

# OVERSTRAND MUNICIPALITY



## CONTRACT MANAGEMENT POLICY

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1 July 2018*

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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 ineffective contract management include but are not limited to:

- 1.1 goods and services outside of specification;
- 1.2 cost overruns;
- 1.3 poor suppliers-, buyer- or other stakeholder relations;
- 1.4 negative public perception, and
- 1.5 potentially complete service delivery failures.
- 1.6 irregular expenditure or un-authorized expenditure

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-

<b>Accounting Officer</b> <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.
<b>Act or MFMA</b>	Means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
<b>Circular 62</b>	means 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>	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.
<b>Contract</b>	means the agreement that results from the acceptance of a bid by the Municipality (mutual agreement)
<b>Contract Alteration</b>	means changing technical writing or input errors to the agreement of the contract without changing the scope of contract.
<b>Contract Amendment</b>	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).
<b>Contract Champion</b>	means the official/s within a specific department, responsible for all day to day administrative and management activities (including performance management and dispute resolution) during the life cycle of the contract (with delegated powers to perform this function).
<b>Contract Management</b>	means the holistic term of all role players involved in an agreement (SLA/SDA) or contract and include the; SCM contract manager, contract director, contract owner, contract champion and supplier.
<b>SCM Contract Manager</b>	means the SCM official responsible for monitoring, regulating and reporting on all contract related activities as set out in Section 116 of the MFMA.
<b>Contract Owner</b>	means the deputy director, senior manager or manager, as the case may be, that is ultimately accountable for all activities during the life cycle of the contract. The Contract Owner can also be seen as the Budget holder.
<b>Contract Director</b>	Appointment according to sect 56 of the Systems Act
<b>Delegation</b> <i>(in relation to a duty)</i>	Includes an instruction or request to perform or to assist in performing the duty.
<b>Force Majure</b>	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).
<b>Official</b> <i>(In relation to a municipality)</i>	means: <ul style="list-style-type: none"> <li>• an employee of a municipality;</li> <li>• a person seconded to a municipality to work as a member of the staff of the municipality; or</li> <li>• a person contracted by a municipality to work as a member of the staff of the municipality otherwise than as an employee.</li> </ul>
<b>Users</b>	Means all officials as set out in the organogram of the Overstrand Municipality involved with contracts.
<b>User Department</b>	Refers to the official/s within the relevant department of a directorate, as set out in the organogram of the Overstrand Municipality responsible for contract management.

**3. ABBREVIATIONS:**

<b>BEE</b>	Black economic empowerment
<b>B-BBEE</b>	Broad-Based Black Economic Empowerment
<b>GCC</b>	means General Conditions of contract.
<b>MSA</b>	means Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
<b>NT</b>	means National Treasury established by section 5 of the Public Finance Management Act.
<b>SCC</b>	means Special Conditions of Contract.
<b>SCM</b>	means Supply Chain Management
<b>SDA</b>	means Service Delivery Agreement.
<b>SLA</b>	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 of goods and services (excluding land sales or rentals of Overstrand Municipal Assets, which are managed by Property Management Services), takes place outside of the SCM System.

## 5. STATUTORY AND REGULATORY FRAMEWORK FOR MANAGING CONTRACTS

- 5.1 Application and Framework of the Contract Management Policy
- 5.1.1 All officials and other role players in the Supply Chain Management system of the Overstrand Municipality must implement this Policy in a way that gives effect to:
- 5.1.1.1 Section 217 of the Constitution;
  - 5.1.1.2 Section 116 of the MFMA;
  - 5.1.1.3 Section 33 of the MFMA;
  - 5.1.1.4 SCM Policy;
  - 5.1.1.5 SCM Regulations
  - 5.1.1.6 any other legislation pertaining to SCM.
- 5.1.2 This Policy applies when the Municipality:
- 5.1.2.1 procures goods or services;
  - 5.1.2.2 disposes of goods no longer needed; and
  - 5.1.2.3 selects service providers and suppliers to provide assistance in the provision of municipal services including circumstances where Chapter 8 of the Municipal Systems Act applies.
- 5.2 Adoption, Amendment and Implementation of the Contract Management Policy
- 5.2.1 The accounting officer must:
- 5.2.1.1 at least annually review the implementation of this Policy; and
  - 5.2.1.2 when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to Council;
  - 5.2.1.3 in terms of section 62(1) (f) (IV) of the Act, take all reasonable steps to ensure that the Contract Management Policy is implemented.
- 5.3 Conditions of Contract
- 5.3.1 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 relevant 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.
- 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 must ensure that contract champions submit suppliers' performance reports to the SCM contract manager within 5 business days after the end of each month.
- 5.5.3 The SCM Contract Manager submits a consolidated report to the relevant Director and Contract Owner within 15 business days after the end of each month for purposes of Section 116 (2)(b) of the Act.
- 5.5.4 The SCM Contract Manager submits a consolidated report on the performance of contracts or agreements for purposes of Section 116 (2)(d), 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 In terms of Section 116(3) of the MFMA, (56 of 2003), amendments (in compliance with 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 (NT Circular 62):
- 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 Man-

agement 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 Section 33 of the MFMA will apply when an amendment has budgetary implications for a term longer than the 3 (three) financial years of the current year's budget, (Section 116 (3) of the MFMA will be followed with section 33, when amending an existing contract for longer than 3 years). It remains the responsibility of the user department to give effect to section 33, following due process, as stipulated in Section 33 of the MFMA. The SCM Contract Management office will support the relevant user department in order to ensure that compliance to all SCM legislation is adhered to.

## 6. MAINTENANCE AND CONTRACT ADMINISTRATION

- 6.1 Contract administration includes all administrative duties associated with a contract once it is adjudicated and implemented.
- 6.2 No rights in terms of an awarded contract will accrue before the SCM 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.
- 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 SCM Contract Manager:
  - 7.1.1 The SCM Contract Manager is the SCM official responsible for system administration, status and SCM performance reporting on all contracts related activities.
  - 7.1.2 For the purposes of **contract management** activities performed by the relevant role players, the SCM contract manager will monitor and report on the following activities:
    - 7.1.2.1 identification and classification of contracts for management purposes in terms of the SCM processes;
    - 7.1.2.2 recognition, measurement and disclosure;



- 7.1.2.3 oversight of contract management as is provided for in this policy;
  - 7.1.2.4 document and information management;
  - 7.1.2.5 relationship management;
  - 7.1.2.6 performance management;
  - 7.1.2.7 contract risk management.
- 7.2 Contract Champion
- 7.2.1 The contract champion is responsible for the following activities:
    - 7.2.2.1 ensuring that all the necessary legal formalities in entering into the contract are adhered to;
    - 7.2.2.2 ensuring that all applicable contract information is maintained in the applicable electronic contract system
    - 7.2.2.3 ensuring that purchase orders are processed on the financial system in accordance with the pricing schedule;
    - 7.2.2.4 maintaining adequate records (paper and/or electronic) in sufficient detail on an appropriate contract file to provide an audit trail;
    - 7.2.2.5 inform the Asset Management section of the Expenditure Department of the location of newly procured assets for asset register and insurance purposes; and
    - 7.2.2.6 where appropriate, in terms of Council's Delegations, authorise invoices due for payment.
    - 7.2.2.7 to take appropriate action in consultation with the contract owner and the SCM contract manager, where a contractor is underperforming or is in default or breach of the contract.
    - 7.2.2.8 ensure performance of suppliers is managed appropriately to the terms and conditions of the contract.
- 7.3 Contract Owner
- 7.3.1 The contract owner is responsible for ensuring that contract champions are assigned to all contracts.
  - 7.3.2 The contract owner is ultimately responsible for management of the activities.
- 7.4 Contract Director
- 7.4.1 The contract director is responsible for signing of contracts with the relevant service provider, in line with the Delegation of Powers and Duties Policy.
  - 7.4.2 The contract director 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 must be linked to the master document on the electronic system, by the relevant official.

- 8.3 Safe custody of all contract documents must be enforced by all relevant users.
- 8.4 Contract Champions and Contract Owners are responsible for the electronic capturing of the contract information and maintenance thereof on the Contract Management system.
- 8.5 The original signed contract must be sent to the records department (by the contract management office) for safekeeping and storage.
- 8.6 The records department is responsible for the administration of archived contract documentation.

## **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 or specified terms of escalation must be specified in the bid documents
- 11.2 Escalation notification must be in writing and presented before the implementation date thereof.
- 11.3 User departments are responsible to manage, verify and implement price escalations as per originally agreed terms and conditions set out in the specifications of the contract and keep proof of evidence to the newly agreed escalations on the system for all other relevant stakeholders to access.

## **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 (Paragraph 9).

### **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.
- 12.2.1.3 Suppliers performance will be reviewed by Overstrand Officials on a monthly basis (every 25<sup>th</sup> of the month) giving effect to section 116 of the MFMA, 2003 and the Performance Management System Implementation Policy
- 12.2.1.4. Prescribed procedures to evaluate service providers must be complied with.  
(Refer to the Performance Management Framework Policy)

**THE FOLLOWING PROCEDURES NEED TO BE FOLLOWED:**

1. The requirements of this policy must be included in the contract of the service provider.
2. The performance of the service provider under the contract or service level agreement must be assessed monthly by the Reporting Officer.
3. The assessment must be completed in the contract management system.
4. The Reporting Officer must complete the Service Provider Assessment on the contract management at the end of each month.
5. The quarterly assessment and reporting must be completed within 15 working days after the end of each quarter. (Refer to the Performance Management Framework Policy, paragraph 9.2.1).
6. The Reporting Officer must provide a copy of the assessment to the Service Provider at the end of each quarterly assessment period and on completion or termination of the contract.
7. Supply Chain Management Unit (Contract Management Office) will review the quarterly Service Provider assessments within 20 days after the end of each quarter and submit a summary report to the Accounting Officer .
8. The Accounting Officer need to develop the necessary forms and report structures to be utilised to manage the above processes. The forms and reporting requirements need to be reviewed on a regular basis.
9. In the instance of under-performance:
  - a. The Municipality will facilitate support interventions to service providers in the identified areas of underperformance
  - b. Service providers who have been identified as under-performing in identified areas must be informed of these support interventions.
  - c. The impact of support interventions must be monitored by the Reporting Officer.
  - d. Corrective action should be documented in writing within the contract management system
  - e. The records of the support interventions must be documented, signed by both parties and appropriately filed in the contract management system.

**13. REVIEW OF CONTRACTS**

- 13.1 In terms of section 116 (1) of the MFMA, a contract or agreement procured through the Supply Chain Management system must have a periodic review once every three years in the case of a contract or agreement that are longer than three years.
- 13.2 The contract owner or champion must conduct, as appropriate, within 3 months after the expiry of contracts, post contract reviews.

**14 IMPLEMENTATION AND REVIEW PROCESS**

This policy will come into effect on 1 July 2018;

This policy will be reviewed at least annually or when required by way of a Council resolution.

<b>POLICY SECTION:</b>	<b>MANAGER: CONTRACTS &amp; LOGISTICS</b>
<b>CURRENT UPDATE</b>	<b>30 MAY 2018</b>
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