

# **UTHUKELA DISTRICT MUNICIPALITY CONTRACT MANAGEMENT POLICY**



This document must be read together with the relevant Treasury Contract Management Framework, Practice Notes, Instruction Notes and Circulars issued in terms of the Municipal Finance Management Act, Act 1 of 1999 (As amended by Act 29 of 1999).

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## 1. DEFINITIONS AND ABBREVIATIONS

In this Policy, unless the context indicated otherwise:

Accounting Officer	Municipal official referred to in section 60 of the MFMA (2003) and include a person acting as the accounting officer.
Act or MFMA	Local government: Municipal Finance Management Act, 2003 (Act no. 56 of 2003).
AO/AA	Accounting Officer/ Accounting Authority
B-BBEE	Broad-Based Black Economic Empowerment
B-BBEEA	Broad-Based Black Economic Empowerment Act, Act No 53 of 2003
BEE	Black Economic Empowerment
Buyer	The other party on a sales side contract (opposite of supplier).
BVA	BEE Verification Agency
CBO	Community based and non-government organizations
CCA	Close Corporation Act
Circular 62	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)	A national body establishment by an Act of Parliament (Act 38 of 2000) to oversee the sustainability and growth of construction enterprises across the country.
Bid	A written offer or stipulated form, in response to an invitation by an uThukela District Municipality for the provision of services or goods, > R500 000 for Departments in value.
Cession	Means when a contract/agreement is relinquished to another individual/uThukela District Municipality.
Closeout	Means when a contract is considered complete and the service provider has complied with all terms and conditions of the contract, and the uThukela District Municipality has inspected and accepted the goods/services 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 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	Agreement (explicit or implied) legally binding two or more parties to the terms of the agreement.

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 uThukela District Municipality.
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 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.
Deliverable	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 uThukela District Municipality.
Extension	Means when an uThukela District Municipality 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.
Finance Lease	A lease that transfers substantially the risks and rewards of ownership of an asset. A lease that transfers substantially the risks and rewards of ownership of an asset.
Firm Price	The price that appears on the Purchase Order and is not affected by price fluctuations due to specific industry price escalations for the duration of the contract.
Goods	Tangible movable products that are purchased from a Supplier and consumed by the uThukela District Municipality, excluding purchases of capital assets.
Joint Venture	Means a business arrangement in which two or more parties agree to join their resources for the purpose of completing a project.
Operating Lease	A lease other than a finance lease and is regarded as a current payment.
Project	The project named in the contract on the cover page.
Purchaser	The acquiring public sector entity or uThukela District Municipality.
Renewal	Means to allow a contract/agreement to continue for a defined period if the existing contract/agreement provides for a renewal period after the termination date.
Service Provider/ Supplier/ Vendor	The contracting party named in the contract that is required to provide goods, services and or works to the uThukela District Municipality.
Services	The tasks to be performed by the Service Provider pursuant to the contract as described in the Terms of Reference advertised in the Invitation to Bid.
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. The contracting party named in the contract that is required to provide goods, services and or works to the uThukela District Municipality.
uThukela District Municipality	Department or Public Entity.
Contract Life Cycle	The stages of a contract encompassing planning, creation, collaboration, execution, administration, and close-up.
Contract Owner	The official that is ultimately accountable for all activities during the life cycle of the contract, relevant to his/her directorate.
Delegation (in relation to a duty)	Includes an instruction or request to perform or to assist in performance the duty.
DM	District Municipality
EME	Exempted Micro Enterprises
Enterprise Contract Management	A strategic model providing a holistic view over, and an uThukela District Municipality culture for the activities necessary to manage all contracts in the uThukela District Municipality throughout all stages in the Contract Life Cycle.
Force Majeure	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 damage 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 contact/s).
GCC	General Conditions of Contract
Government uThukela District Municipality/s	National and provincial departments, constitutions, and public entities (municipalities and municipal entities are excluded for the purpose of the CMF).
GRAP	Generally Recognized Accounting Practice
IRBA	Independent Regulatory Board of Auditors
LM	Local Municipality
MFMA	Municipal Finance Management Act, Act No 56 of 2003
MSA	Municipal System Act, 2000 (Act No 32 of 2000)
NT	National treasury established by Section 05 of the Public Finance Management Act
Official (in relation to a municipality)	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>
PFMA	Public Finance Management Act, Act No 01 of 1999 as amended by Act 29 of 1999
PPP	Public-Private Partnership/ Public-Public Partnership
PPPFA	Preferential Procurement Policy Framework Act
Preparation Guide	Financial statement and disclosures issued annually by the Office of the Accountant General.

QSE	Qualifying Small Enterprises
SANAS	South African National Accreditation System
SASAE	South African Standard on Assurance Engagements
SCC	Special Conditions of Contract
SDA	Service Delivery Agreement
SLA	Service Level Agreement
Stakeholders	Any other stakeholder to a contract. Note that some contracts do not involve suppliers or buyers.
Supplier	The individual or organization providing goods or services to the government uThukela District Municipality (opposite of buyer).
Supply Chain Management (SCM)	Encompasses management of demand, acquisition, logistics, disposal, and supply chain performance.
Supply Chain Management Framework	Legislation, regulations, treasury instructions and guiding materials issued by government pertaining to SCM.
Supply Chain Management Unit	In any government uThukela District Municipality referred to in Treasury Regulation 16A4.1
ToR	Terms of Reference
Treasury Regulation/s	Regulations to the Public Finance Management Act.
UDM	uThukela District Municipality
Users	Means all officials as set out in the organogram of uThukela District involved with contracts.

**Table 1: Definitions**

## 2. GLOSSARY

<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>MOA</b>	Memorandum of Agreement
<b>MTEF</b>	Medium-Term Expenditure Framework
<b>NT</b>	National Treasury
<b>PFMA</b>	Public Finance Management Act, Act No. 1 of 1999
<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>SLA</b>	Service Level Agreement
<b>TR</b>	Treasury Regulations

**Table 2: Glossary**

### **3. PRE-AMBLE**

#### **3.1 Policy Statement**

The uThukela District Municipality publishes this Contract Management Policy Framework (CMPF) in order to provide guidance to all uThukela District Municipality Departments in processes related to contract management.

uThukela District Municipality contracting must be conducted in a manner that will:

- a) Stand the test of public scrutiny in matters of discretion and integrity, encourage competition, and reflect fairness in the spending of public funds.
- b) Ensure the supremacy of functioning requirements; and
- c) Comply with the Government's obligations under the related legislative and policy prescripts.

#### **3.2 Purpose of the Policy**

The objective of uThukela District 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 uThukela District Municipality and the people of uThukela District at large.

In accordance with the National Treasury Contract Management Guidelines, 2010, contract management should deliberately focus on the activities associated with the operational phase of the contract after the contract has been awarded and is functional and being implemented. It is, however, fully acknowledged that successful contract management is significantly dependent on what happens before, during and after the tendering and award phases. For example, the quality of the original specification included in the bid documentation, and the agreed terms and conditions, play a critical role in enabling the effective management of the contract. Therefore, procurement planning during the tendering, contract award and the contract management phases should be seen as a continuum, with effective contract management planned from the very start of the procurement process. The policy framework is designed not only to support the application of good practice within a contract, but also to support the development and application of an effective contract management function, in general.

All transactions undertaken by the uThukela District Municipality involves a contract whether explicitly agreed in writing, or implicitly implied through actions. Effective contract management is a key component in achieving project outcomes. The processes, structure and resources that will be applied to the contract management phase should be identified during the procurement planning stage.



**Contracts need to be properly managed to ensure that services are delivered within specifications and at the agreed cost. Improperly managed contracts may impact negatively the performance of the municipality, both financially and delivery of services.**

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 included but not limited to:

- a. **Goods and services outside of specification.**
- b. Cost overruns.
- c. Poor supplier, buyer, or other stakeholder relations.
- d. Negative public perception; and
- e. 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 centralized strategy of contract management. **This policy must be read in coincidence with the SCM Policy of the uThukela District.**

Good contract management:

- \* Optimizes delivery of large capital projects,
- \* Specifies management techniques and processes for all types of contracts,
- \* Encourages achievement of value for money and continuous improvement,
- \* Identifies savings and additional revenue opportunities,
- \* Enhances risk management,
- \* Provides clear and complete records for audit, and
- \* Encourages communication between all parties to contracts.

**Failure to implement adequate management could result in:**

- \* **Paying for goods and services which do not meet the standards set out in the contract,**
- \* **Significantly higher costs,**
- \* **Customer and supplier dissatisfaction,**
- \* **Erroneous payments,**
- \* **Negative public perception,**
- \* **Protracted legal disputes,**
- \* **Poor service delivery.**

### Key requirements

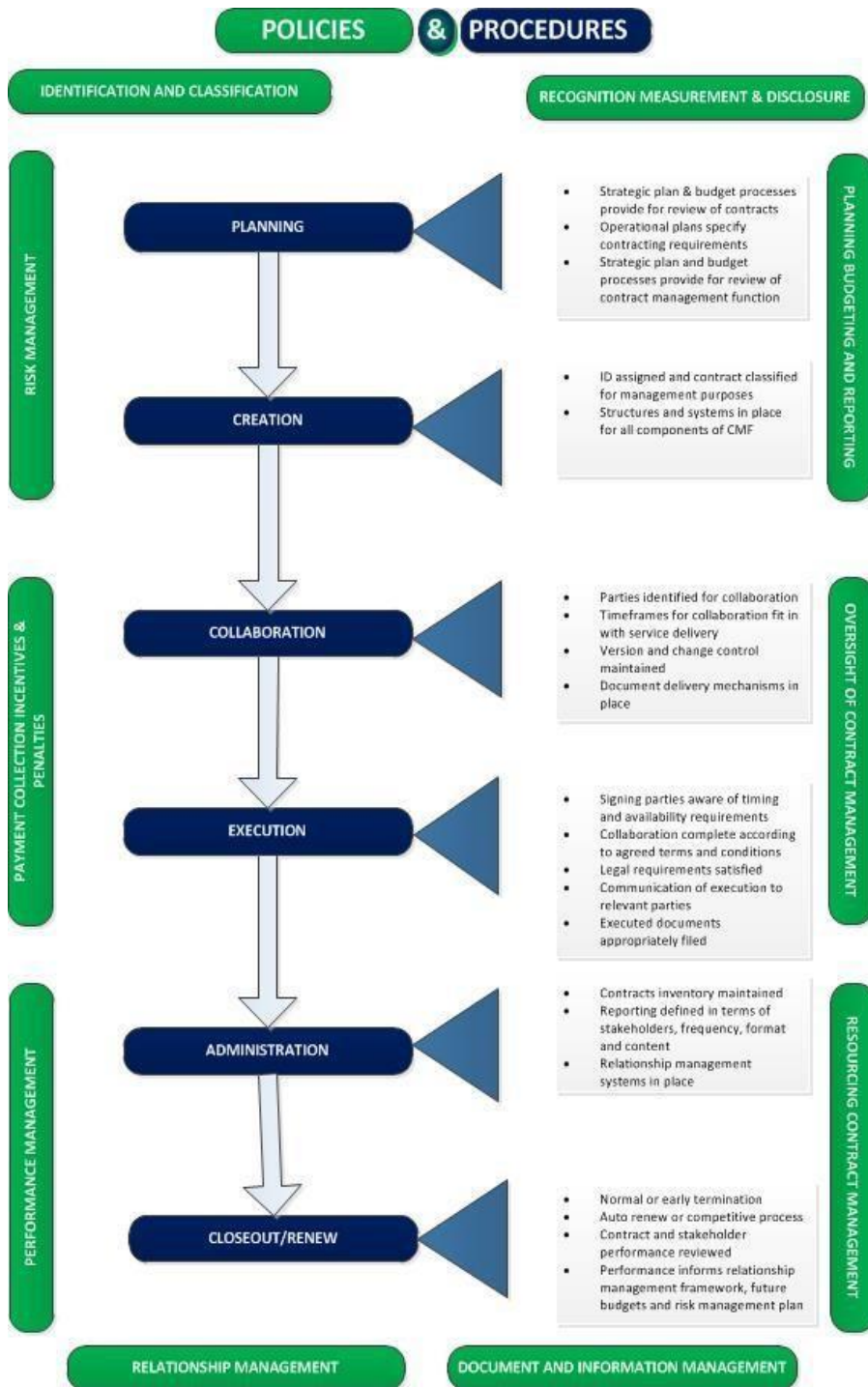
A contract management plan must address the following:

- \* Monitoring compliance with contract conditions,
- \* Identification of milestones and key deliverables\ outcomes,
- \* Roles and responsibilities of participants,
- \* Effective financial management and monitoring,
- \* Monitoring of risks,
- \* Project performance reporting requirement.

### **3.3 Scope and Application**

This Policy Framework is applicable to KwaZulu-Natal Provincial Government Departments and Public Entities, for contracts that are valued greater than R200 000.

This framework addresses the contract management lifecycle using the policies in the following diagram:



**4. TERMS AND DEFINITIONS**

<i>Accounting Officer</i>	the Accounting Officer or in the other cases of public entities the Accounting Authority as defined in the PFMA.
<i>Buyer</i>	The other party on a sales side contract (opposite of supplier).
<i>Contract</i>	Agreement (explicit or implied) legally binding two or more parties to the terms of the agreement.
<i>Contract Life Cycle</i>	The stages of a contract encompassing: planning, creation, collaborations, execution, administration, and closeout.
<i>Contract Management (CM)</i>	The activities necessary to manage a contract throughout all stages in the Contract Life Cycle.
<i>Enterprise CM (ECM)</i>	A strategic model providing a holistic view over, and an uThukela District Municipality culture for, the activities necessary to manage all contracts in the uThukela District Municipality throughout all stages in the Contract Life Cycle.
<i>Contract Manager</i>	The person within the uThukela District Municipality responsible for monitoring the contract trigger points, and delivery under the contract’s terms and conditions.
<i>Contract Owner</i>	The person within the uThukela District Municipality benefits from the contract. From goods or services being procured or sold, or from other relationships established by the contract.
<i>Government uThukela District Municipality/s</i>	National and provincial departments, constitutional uThukela District Municipality’s, and public entities (municipalities and municipal entities are excluded for the purposes of the CMF).
<i>GRAP</i>	Generally Recognized Accounting Practice.
<i>Preparation Guide</i>	The Preparation Guide for financial statements and disclosures issued annually by the Office of the Accountant General.
<i>SCM</i>	Supply Chain Management encompasses management of: demand, acquisition, logistics, disposal, and supply chain performance.
<i>Stakeholder</i>	Any other stakeholder to a contract. Note that some contracts do not involve supplier or buyers.

<i>SCM Framework</i>	Legislation, regulations, treasury instructions, and guiding material issued by the government pertaining to SCM.
<i>SCM Unit</i>	Supply Chain Management Units in any government uThukela District Municipality referred to in Treasury Regulation 16A4.1.
<i>Supplier</i>	The individual or organization providing goods or services to the <i>government of uThukela District Municipality</i> (opposite of supplier).
<i>Treasury Regulation/s</i>	Regulations to the Public Finance Management Act.

**5. OBJECTIVES:**

- a. To give effect to Section 217 of the Constitution of South Africa (1996) that stipulate:
  - i. When an organ of state in the national, provincial, or local sphere of government, or any other uThukela District Municipality identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is: **Equitable, Transparent, Competitive Cost-effective and Fair.**
- b. The effective and efficient control procured through the SCM system ensures:
  - i. Proper recording and enforcement of contracts throughout the contract life cycle (specifications to contract reviews),
  - ii. 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,
  - iii. Management of Contract Performance.
  - iv. Compliance with the regulatory framework,
  - v. To assist officials in understanding their legal and managerial responsibilities with regard to contract management,
  - vi. The optimization of the efficient and sustainable financial well-being 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.
  - viii. To ensure that no contract procurement takes place outside of the SCM System.

**6. LEGISLATIVE FRAMEWORK**

<b>THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (Act 108 of 1996)</b>
Municipal Finance Management Act (MFMA) (No. 56 of 2003)
Preferential Procurement Policy Framework Act (No. 5 of 2000) and its Regulations
Broad Based Black Economic Empowerment Act (BBBEE) (No. 53 of 2003)
Municipal Supply Chain Management Regulations and SCM Policy (May 2005)

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

### 7.1 Application and Framework of the Contract Management Policy

7.1.1 All officials and other role players in the uThukela District Municipality must implement this Policy in a way that gives effect to:

- 7.1.1.1 Section 217 of the Constitution
- 7.1.1.2 Section 116 and 33 of the MFMA
- 7.1.1.3 SCM Policy
- 7.1.1.4 Preferential Procurement Policy Framework Act 5 OF 2000
- 7.1.1.5 Promotion of Access to Information Act 2 of 2000
- 7.1.1.6 Promotion of Administrative Justice Act 3 of 2000
- 7.1.1.7 Construction Industry Development Board Act 38 of 2000
- 7.1.1.8 National Treasury Supply Chain Management Regulations
- 7.1.1.9 The Protected Disclosures Act 26 of 2000
- 7.1.1.10 Provincial Treasury Practice Notes and Circulars.
- 7.1.1.11 Any other regulations pertaining to Supply Chain Management

7.1.2 This Policy applies when the Municipality:

- 7.1.2.1 Procures goods or services.
- 7.1.2.2 Disposes of goods no longer needed and
- 7.1.2.3 Selects service providers and suppliers to provide assistance in the provision of municipal services including circumstances where Chapter 8 of the Municipal System Act applies.

### 7.2 Adoption, Amendment, and Implementation of the Contract Management Policy

7.2.1 The accounting officer must:

- 7.2.1.1 At least annually review the implementation of this Policy
- 7.2.1.2 When the accounting officer considers it necessary, submit proposals for the amendment of the Policy to the Council
- 7.2.1.3 In terms of Section 62(1) (f) (IV) of the Act, take all reasonable steps to ensure that the Contract Management Policy is implemented.

### 7.3 Conditions of Contract

7.3.1 A contract or agreement procured through the Supply Chain Management System of the uThukela District.

7.3.2 Municipality must:

- 7.3.2.1 Be in writing.

- 7.3.2.2 Stipulate the terms and conditions of the contract or agreement which must provide for:
  - 7.3.2.2.1 The termination of the contract or agreement in case of non or underperformance
  - 7.3.2.2.2 Dispute resolution mechanisms to settle disputes between the parties.
  - 7.3.2.2.3 A periodic review of the contract or agreement once every three years in case of a contract or agreement for longer than three years and
  - 7.3.2.2.4 Any other matters that may be prescribed
  
- 7.4 Administrative Capacity
  - 7.4.1 The relative Director with delegated powers from the Municipal Manager as a contract owner must establish capacity in the administration of the municipality to:
    - 7.4.1.1 Assist the accounting officer in carrying out the duties set out in Section 116(2) of the MFMA and
    - 7.4.1.2 To oversee the day-to-day management of the contract or agreement
  
- 7.5 Management of Contracts
  - 7.5.1 The accounting officer and delegated officials must take all reasonable steps to:
    - 7.5.1.1 Ensure that a contract or agreement procured through the supply chain management policy of the municipality is properly enforced.
    - 7.5.1.2 Monitor on a monthly basis the performance of the contract under the contract or agreement.
    - 7.5.1.3 Administrate the contract with the necessary competencies and delegations, ensuring effective management of contracts.
    - 7.5.1.4 The Contract Owner ensures that contract champions submit suppliers' performance reports to the contract manager within 05 business days after the end of each month.
    - 7.5.1.5 The Contract Owner submits a consolidated report for their Directorate to the Contract Manager within 10 business days after the end of each quarter.
    - 7.5.1.6 The Contract 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.



## 7.6 Amendment of Contracts

7.6.1 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.

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

7.6.2.1 The reason for the proposed amendment have been tabled in the council,

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

7.6.2.3 It has been invited to submit representations to the municipality.

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

7.6.3.1 20% (construction-related goods, service, and /or infrastructure project),

7.6.3.2 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 for approval.

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

7.6.5 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.

7.6.6 When an amendment has a budgetary implication for a term longer than 03(three) years, Section 33 of the MFMA will apply to this amendment.

## 8 THE CONTRACTING PROCESS

The key elements of a thoughtful contracting process are the following:

- Strategy development
- Evaluation
- Selection
- Negotiation
- Implementation

## 8.1 Strategy development

It is important for the uThukela District Municipality to adopt a strategy pertaining to the acquisition of a service delivery mechanism. This policy advises that the Municipality outlines the Terms of Reference for the service to be provided.

The ToR would typically be constituted by the following elements:

- Programme objectives and description
- Aspects of tender from the service provider
- Plan of work and methodology
- Sources of information
- Deliverables of the programme
- Required expertise of the service provider
- Time schedule
- Management structure and reporting
- Tender adjudication
- Contact details of the Municipality
- Confidentiality clause

The ToR should be advertised in the mainstream printed media in order to reach service providers on an equal footing.

## 8.2 Evaluation

Upon receipt of tender documentation from service providers, the Bid Evaluation Committee will start the evaluation process.

The Bid Evaluation Committee will scrutinize the tenders as follows:

The Committee will check for completeness and conformity with the precise instructions and conditions of the ToR, which check must include, inter alia:

- Completed standards tenders' forms
- Price calculations
- Required validity period
- Acceptable escalation requirements
- Acceptable commercial terms and conditions
- Price/ rates for services where applicable
- Inclusion of costs for transportation and packaging as applicable
- Inclusion of Erection/ Installation/ Commission cost as applicable
- Adherence to Tender Board requirements
- Prices included for manuals where requested
- Acceptable delivery periods have been quoted

At this stage, service providers who do not pass the evaluation criteria will be disqualified.

### 8.3 Selection

The Bid Evaluation Committee will shortlist and then a selection will be made based on set criteria.

The criteria for the selection of the successful service provider will be as follows:

- Level of expertise in the service provider team
- Reliable, contactable references
- Proven financial sustainability.
- Proven experience in similar projects
- BBBEE status
- Menu and pricing structure
- Product or service offered.
- Membership in the relevant professional organization

### 8.4 Negotiation

The selected service provider(s) will be invited in writing for contract negotiations. Negotiations may include discussions on any aspects of the proposal and any matter of concern to the uThukela District Municipality and other consultants/ service providers.

This policy furthermore acknowledges the need for negotiating the SLA. An SLA is a formally negotiated agreement between two parties. It is a contract that exists between customers and their service provider, client, or between service providers. It records the common understanding about services, priorities, responsibilities, guarantees, and such- collectively, the level of service. For example, it may specify the levels of availability, serviceability, performance, operation, or other attributes of the service like billing and even penalties in the case of violation of the SLA.

After a settlement is reached, the successful service provider(s) will be appointed. Such appointment will be effected with the signing of relevant contracts and other documentation by the stakeholders.

### 8.5 Implementation

The contract implementation phase tests the relevance of contract terms and conditions. This policy acknowledges that certain pitfalls exist when a contract is being implemented and listed them below:

**RISK REALISATION:** Even if contracts correctly anticipate potential risk events and put in place binding provisions to deal with these events, the contract terms still risk being overridden by the contracting parties acting on other external pressures. This has a potential knock-on effect for affordability and value for money.

**CAPITAL INVESTMENT:** Long term contracts, such as concession contracts, are more vulnerable to material contract amendment or renegotiation. The results can lead to the watering down of outsourcing objectives, such as the provision of capital for infrastructure projects.

**MONITORING:** If monitoring duties specifically provided for in contracts are not being conscientiously implemented by uThukela District Municipality, it will render the monitoring provisions meaningless.

This policy seeks to guide the uThukela District Municipality in such a way that contract implementation pitfalls are either mitigated or eliminated.

The uThukela District Municipality needs to vigorously monitor and control all contracts entered into renegotiation of long-term contracts must be done with the utmost sensitivity towards the requirement of transparency, budgeting constraints, and the accountability of the uThukela District Municipality.

## 9 LEASES AND CONCESSIONS

Leases and concessions are contracts most appropriate to municipalities where large-scale capital investment is required. Public sector resources are simply insufficient to meet the significant municipal infrastructure backlog and alternative ways of accessing financial resources need to be explored. Mostly the solution lies in a partnership of the public and private sector.

However, if poorly managed and structured, the risks of these partnerships are high. These potential risks are identified:

- Loss of accountability.
- Prejudice to consumer rights.
- Monopoly pricing.
- “Cherry-picking” high-income end users (to the detriment of the poor);
- Poor quality services; and
- Unfair labour practices.

Because of the seriousness of these risks, there was need for national government to develop a regulatory framework for Municipal Public-Private Partnerships. These Municipalities PPP Regulations went into effect on 1 April 2005.

The areas that are being regulated included:

- Monitoring.
- Oversight and consultative mechanisms.
- Tendering and procurement processes.
- Contractual arrangements and
- Resolution of disputes.

This policy acknowledges that the following categories of risk apply to PPPs although these may overlap to some extent and are not necessarily comprehensive:

- Construction risk (design problems, building cost overruns, project delays).
- Financial risk (variability interest rates, exchange rates, factors affecting financial costs).
- Demand risk (need for services)

Section 120 of the MFMA covers the conditions and process for PPP's. The Municipality must comply with Chapter 8 of the MSA when the PPP involves the provision of a municipal service. Both the MFMA and the MSA make the appropriate transfer of technical, operational, and financial risk an essential factor to be considered in any outsourcing process.

## 10 MAINTENANCE AND CONTRACT ADMINISTRATION

- 10.1 Contract administration includes all administrative duties associated with a contract once it is implemented.
- 10.2 No rights in terms of an awarded contract will accrue before the appeal period and /or appeal has been finalized.
- 10.3 The contract should be signed by all parties concerned (The relevant official should also ensure that the delegated powers sign and amend the contractual agreement).
- 10.4 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).**
- 10.5 A signed service level agreement (if applicable) must be compiled and signed which will incorporate all the relevant sections of the tender documentation.
- 10.6 All once-off purchases shall have a specified end delivery date.

## 11 PERFORMANCE MANAGEMENT

The aim of performance management is to ensure that:

- a) The service provider performs in accordance with the standards previously agreed upon;
- b) The service provider is meeting their obligations stipulated in the contract.
- c) Issues and problems are identified early in order for remedial actions to be implemented; and
- d) Price and payment terms are being adhered to.

Prior to the contract commencing the parties should discuss and agree upon the policies and procedures to be used in measuring performance. These policies and procedures must be set out in the contract. The level of performance management will depend on factors such as:

- a) Contract value.
- b) Duration of the contract.
- c) Expertise of the personnel involved.
- d) Level of risk associated with the contract.
- e) Size and nature of the contract.
- f) The goods, services and/ or works to be provided; and
- g) Type of contract.

### 11.1 PERFORMANCE TARGETS

In order to determine the KPI's, it is necessary to:

- a) Identify the uThukela District Municipality's objectives and desired outcomes.
- b) Specify the inputs, activities and outputs necessary to achieve the uThukela District Municipality's objectives and desired outcomes;
- c) Select indicators that will measure critical inputs, activities, as well as key outputs; and
- d) Ensure that the selected indicators are manageable and that the required data is easily available.

Once the KPI's have been defined they are used to specify performance targets which the uThukela District Municipality aims to achieve within a specific time period. The performance targets need to be:

- a) **Specific** and clearly identifiable;
- b) **Measurable**.
- c) **Achievable**;
- d) **Relevant** and linked to a desired outcome; and
- e) **Time bound**.

Performance standards also need to be set so as to identify the minimum level of performance that will be accepted by the uThukela District Municipality. The performance standards and targets should be specified in the contract document and communicated to all parties prior to the commencement of the contract.

### 11.2 Delayed Performance

The GCC provides that the service provider must perform in accordance with the contract specifications within the time schedule set out in the contract. If at any time during the

contract period, the service provider is unable to perform in a timely manner, the service provider must notify the uThukela District Municipality in writing of the cause of and the duration of the delay. Upon receipt of the notification, the uThukela District Municipality should evaluate the circumstances and, if deemed necessary, the uThukela District Municipality may extend the service provider's time for performance which will constitute an amendment to the contract. The uThukela District Municipality may decide to impose a delay penalty.

In the event of delayed performance that extends beyond the delivery period, the uThukela District Municipality is entitled to purchase commodities of a similar quantity and quality as a substitution for the outstanding commodities, without terminating the contract, as well as return commodities delivered at a later stage at the service provider's expense. Alternatively, the uThukela District Municipality may elect to terminate the contract and procure the necessary commodities in order to complete the contract.

In the event that the contract is terminated the uThukela District Municipality may claim damages from the service provider in the form of a penalty. The service provider's performance should be captured on the service provider database in order to determine whether or not the service provider should be awarded any contracts in the future.

### 11.3 Unsatisfactory Performance

When an uThukela District Municipality is not satisfied or there are problems with the service provider's performance, the uThukela District Municipality must:

- a) Review the conditions causing the problems and determine whether or not the uThukela District Municipality itself has significantly contributed to the problem;
- b) Review the contract and other relevant documentation in order to identify the rights and responsibilities of each party; and
- c) Notify the service provider in writing that their performance does not comply with the terms and conditions set out in the contract.

The written notification sent to the service provider should clearly identify the following: a) The problem so as to avoid any misunderstanding.

- b) The corrective actions that are to be taken;
- c) The time frame allowed for the service provider to address and correct the problem; and
- d) The consequences that would arise in the event that the problem is not corrected within the specified period.

## 12 Dispute Resolutions

The uThukela District Municipality can apply different measures during the preparation and administrative phases of the contract in order to avoid any problems that may lead to a dispute. These measures include the following:

- a) Stating the contractual requirements, such as specifications and delivery dates, as clearly as possible.
- b) Using plain and clear language in the contract itself, as well as all other contract documentation.
- c) Addressing issues or problems as and when they arise to prevent them escalating; and
- d) Maintaining a good working relationship with the service provider.

The policies and procedures with regards to dispute resolution should be detailed in the contract and agreed to by both parties. The resolution options should be listed in order of preference starting with the least severe method moving towards more severe methods.

## 13 Standard Bidding Documents

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

The standard wording of the GCC must not be amended. The standard bid documentation and GCC issued by the Construction Industry Development Board must be utilized in cases of bids related to the construction industry.

The bid documents should clearly state the type of contract to be entered into and contain the appropriate contract provisions. The most common types of contracts provide for payments on the basis of lump sum prices, unit prices, reimbursable costs plus fees, or combinations thereof.

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 or AA.



**14 Contract File**

A contract file should be opened for each contract that includes the following documentation:

- a) Letter of Award;
- b) Pre Awards
- c) Purchase Order;
- d) A contract, signed by all parties post-award;
- e) All correspondence between the contracting parties;
- f) Record of payments;
- g) Evidence of delivery as provided for in the agreement;
- h) Record of amendments to the contract (including extension of time frames or expansion of scope);
- i) Record of reviews and audits conducted on the contract; and
- j) Risk assessment reports, where applicable.

**15 Contract Register**

A contract register should be created and updated regularly. This register should include the following information:

- a) Contract identifiers (unique ID, corresponding bid/ quotation/ requisition number, and purchase order number);
- b) Contract type and category.
- c) Service provider identifiers (Name of appointed bidder, Provincial database registration number, type of service provider);
- d) Description of Goods/Services/Works/Projects.
- e) Contract Value (if applicable, include percentage escalation and any other financial value);
- f) Contract period (start date, end date, duration, extension date where applicable, and early termination date where applicable); and
- g) Payment history (milestones/deliverables, actual dates of payment, payment penalties levied).

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

- a) 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.
- b) Contract files and contract registers exist and are a true record of the status of the contracts.
- c) Payments are made on the basis of verifiable proof of delivery of goods, services or works as provided in the contract.
- d) The uThukela District Municipality conducts periodic quality assurance reviews of the information in the register.
- e) Payments are made in accordance with the terms and conditions of the contract.

## 16 ROLES AND RESPONSIBILITIES OF OFFICIALS:

### 16.1 Contract Manger:

16.1.1 The Contract Manager is the official responsible for monitoring, regulating and reporting on all contract-related activities.

16.1.2 For the purposes of contract management activities performed by the relevant role players, the contract manager will monitor and report on the following activities:

- 16.1.2.1 Identification and classification of contracts for management purposes,
- 16.1.2.2 Planning and budgeting for contracts,
- 16.1.2.3 Oversight of contract management,
- 16.1.2.4 Document and information management,
- 16.1.2.5 Relationship management,
- 16.1.2.6 Performance management,
- 16.1.2.7 Payment, collection, incentives, and penalties,
- 16.1.2.8 Risk management.

16.2 Contract Admin officer:

- 16.2.1 The contract administration officer is responsible for the following:
- 16.2.1.1 Ensuring that all the necessary legal formalities in entering the contract are adhered to,
  - 16.2.1.2 Maintaining adequate records (paper and /or electronic) in sufficient details on an appropriate contract file to provide an audit trail,
  - 16.2.1.3 Inform the Asset Management section of the Expenditure Department of the location of newly procured assets for asset register and insurance purpose,
  - 16.2.1.4 Where appropriate, authorize payment due in terms of the contract by processing invoices or Goods Received Notes,
  - 16.2.1.5 Submit monthly performance reports to the contract manager on service providers or suppliers' performance in meeting the terms and conditions of the contract (including price escalation),
  - 16.2.1.6 To take appropriate action in consultation with the contract manager where a contractor is underperforming or is in default or breach of the contract,
  - 16.2.1.7 Ensure performance of suppliers is managed (Champion) appropriately to the terms and conditions of the contract including establishment and managing of:
    - 16.2.1.7.1 Non-performance is addressed with at least a formal letter advising non-performing areas and stating remedial action(s) required within specific time frames,
    - 16.2.1.7.2 Good performance is recognized and communicated through established channels and
    - 16.2.1.7.3 All parties participate in joint performance reviews where appropriate and seek improvement opportunities.

16.3 Contract Owner:

- 16.3.1 The contract owner is responsible for ensuring that contract champions are:
- 16.3.1.1 Assigned to all contracts and
  - 16.3.1.2 Adequately trained so that they can exercise the necessary level of responsibility in the performance of their duties.
- 16.3.2 The contract owner is ultimately accountable for the contract.

**17 RECORD KEEPING**

- 17.1 Proper records regarding all aspects of the contract must be maintained and kept in accordance with relevant legislation.
- 17.2 All communication related to contract should be linked to the master document on the electronic system.
- 17.3 Safe custody of all contract documents must be enforced by all relevant users.
- 17.4 Users are responsible for the electronic load feedback of contract(s) to the operating system in conjunction with the records department.

**18 CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS**

uThukela District Municipality may 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.

**19 RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES:**

The accounting officer is responsible to establish a dispute resolution mechanism as required by Section 116(1) of the MFMA and paragraph 50 of the SCM Policy.

**20 CONTRACT PRICE ESCALATIONS:**

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

**21 PERFORMANCE ON CONTRACT**

21.1 In terms of the SCM Policy and the Municipal System 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 Implementation Policy.

**21.1.1 Municipality's Performance:**

21.1.1.1 The uThukela District Municipality is required to pay creditors within 30 days of receiving all relevant invoice statements.

21.1.1.2 The municipality is also required to create a favorable environment to receive services and goods without preventing the supplier to perform their duties.

21.1.1.3 All parties involved must perform according to the terms and conditions of the relevant contract, while the contract is alive.

### 21.1.2 Supplier Performance:

21.1.2.1 The supplier of goods and services is required to perform as per terms and conditions agreed upon and should inform the municipality if circumstances prevent them performing with reason provided within 5 working days (to be included in all contracts).

21.1.2.2 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.

## 22 CONTRACT REVIEWS

- 22.1 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.
- 22.2 The contract owner or champion must conduct as appropriate post contract reviews (at least once a year for contracts longer than three years).
- 22.3 Provide contract information to the contract manager and Supply Chain Management unit after a contract has expired.
- 22.4 Conduct a contract risk assessment at the review phase of the contract life cycle.

## 23 CONCLUSION

Contract management should deliberately focus on the activities associated with the operational phase of the contract after the contract has been awarded and is up and running. However, it is fully acknowledged that successful contract management is significantly dependent on what happens before, during and after the tendering and award phases.

Procurement planning during the tendering, contract award and the contract management phases should be seen as a continuum, with effective contract management planned from the very start of the procurement process.

24 **Policy Review**

This policy will be reviewed on a biennial basis.

<b>POLICY SECTION:</b>	<b>CONTRACT MANAGEMENT UNIT (CMU)</b>
Department:	Budget and Treasury Office
<b>Effective Date</b>	<b>01 July 2024</b>
<b>Adopted by Council</b>	<b>27 March 2024</b>
<b>Council Resolution</b>	<b>A22/03/24</b>
Department:	Budget and Treasury Office
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<b>Adopted by Council</b>	<b>29 May 2023</b>
<b>Council Resolution</b>	<b>A06/05/23</b>

25 **Effective Date**

**The policy takes effect on the date on which it is adopted by the Council and shall be reviewed annually or when the need arises.**