptable actions.
- (b) Unsatisfactory performance occurs when performance is not in accordance with the contractual conditions. Directives regarding action in such cases should appear in the general conditions of contract.

- (c) Before action is taken in terms of the general conditions of contract or any other special contract condition applicable, SPM shall warn the contractor by registered mail that action will be taken in accordance with the contract conditions unless the contractor complies with the contract conditions and delivers satisfactory supplies or services within a specified reasonable time. If the contractor still does not perform satisfactorily despite a final warning, the SCM Unit may make a recommendation to the MM or the delegate for the appropriate penalties to be introduced or make a recommendation to the MM for the cancellation of the contract concerned.
- (d) When SPM has to satisfy its need through another provider (for the contractor's expense), the loss to SPM shall always be restricted to the minimum since it is difficult to justify the recovery of unreasonable additional costs from the contractor.

### **12.3 Municipality's Performance:**

- (a) The municipality is required to pay creditors within 30 days of receiving all relevant invoice statements.
  - (i) The municipality is also required to create a favourable environment to receive services and goods without preventing the supplier to perform their duties.
  - (ii) All parties involved must perform according to the terms and conditions of the relevant contract, while the contract is active.

### **12.4 Supplier Performance:**

- (a) **The supplier of goods and services** is required to perform as per terms and conditioned agreed upon and should inform the Municipality if circumstances prevent them to perform, with reasons provided, within **5 working days** (to be included in all contracts).
- (b) **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.



- (c) **Supplier's performance will be reviewed** by Sol Plaatje Municipal Officials / Line/Project Managers on a monthly basis (**every 30<sup>th</sup> of the month**) giving effect to section 116 of the MFMA, 2003 and the Performance Management System Implementation Policy.
- (d) **Prescribed procedures** to evaluate Service Providers must be complied with (Refer to the Performance Management Framework Policy)

#### **12.5 The following procedures need to be followed:**

- (a) The requirements of this policy must be included in the contract of the Service Provider.
- (b) The performance of the Service Provider under the contract or **Service Level Agreement must be assessed monthly** by the Line/Project Manager.
- (c) The assessment must be completed in the Contract Management System.
- (d) The Line/Project Manager must complete the Service Provider Assessment on the Contract Management System at the end of each month.
- (e) 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).
- (f) The Line/ Project Manager must provide an electronic copy of the assessment to the Service Provider, PMU and SCM, at the end of each quarter, assessment period.
- (g) SCM will review quarterly Service Provider assessments **within 20 days** after the submission by the line manager and PMU end of each quarter and submit a summary report to Council.
- (h) The Line Manager and PMU submit supplier's performance reports which is signed by the ED to the SCM Contract Administrator.

### **13. REVIEW OF CONTRACTS**

- (a) 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.
- (b) The Executive Directors or Line/Project Managers must conduct a review within 3 months after the expiry of contracts, post contract review.

- (c) The expired contract can only be renewed once within **three (3) months** after it has expired.

## **14. CESSION AND ASSIGNMENT OF CONTRACTS**

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.

### **14.1 Assignment of Contracts**

Clause 19 of the General Conditions of Contract (GCC) makes provision for assignment of contract. Clause 19 of the GCC provides that "a supplier (or service provider) shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent". However, as stated above, transfer of rights and obligation of the service provider with or without consent of an organ of state is against the principles of section 217 of the Constitution and is therefore not allowed. National Treasury is currently in the process of reviewing the GCC.

#### **14.1.2.1 Cession of Contracts**

- (a) Cession refers to the transfer of only the rights a service provider has in terms of a contract from it to a third party. In commercial contracts, the main right involved is the right to be paid for services rendered. While the appointed bidder remains the service provider that continues to render the services, the service provider may cede (transfer) its right to be paid for the services it rendered in terms of the contract to a third party. This means that the service provider renders the services to an organ of state,

while the organ of state pays for the services rendered to a third party instead, most commonly, a financial institution.

- (b) 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).
- (c) Therefore, cession shall only be applicable as follows: MFMA Circular No 120 Cession and Assignment of Contracts August 2022 Page 3 of 3
  - (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 the process for budget-related policies.
- (b) When there are any changes in the legislation affecting this policy, such amendment shall be submitted to Council for approval.
- (c) This policy will come into effect on the date of Council approval.