



DR NKOSAZANA DLAMINI ZUMA MUNICIPALITY CONTRACT MANAGEMENT POLICY

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1. PRE-AMBLE

All transactions undertaken by the Dr Nkosazana Dlamini Zuma 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. goods and services outside of specification;
2. cost overruns;
3. poor suppliers-, buyer- or other stakeholder relations;
4. negative public perception, and
5. potentially complete service delivery failures.
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 Dr Nkosazana Dlamini Zuma Municipality.

2. DEFINITIONS

In this Policy, unless the context indicates otherwise

- **Accounting Officer (in relation to a municipality):** 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 Section 116 of 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 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).
- **Contract Management**: means the holistic term of all role players involved in an agreement (SLA) or contract and include the; SCM manager, contract management officer, contract owner, contract champion and supplier.
- **Contract management officer**: means the SCM 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 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.
- **Contract Director**: means a Senior manager appointed according to sect 56 of the Systems Act
- **Delegation (in relation to a duty)**: Includes an instruction or request to perform or to assist in performing the duty.
- **Force Majeure**: 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 (In relation to a municipality):**

means:

- ✓ 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 Dr NDZ Municipality involved with contracts.
 - **User Department:** Refers to the official/s within the relevant department of a directorate, as set out in the organogram of the DR NDZ Municipality responsible for contract management.

3. INTRODUCTION

Effective contract management is vital for the efficient operation of any business entity. The importance of contract management in municipalities has been emphasized by the introduction of the Municipal Finance Management Act no 56 of 2003. Contracts and contract management are of particular relevance, a contract or agreement procured through the supply chain management system of a municipality or municipal entity must-

- Be in writing;
- Stipulate the terms and conditions of the contract or agreement , which must include provisions providing for;
 - ✓ The termination of the contract or agreement in the case of non or under performance;
 - ✓ Dispute resolution mechanisms to settle between the parties;
 - ✓ A periodic review of the contract or agreement once every 3 years in case of a contract or agreement for longer than 3 years and;
 - ✓ Any other matters that may be prescribed

The accounting officer of a municipality or municipal entity must

- a) Take all reasonable steps to insure that a contract or agreement procured through the supply chain management policy of the municipality or municipal entity is properly enforced;
- b) Monitor on a monthly basis the performance of a contractor under the contract or agreement
- c) Establish capacity in the administration of the municipality or municipal entity-

To assist the accounting officer in carrying out the duties set out in paragraphs (a) and (b);

- To oversee the day-to day management of the contract or agreement; and
- Regularly report to the council of the municipality as may be appropriate, on the management of the contract or agreement and the performance of the contractor

A contract or agreement procured through the supply chain management policy of a municipality or a municipal entity may be amended by the parties but only after-

- The reasons for the proposed amendments have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
- The local municipality-
 - ✓ has been given reasonable notice of the intention to amend the contract and agreement
 - ✓ Has been invited to submit representations to the municipality or municipal entity;

4. OBJECTIVES

4.1 The objectives of this policy is to set out the procedure that should be followed when drafting, monitoring, cancelling or renewing contracts or agreements procured through supply chain management of the municipality.

4.2 This policy applies to all contracts entered into by the municipality as a result of Supply Chain Management Policy.

4.3 This policy should be read and used in conjunction with the municipalities supply chain management policy.

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

- When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is:
 - ✓ Equitable
 - ✓ Transparent
 - ✓ Competitive
 - ✓ cost-effective
 - ✓ fair

4.5 The effective and efficient control of contracts procured through the SCM system ensuring:

- proper recording and enforcement of contracts throughout the contract life cycle (specifications to contract reviews);
- 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;
- management of Contract Performance;
- compliance with the regulatory framework;
- to assist officials in understanding their legal and managerial responsibilities with regards to contract management;
- the optimization of efficient and sustainable financial wellbeing of the municipality, resulting in lower cost drivers, and
- the continuous development of effective Management Information systems, resulting in strategic support and risk preventions.

4.6 To ensure that no contract procurement of goods and services (excluding land sales or purchases of Dr NDZ Municipal Assets, which are managed by Town Planning Department), should take place outside of the SCM System.

5 CONTRACT PRICE ESCALATIONS

5.1 An appropriate contract price adjustment formula or specified terms of escalation must be specified in the bid documents.

5.2 Escalation notification must be in writing and presented before the implementation date thereof.

5.3 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.

5.4 Dr NDZ Municipality will increase prices based on the Consumer Price Index (CPI) for that current year as the regulated base.

6 CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS

Dr Nkosazane Dlamini Zuma 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.

7 CUSTODIANS OF CONTRACT DOCUMENTS

- Contract Documents should be kept by the Supply Chain Management Unit
- No directorate shall keep original Bid Documents and contracts in their office
- Directorates will however be allowed to keep copies of contracts and bid documents for assessment purposes
- Safe custody of all contract documents must be enforced by all relevant users.
- Contract Champions and Contract Owners are responsible for the electronic capturing of the contract information and maintenance thereof on the Contract Management system.

8 ROLEPLAYERS IN CONTRACT MANAGEMENT

- Contract Administration/ Supply Chain Management
- Contract Management/ Project Manager
- Project Manager

9 ROLES OF PROJECT MANAGEMENT AND CONTRACT ADMINISTRATION

- Nominated by the head of department to manage the specific project
- Responsible for quality control, financial management and other technical expertise needed for-
 - ✓ The success of the project
 - ✓ Facilitate the signing of contract with the service provider
 - ✓ Assess performance in line with the specification/ terms of reference

10 CONTRACT ADMINISTRATION

- Official from supply Chain Management Unit is responsible for contract administration
- Ensuring that all the necessary legal formalities in entering into the contract are adhered to
- Responsible for –
 - Safe keeping of all contract related documents
 - Drafting and ensuring of signing the service level agreement
 - Advise user departments in advance on the the expiry of their contracts
 - Drafting and monitoring of variation orders
 - Reporting on the performance of Service Providers to the accounting officer and council.

11 PROCEDURES WHEN DRAFTING CONTRACTS

All contracts of the municipality should be in writing and should atleast include the following:

- Project amount
- Duration of the contract
- Dispute resolution mechanisms
- Penalties in breach of contract
- Termination Clause

12 PROCEDURES AFTER DRAFTING THE CONTRACT

After the contract has been signed by the Municipal Manager, it should be entered into the contract register that should be maintained by the contract management officer. The register should atleast include the following information:

- Contract Number
- Bid/ Qoutation number
- Appointed Bidder
- Project description
- Contract value
- Contract Start/ End date
- Comments

The contract management officer should update the register on a monthly basis with all contracts entered into by the municipality during that month.

13 REVIEW OR TERMINATION OF CONTRACT

- 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.
- The head of supply chain management should inform the relevant head of department and or municipal manager about the date of the review of the contract, at a reasonable period before the review date
- In case of non performance or under performance by the contractor, remedies as outlined in the contract should be used by the municipality

14 CONTRACT AMMENDMENTS

13.1 A contract or agreement procured through the Supply Chain Management Policy of the municipality or municipal entity may be amended by the parties, in exceptional circumstances in order to mitigate abuse.

13.2 In terms of Section 116(3) of the MFMA, (56 of 2003), ammmendments in compliance with SCM procedures, may only be made after-

- The reasons for the proposed amendment have been tabled to the Municipal council or, in the case of the Municipal entity in the council of its parent municipality; and the local community-
 - Has been given reasonable notice of the intension to ammmend the contract or agreement : and
 - Has been invited to submit representation to the municipality or municipal entity

13.3 Amendments of contracts where the expansion or variation is not more than (NT Circular 62):

- 20% (construction related goods, services and/or infrastructure projects), and
- 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 Manager for approval.

13.4 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.

15 REPORTING TO COUNCIL ON CONTRACT MANAGEMENT

The contract management officer should prepare a report on a monthly basis for submission to the accounting officer on the state of all contracts entered into through the municipal supply chain mamangement system. The following information should be contained in the report;

- Name of bidder
- Project/ Service
- Project user department

- Contract Value
- Payments made to date
- Contract Start/ End date
- Comments

16 REPORTING TO NATIONAL TREASURY

The Chief Financial Officer is required to submit information in respect of each contract that is above R100 000.

17 APPLICATION OF CESSION AND ASSIGNMENT OF CONTRACTS RESULTING FROM PROCUREMENT

17.1 ASSIGNMENT OF CONTRACTS

17.1.1 Assignment refers to the transfer of rights and obligations in a contract from an assigner to an assignee. The effect of this is that the service provider appointed through a competitive bidding process transfers the contract in its entirety that is, the obligation (the responsibility of rendering the services) and the right (of receiving payment for service rendered) to a third party that did not participate in the bidding process or a bidder that participated in the bidding process but was not successful.

17.1.2 South African law of contract is based mainly on common law. However, the contracting process for commercial contracts entered into by organs of state is subject to section 217 of the Constitution and other applicable legislation. The effect of the above is that contracts that result from public procurement processes are required to comply with the requirements of all Supply Chain Management (SCM) legislative prescripts and consequently, assignment of contracts is not allowed as it will be contrary to principles of section 217 of the Constitution particularly, fairness, transparency and competitiveness.

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

17.2 CESSION OF CONTRACTS

17.2.1 Cession refers to the transfer of only the rights a service provider has in terms of a contract from it to a third party. In commercial contracts, the main right involved is the right to be paid for services rendered. While the appointed bidder remains the service provider that continues to render the services, the

service provider may cede (transfer) its right to be paid for the services it rendered in terms of the contract to a third party. This means that the service provider renders the services to an organ of state, while the organ of state pays for the services rendered to a third party instead, most commonly, a financial institution.

17.2.2 Cession is permissible within the SCM legal prescripts. However, it is important that the application of cession in public procurement is carefully regulated to limit possible instances of abuse through fronting arrangements and similar processes. It is for this reason that the application of cession be limited only to those cession agreements in favour of registered Financial Services Providers (FSP) and state institutions established for the express purpose of providing funding to businesses and entities (State Institution).

17.2.3 Therefore, cession shall only be applicable as follows: MFMA Circular No 120 Cession and Assignment of Contracts August 2022 Page 3 of 3 4.3.1

17.2.4 Cession must only be applicable to the transfer of right to payment for services rendered by a service provider to an FSP or State Institutions;

17.2.5 The written request for cession must be by the service provider and not a third party; and

17.2.6 The written request by the service provider must be accompanied by the cession agreement.

This Policy is called the “*Contract Management Policy for Dr Nkosazana Dlamini Zuma Municipality*” and takes effect on 01 July 2023

ADOPTED BY COUNCIL ON THIS _____ DAY OF _____ 2023

MUNICIPAL MANAGER

DATE