

OVERSTRAND MUNICIPALITY



CONTRACT MANAGEMENT POLICY

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1. PRE-AMBLE

All transactions undertaken by the Overstrand 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:

- 1.1 goods and services outside of specification;
- 1.2 cost overruns;
- 1.3 poor supplier, buyer or other stakeholder relations;
- 1.4 negative public perception, and
- 1.5 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 Overstrand Municipality.

2. DEFINITIONS:

In this Policy, unless the context indicates otherwise-

Accounting Officer <i>(in relation to a municipality)</i>	means the municipal official referred to in section 60 of the MFMA (2003); and include a person acting as the accounting officer.
Act or MFMA	Means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
Circular 62	means communication from National Treasury by means of a Circular to enhance compliance and accountability to SCM Regulations and the MFMA of 2003.
Construction Industry Development Board (CIDB):	means the Construction Industry Development Board (CIDB), a national body established by an Act of Parliament (Act 38 of 2000) to oversee the sustainability and growth of construction enterprises across the country.
Contract	means the agreement that results from the acceptance of a bid by the Municipality (mutual agreement)
Contract Alteration	means changing technical writing or input errors to the agreement of the contract without changing the scope of contract.
Contract Amendment	means changing the scope, nature, duration, purpose or objective of the agreement or contract (In context of Circular 62 and section 116 (3) of the MFMA).
Contract Champion	means the manager / director/ administrator responsible for all day to day activities (including performance management and dispute resolution) during the life cycle of the contract (with delegated powers to perform this function).
Contract Management	means the holistic term of all role players involved in an agreement (SLA/SDA) or contract and include the; contract manager, contract owner, contract champion and supplier.
Contract Manager	means the official responsible for monitoring, regulating and reporting on all contract related activities as set out in Section 116 of the MFMA.
Contract Owner	means the official that is ultimately accountable for all activities during the life cycle of the contract, relevant to his/her directorate.
Delegation <i>(in relation to a duty)</i>	Includes an instruction or request to perform or to assist in performing the duty.
Force Majure	Is the expression used to denote irresistible superior force which might cause damage or prevent the execution of an obligation, therefore suppliers is not liable for damages caused by force majeure or for failure to carry out a contract if prevented (Term and conditions in this regard will be determined by every individual contract/s).
Official <i>(In relation to a municipality)</i>	means: <ul style="list-style-type: none"> • an employee of a municipality; • a person seconded to a municipality to work as a member of the staff of the municipality; or • a person contracted by a municipality to work as a member of the staff of the municipality otherwise than as an employee.
Users	Means all officials as set out in the organogram of the Overstrand Municipality involved with contracts.

3. ABBREVIATIONS:

BEE	Black economic empowerment
B-BBEE	Broad-Based Black Economic Empowerment
GCC	means General Conditions of contract.
MSA	means Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
NT	means National Treasury established by section 5 of the Public Finance Management Act.
SCC	Special Conditions of Contract.
SDA	means Service Delivery Agreement.
SLA	means Service Level Agreement.

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 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 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) (f) (IV) of the Act, take all reasonable steps to ensure that the Contract Management Policy is implemented.
- 5.3 Conditions of Contract
 - 5.3.1 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 Administrative Capacity
 - 5.4.1 The relative Director, with delegated powers from the Municipal Manager, as contract owner must establish capacity in the administration of the municipality to:

- 5.4.1.1 assist the accounting officer in carrying out the duties set out in section 116(2) of the MFMA; and
 - 5.4.1.2 to oversee the day-to-day management of the contract or agreement.
- 5.5 Management of Contracts
- 5.5.1 The accounting officer and delegated officials must take all reasonable steps to:
 - 5.5.1.1 ensure that a contract or agreement procured through the supply chain management policy of the municipality is properly enforced;
 - 5.5.1.2 monitor on a monthly basis the performance of the contractor under the contract or agreement.
 - 5.5.1.3 administrate the contract with the necessary competencies and delegations, ensuring effective management of contracts.
 - 5.5.2 The Contract Owner ensures that contract champions submit suppliers' performance reports to the contract manager within 5 business days after the end of each month.
 - 5.5.3 The Contract Owners submits a consolidated report for their Directorate to the Contracts Manager within 10 business days after the end of each quarter.
 - 5.5.4 The Contracts Manager 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.
- 5.6 Amendment of Contracts
- 5.6.1 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.
 - 5.6.2 Amendments (through the transparent SCM procedures) may only be made after:
 - 5.6.2.1 the reasons for the proposed amendment have been tabled in the council; and
 - 5.6.2.2 the local community has been given reasonable notice of the intention to amend the contract or agreement; and
 - 5.6.2.3 has been invited to submit representations to the municipality.
 - 5.6.3 Amendments of contracts where the expansion or variation is not more than
 - 5.6.3.1 20% (construction related goods, services and/or infrastructure projects), and
 - 5.6.3.2 15% (all other goods and/or services) of the original value of the contract, must be submitted directly to the Contract Management Office for approval and further reference to the SCM committee system for approval.

- 5.6.4 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.
- 5.6.5 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.
- 5.6.6 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.
- 5.6.7 When an amendment has a budgetary implication for a term longer than 3 (three) years, section 33 of the MFMA will apply to this amendment.

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 finalised.
- 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 the official responsible for monitoring, regulating and reporting on all contracts related activities.
 - 7.1.2 For the purposes of **contract management** activities performed by the relevant role players, the contract manager will monitor and report on the following activities:
 - 7.1.2.1 identification and classification of contracts for management purposes;
 - 7.1.2.2 recognition, measurement and disclosure;
 - 7.1.2.3 planning and budgeting for contracts;
 - 7.1.2.4 oversight of contract management;
 - 7.1.2.5 document and information management;
 - 7.1.2.6 relationship management;
 - 7.1.2.7 performance management;
 - 7.1.2.8 payment, collection, incentives, and penalties; and
 - 7.1.2.9 risk management.

- 7.2 Contract Champion:
- 7.2.1 The contract champion is responsible for the following activities:
- 7.2.1.1 ensuring that all the necessary legal formalities in entering the contract are adhered to;
 - 7.2.1.2 ensuring that purchase orders are captured on the financial system in accordance with the pricing schedule;
 - 7.2.1.3 maintaining adequate records (paper and/or electronic) in sufficient detail on an appropriate contract file to provide an audit trail;
 - 7.2.1.4 inform the Asset Management section of the Expenditure Department of the location of newly procured assets for asset register and insurance purposes; and
 - 7.2.1.5 where appropriate, authorise payments due in terms of the contract by processing invoices/Goods Received Notes.
 - 7.2.1.6 Submit monthly performance reports to the contract manager on service providers /suppliers' performance in meeting the terms and condition of the contract (Including price escalation);
 - 7.2.1.7 to take appropriate action in consultation with the contract manager where a contractor is underperforming or is in default or breach of the contract.
 - 7.2.1.8 ensure performance of suppliers is managed (Champion) appropriately to the terms and conditions of the contract including establishing and managing of:
 - 7.2.1.8.1 non-performance is addressed with at least a formal letter advising specific non-performing areas and stating remedial action/s required within specific time frames;
 - 7.2.1.8.2 good performance is recognised and communicated through established channels, and
 - 7.2.1.8.3 all parties participate in joint performance reviews where appropriate, and seek improvement opportunities.
- 7.3 Contract Owner:
- 7.3.1 The contract owner is responsible for ensuring that contract champions are:
- 7.3.1.1 assigned to all contracts; and
 - 7.3.1.2 adequately trained so that they can exercise the necessary level of responsibility in the performance of their duties.
- 7.3.2 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 department.

9. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS

Overstrand 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 5.3.1.2.2 and also as required by section 116(1) of the MFMA and paragraph 50 of the 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 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.

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 alive.

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 Refer to paragraph 5.2.2, regarding the adoption, amendment and implementation of the contract management policy.
- 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 assessments at the review phase of the contract life cycle.

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