

# DRAFT CONTRACT MANAGEMENT POLICY AND PROCEDURE FOR UTHUKELA DISTRICT MUNICIPALITY

## PRE-AMBLE

All transactions undertaken by the UThukela District Municipality 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 escalation clauses in contracts) time period and qualities of the goods and services procured.

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

Improperly managed contracts may impact negatively on service delivery.

Adverse effects of poor contract management include but are not limited to:

1. goods and services outside of specification;
2. poor supplier, buyer or other stakeholder relations;
3. negative public perception, and
4. potentially complete service delivery failure.

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 coincidence with the SCM Policy of the Uthukela District Municipality.

## 1. DEFINITIONS:

In this Policy, unless the context indicates otherwise-

<b>Bid</b>	A written offer or stipulated form, in response to an invitation by an institution for the provision of services or goods, > R200 00, in value.
<b>Cession</b>	Means when a contract/agreement is relinquished to another individual/institution.
<b>Closeout</b>	Means when a contract is considered

complete and the service provider has complied with all terms and conditions of the contract, and the Institution has inspected and accepted the goods/services and/or works.

**Consortium**

A consortium is an association of two or more individuals/companies with the objective of participating in a common activity or joining their resources to achieve a common goal.

**Contract**

Agreement (explicit or implied) legally binding two or more parties to the terms of the agreement.

**Contract Administrator**

Means the official that is responsible for the continuous updating of the contract register and management and control of all documentation relating to the contract.

**Contract Amendment**

Means changing the scope, nature, duration, purpose or objective of the agreement or contract.

**Contract Life Cycle**

The stages of a contract encompassing planning, creation, collaboration, execution, administration and closeout or renew.

**Contract Management**

Means the holistic term for all activities in the contract lifecycle that is undertaken by all role players involved in a contract and include the, Contract Manager, Contract Owner, contract champion and supplier.

**Contract Manager**

Means the official responsible for overall contract management in an institution.

**Contract Owner**

Means the official that is ultimately accountable for the deliverables during the contract lifecycle relevant to the service delivery target that the contract seeks to achieve.

**Contract Price**

The all-inclusive price of the contract over the complete duration of the contract and includes price escalations, cost of contract variations, disbursements, VAT, etc.

**Service provider**

The contracting party that represents a Supplier, Service Provider or Vendor.

<b>Deliverable</b>	Any measurable, tangible, verifiable outcome, result or item that must be produced, delivered or constructed to meet the strategic objectives and service delivery targets of an institution.
<b>Extension</b>	Means when an institution decides to increase the term of a contract/agreement mutually agreed upon in writing, but for no longer than six months in terms of Treasury Regulations.
<b>Finance Lease</b>	A lease that transfers substantially the risks and rewards of ownership of an asset.
<b>Memorandum of Understanding (MOU)</b>	<p>a) A Memorandum of Understanding (MOU) is a legal document describing a bilateral agreement between parties.</p> <p>b) It expresses a convergence of will between the parties, indicating an intended common line of action, rather than a legal commitment.</p> <p>c) It is a more formal alternative to a gentlemen's agreement, but generally lacks the binding power of a contract.</p> <p>d) It is usually selected in agreements between Public Entities or between a Public Entity and a Non-Profit Organisation, and does not involve an exchange of goods, services and/ or works for payment.</p>
<b>Memorandum of Agreement (MOA)</b>	<p>a) A MOA is a contract between parties that defines the obligations of all parties to co-operate on an agreed project or meet an agreed objective.</p> <p>b) The purpose of an MOA is to have a written understanding of the agreement between parties.</p> <p>c) The MOA can also be a legal document that is binding and hold the parties responsible to their commitment or simply just a partnership agreement.</p>
<b>Lease</b>	a) This is a legally binding agreement through which the state will be assigned the right to use an asset owned by a service

provider, for the duration of a specified period, in exchange for a series of specified payments.

b) A finance lease is a lease in which all of the risks and rewards related to ownership are transferred from the lessor to the lessee.

c) An operating lease is a lease in which the risks and rewards associated with ownership are not transferred to the lessee but instead are retained by the lessor.

d) Contracts that are classified as leases include contracts for technological devices such as printers and photocopiers, leases for fleet, as well as contracts for property rentals.

e) The parties to the lease agreement are the Lessor and the Lessee.

### **Service Level Agreement (SLA)**

a) A SLA is a contractual agreement that is legally binding and entered into by a Service provider and an Institution that specifies services that will be rendered, in lieu of specified payment.

b) It is a contract between parties, which details the nature, quality, cost and scope of the service to be provided over a specified period of time.

## 2. ABBREVIATIONS:

<b>AA</b>	Accounting Authority
<b>AO</b>	Accounting Officer
<b>ASB</b>	Accounting Standards Board
<b>CLMS</b>	Contract Life-Cycle Management System
<b>CMD</b>	Contract Management Database
<b>ECM</b>	Electronic Content Management
<b>GCC</b>	General Conditions of Contract
<b>GRAP</b>	Generally Recognised Accounting Practice
<b>MFMA</b>	Municipal Finance Management Act, Act No. 56 of 2003
<b>MOA</b>	Memorandum of Agreement
<b>MOU</b>	Memorandum of Understanding
<b>MTEF</b>	Medium Term Expenditure Framework
<b>NT</b>	National Treasury
<b>PPP</b>	Public Private Partnership
<b>SBD</b>	Standard Bidding Documents
<b>SCC</b>	Special Conditions of Contract
<b>SCM</b>	Supply Chain Management
<b>SCOA</b>	Standard Chart of Accounts
<b>SLA</b>	Service Level Agreement

### **3. PURPOSE OF THE POLICY**

The objective of Uthukela District Municipality procurement contracting is to acquire goods, services and/ or works and to carry out contracts in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Municipality and the people of District at large.

The intention of this Policy Framework is to define the parameters and set out a clear basis for the creation and application of appropriate processes and procedures that should result in efficient and value-adding procedures within Municipality in accordance with the prescribed legal, financial and ethical requirements. It will assist to properly deliver the required outputs with clarity, effectiveness and accountability, and to further enable standard application of the required processes, thereby resulting in accuracy and consistency in decision-making.

### **4. OBJECTIVES:**

#### **4.1 To give effect to Section 217 of the Constitution of South Africa (1996) that stipulate:**

4.1.1 When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is:

4.1.1.1 equitable

4.1.1.2 transparent

4.1.1.3 competitive

4.1.1.4 cost-effective and

4.1.1.5 fair

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

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

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

4.2.3 management of Contract Performance;

4.2.4 compliance with the regulatory framework;

- 4.2.5 to assist officials in understanding their legal and managerial responsibilities with regards to contract management;
  - 4.2.6 the optimization of efficient and sustainable financial wellbeing of the municipality, resulting in lower cost drivers, and
  - 4.2.7 the continuous development of effective Management Information systems, resulting in strategic support and risk preventions.
- 4.3 To ensure that no contract procurement takes place outside of the SCM System.

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

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

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

5.1.1.1 Section 217 of the Constitution;

5.1.1.2 Section 116 of the MFMA;

5.1.1.3 Section 33 of the MFMA;

5.1.1.4 SCM Policy; and

5.1.1.5 any other regulations pertaining to Municipal Supply Chain Management

5.1.2 This Policy applies when the Municipality:

5.1.2.1 procures goods or services;

5.1.2.2 disposes of goods no longer needed; and

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

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

5.2.1 The accounting officer must:

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

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

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

### **5.3 Conditions of Contract**

- 5.3.1 A contract or agreement procured through the Supply Chain Management System of the Municipality must:
  - 5.3.1.1 be in writing;
  - 5.3.1.2 stipulate the terms and conditions of the contract or agreement, which must provide for:
    - 5.3.1.2.1 the termination of the contract or agreement in the case of non- or underperformance;
    - 5.3.1.2.2 dispute resolution mechanisms to settle disputes between the parties;
    - 5.3.1.2.3 a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and
    - 5.3.1.2.4 any other matters that may be prescribed.

### **5.4 Contract Documentation**

- 5.4.1 A valid contract is concluded and becomes binding when a bidder's bid is accepted by the Municipality against an official purchase order and a signed letter of acceptance, by an authorized person, has been sent before the validity period has expired.
- 5.4.2 The contract concluded must consist of:
  - 5.4.2.1 The GCC issued by the National Treasury;
  - 5.4.2.2 Where applicable, SCC that enhance the GCC in relation to the specific goods, services and/ or works procured;
  - 5.4.2.3 Submitted bid documents;
  - 5.4.2.4 Documentation for the claiming of preferential procurement points;
  - 5.4.2.5 Tax clearance certificate; and
  - 5.4.2.6 Letter of acceptance.
- 5.4.3 Contracts relating to information technology must be prepared in accordance with the State Information Technology Act, 1998 (Act 88 of 1988), and any regulations issued in terms of that Act.

### **5.5 Standard Bidding Documents**

- 5.5.1 All contracts must be based on the GCC, issued by the National Treasury. Where no relevant standard bidding documents (SBD) have been issued, the institution should use other internationally recognized standard contract forms acceptable to the AO, in concurrence with the relevant Treasury.

- 5.5.2 The standard wording of the GCC must not be amended. The standard bid documentation and GCC issued by the Construction Industry Development Board (CIDB) must be utilized in cases of bids related to the construction industry.
- 5.5.3 The bid documents should clearly state the type of contract to be entered into and contain the appropriate contract provisions.
- 5.5.4 Reimbursable cost contracts should be acceptable only in exceptional circumstances, such as contracts with conditions of high risk or where costs cannot be determined in advance with sufficient accuracy. Such contracts should include appropriate incentives to limit costs and may only be concluded subject to the approval of the AO.

## **5.6 Contract File**

- 5.6.1 A contract file should be opened for each contract that includes the following documentation:
  - 5.6.1.1 Letter of Award;
  - 5.6.1.2 Purchase Order;
  - 5.6.1.3 A contract, signed by all parties post-award;
  - 5.6.1.4 All correspondence between the contracting parties;
  - 5.6.1.5 Record of payments;
  - 5.6.1.6 Evidence of delivery as provided for in the agreement;
  - 5.6.1.7 Record of amendments to the contract (including extension of time frames or expansion of scope);
  - 5.6.1.8 Record of reviews and audits conducted on the contract; and
  - 5.6.1.9 Risk assessment reports, where applicable.

## **5.7 Contract Register**

- 5.7.1 A contract register should be created and updated regularly. This register should include the following information:
  - 5.7.1.1 Contract identifiers (unique ID, corresponding bid/ quotation/ requisition number and purchase order number);
  - 5.7.1.2 Contract type and category;
  - 5.7.1.3 Service provider identifiers (Name of appointed bidder, Provincial database registration number, type of service provider);
  - 5.7.1.4 Description of Goods/Services/Works/Projects;

- 5.7.1.5 Contract Value (if applicable, include percentage escalation and any other financial value);
- 5.7.1.6 Contract period (start date, end date, duration, extension date where applicable, and early termination date where applicable); and
- 5.7.1.7 Payment history (milestones/deliverables, actual dates of payment, payment penalties levied).

## **5.8 Administrative Capacity**

- 5.8.1 The relative Departmental Manager or Official, with delegated powers from the Accounting Officer, as contract owner must establish capacity in the administration of the municipality to:
  - 5.8.1.1 assist the Accounting Officer in carrying out the duties set out in section 116(2) of the MFMA; and
  - 5.8.1.2 to oversee the day-to-day management of the contract or agreement.

## **5.9 Management of Contracts**

- 5.9.1 The Accounting Officer and delegated officials (departmental heads) must take all reasonable steps to:
  - 5.9.1.1 ensure that a contract or agreement procured through the supply chain management policy of the municipality is properly enforced;
  - 5.9.1.2 monitor on a monthly basis the performance of the contractor under the contract or agreement.
  - 5.9.1.3 administrate the contract with the necessary competencies and delegations, ensuring effective management of contracts.
- 5.9.2 The Contract Owner ensures that contract champions submit suppliers' performance reports to the contract administrator within 5 business days after the end of each month.
- 5.9.3 The Contract Owners submits a consolidated report for their Department to the Contracts Administrator within 10 business days after the end of each quarter.
- 5.9.4 The Contracts Administrator submits a consolidated report on the performance of contracts or agreements to the Accounting Officer within 15 business days of the end of each quarter.

## **5.10 Amendment of Contracts**

- 5.10.1 A contract or agreement procured through the supply chain management policy of the municipality may be amended by the parties, in exceptional circumstances in order to

mitigate abuse, in perception after the fact to prevent financial inefficiencies and influencing financial sustainability.

5.10.2 Amendments (through the transparent SCM procedures) may only be made after:

5.10.2.1 the reasons for the proposed amendment have been tabled in the council; and

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

5.10.2.3 the local community has been invited to submit representations to the municipality.

5.10.3 Amendments of contracts where the expansion or variation is not more than

5.10.3.1 20% (construction related goods, services and/or infrastructure projects), and

5.10.3.2 15% (all other goods and/or services) of the original value of the contract, must be submitted directly to the Contract Management Officer for approval and further reference to the SCM committee system for approval.

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

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

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

5.10.7 When an amendment has a budgetary implication for a term longer than 3 (three) years, section 33 of the MFMA will apply to such an amendment.

## **6. MAINTENANCE AND CONTRACT ADMINISTRATION**

6.1 Contract administration includes all administrative duties associated with a contract once it is implemented.

6.2 No rights in terms of an awarded contract will accrue before the appeal period and/or appeal has been finalized.

- 6.3 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).
- 6.4 The contract will only be enforceable after all the signatures of the relevant parties are documented. (Signatures must include the initial on all pages by delegated persons and witnesses).
- 6.5 A signed service level agreement (if applicable) must be compiled and signed which will incorporate all the relevant sections of the tender documentation.
- 6.6 All once-off purchases shall have a specified end delivery date.

## **7. ROLES AND RESPONSIBILITIES OF OFFICIALS:**

### **7.1 Contract Manager**

7.1.1 The Contract Manager is tasked with the following:

7.1.1.1 Establish procedures and guidelines for managing all contracts.

7.1.1.2 Authorize payments consistent with the contract terms and conditions of payment.

7.1.1.3 Manage risks and resolve disputes in a timely manner.

7.1.1.4 Maintain appropriate records.

7.1.1.5 Monitor performance data and address non-performance.

7.1.1.6 Be the first line of dispute resolution.

7.1.1.7 Receive and consider performance reports from the service provider.

### **7.2 Contract Administrator**

7.2.1 The contract administrator is tasked with the following:

7.2.1.1 Keep all contract records, including bid documents, letters of awards, purchase orders, signed contract documents and amendments or variations to the contract.

7.2.1.2 Create and maintain the contract registers.

7.2.1.3 Manage contract amendments and variations – including scope variations, extension of contract periods, renewal and others.

7.2.1.4 Institute penalties and issue warning letters to non-performing service providers.

7.2.1.5 Recommend the processing of payments after verifying performance with Contract Manager.

7.2.1.6 Conduct regular legal and financial reviews of contracts.

7.2.1.7 Open and close projects on the contract management system.

### **7.3 Contract Owner/Champion**

7.3.1 The contract owner is tasked with the following:

7.3.1.1 Monitor the service provider's progress and performance to ensure goods, services and/ or works conform to the contract requirements.

7.3.1.2 Regular meetings with the service provider to review progress, discuss problems and consider necessary changes.

7.3.1.3 Consider project reports to advise the Contract Administrator of the performance or non-performance of the service provider and risks associated with the project.

7.3.1.4 Recommend the processing of payments consistent with the contract terms and conditions of payment.

7.3.1.5 Participate, as necessary, in developing the bid documents (specifications, scope and standards of delivery), as well as contract documents.

7.3.1.6 Resolve operational issues as they arise.

7.3.1.6 Generate change requests.

### **7.4 Legal Services**

7.4.1 Legal services section should be tasked with the following:

7.4.1.1 Establish the type of contract required.

7.4.1.2 Negotiate heads/terms of agreement.

7.4.1.3 Draft contract documents, based on Provincial templates and bid documents for specific contracts.

7.4.1.4 Oversee the signing of contracts.

7.4.1.5 Resolve disputes.

### **7.5 Internal Audit**

7.5.1 Internal Audit (Contract reviewers) are tasked with the following:

7.5.1.1 Conduct scheduled audits of contracts, based on the provisions of this policy framework.

7.5.1.2 Establish if sufficient checks and balances exist in the contract management life cycle.

7.5.1.3 Internal Audit must conduct scheduled audits of the document and information systems that are set up in the Municipality. The audit should verify that:

- 7.5.1.3.1 Checks and balances are being implemented for system access controls designed to ensure unauthorized employees do not have access to, and cannot amend or alter, contract information.
- 7.5.1.3.2 Contract files and contract registers exist, and are a true record of the status of the contracts.
- 7.5.1.3.3 Payments are made on the basis of verifiable proof of delivery of goods, services or works as provided in the contract.
- 7.5.1.3.4 The Municipality conducts periodic quality assurance reviews of the information in the register.
- 7.5.1.3.5 Payments are made in accordance with the terms and conditions of the contract.

**7.6 The contract owner is ultimately accountable for the contract.**

## **8. RECORD KEEPING**

- 8.1 Proper records regarding all aspects of the contract must be maintained and kept in accordance with relevant legislation.
- 8.2 All communication related to contracts should be linked to the master document on the electronic system.
- 8.3 Safe custody of all contract documents must be enforced by all relevant users.
- 8.4 Users are responsible for the electronic load and feedback of contract/s to the operating system in conjunction with the records/registry section.

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

Uthukela District 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 and also as required by section 116(1) of the MFMA and SCM Policy.

## **11. CONTRACT PRICE ESCALATIONS:**

- 11.1 An appropriate contract price adjustment formula must be specified in the bid documents if deemed necessary.
- 11.2 Escalation notification must be in writing and presented before the implementation date thereof.

## **12. PERFORMANCE ON CONTRACTS:**

- 12.1 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 authorized supply chain management processes were followed and whether the objectives of this Policy were achieved in terms of the Performance Management System.

### **12.1.1 Municipality's Performance:**

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

### **12.2.1 Supplier Performance:**

- 12.2.1.1 The supplier of goods and services is required to perform as per terms and conditioned agreed upon and should inform the municipality if circumstances prevents them to perform, with reasons provided, within 5 working days (to be included in all contracts).
- 12.2.1.2 For all relevant deviations from the agreed terms and conditions of any contract, the key performance indicators (KPI's) should be reviewed as well as the alignment with the strategic objectives established in the IDP.

## **13. CONTRACT REVIEWS**

- 13.1 When the Municipality is not satisfied or there are problems with the service provider's performance, the Municipality must:

- 13.1.1 Review the conditions causing the problems and determine whether or not the Municipality itself has significantly contributed to the problem;
- 13.1.2 Review the contract and other relevant documentation in order to identify the rights and responsibilities of each party; and
- 13.1.3 Notify the service provider in writing that their performance does not comply with the terms and conditions set out in the contract.
- 13.1.4 The written notification sent to the service provider should clearly identify the following:
  - 13.1.4.1 The problem so as to avoid any misunderstanding;
  - 13.1.4.2 The corrective actions that are to be taken;
  - 13.1.4.3 The time frame allowed for the service provider to address and correct the problem; and
  - 13.1.4.4 The consequences that would arise in the event that the problem is not corrected within the specified period.
- 13.2 In terms of section 116 (1) of the MFMA, a contract or agreement procured through the Supply Chain Management system must have a periodic review once every three years in the case of a contract or agreement that are longer than three years.
- 13.3 The contract owner or champion must conduct, as appropriate, post contract reviews, (at least once a year for contracts longer than 3 years);
- 13.4 Provide contract information to the contract manager and Supply Chain Management unit after a contract has expired.
- 13.5 Conduct a contract risk assessment at the review phase of the contract life cycle.

#### **14. EFFECTIVE DATE**

This policy will be effective from the date approved by Council of the UThukela District Municipality