

DR JS MOROKA LOCAL MUNICIPALITY



2022/2023

CONTRACT MANAGEMENT POLICY

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1. PREAMBLE

- 1.1. The Contract Management Framework as developed by the National Treasury requires an organisation wide approach to contract management which will include among others:-
 - 1.1.1 identification of all contracts and stakeholders;
 - 1.1.2 classification of contracts for management purposes; and
 - 1.1.3 management of all stages in the Contract Life Cycle.
- 1.2. Having had regard to the intention and purpose of the above mentioned Contract Management Framework, Dr JS Moroka Local Municipality developed an institution Contract Management Policy which on its approval and implementation will facilitate improvements in financial management and lead to:-
 - 1.2.1 increases in revenue; and
 - 1.2.2 enhanced service delivery.
- 1.3. All transactions undertaken by the Dr JS Moroka Local Municipality involves a contract whether explicitly agreed to in writing, or implicitly implied through actions.
- 1.4. 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.
- 1.5. All contracts must be managed throughout the 9 (Nine) Steps of Contract Life Cycle process, based on the level of management control appropriate for the classification of that contract.
- 1.6. Improperly managed contracts may impact negatively on service delivery. Adverse effects of ineffective contract management include but are not limited to:
 - 1.6.1. goods and services outside of specification;
 - 1.6.2. cost overruns;
 - 1.6.3. poor suppliers-, buyer- or other stakeholder relations;
 - 1.6.4. negative public perception, and
 - 1.6.5. potentially complete service delivery failures.
- 1.7. 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 municipal departments following a centralised strategy of contract management. This policy must be read in conjunction and alliance with the SCM standard procedure on contract management of the Dr JS Moroka Local Municipality.

2. PURPOSE

The purpose of this policy is to ensure that the resources required to support the strategic and operational commitments of the Municipality to deliver basic services at the correct time, at the right price and at the right location and further that the quantity and quality of the basic services delivered by the Municipality satisfy the needs of the community, the system of demand management and the provisions of Section 116 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

3. POLICY TITLE

This policy shall be known as and officially referred to as the Dr JS Moroka Local Municipality 2022/2023 Contract Management Policy.

4. COMMENCEMENT AND VALIDITY

This policy shall be valid for the 2022/2023 financial year and it shall cease to apply when integrated into the Dr JS Moroka Local Municipality Supply Chain Management Policy and will be effective from the 01st July 2022.

5. DEFINITIONS:

In this Policy, unless the context indicates otherwise-

Accounting Officer	means the municipal official referred to in Section 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	means the Construction Industry Development Board (CIDB), a national body established by an Act of Parliament (Act 38 of 2000)

Development Board (CIDB):	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 officer	means the official within a specific municipal department, 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; Divisional Manager, Departmental Manager, Contract Officer and Supplier/Service Provider.
Divisional Manager	means the SCM official responsible for monitoring, regulating and reporting on all contract related activities as set out in Section 116 of the MFMA.
Delegation	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 majure or for failure to carry out a contract if prevented (Term and conditions in this regard will be determined by every individual contract/s).
Executive Manager	An official appointed according to Section 56 of the Local Government: Municipal Systems Act
Official	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 Dr JS Moroka Local Municipality involved with contracts.
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6. 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	means Special Conditions of Contract.
SCM	means Supply Chain Management
SDA	means Service Delivery Agreement.
SLA	means Service Level Agreement.

7. LEGAL FRAMEWORK

This policy is guided among others by the following legislation and agreements as amended from time to time:

- 7.1. Constitution of the Republic of South Africa;
- 7.2. Local Government: Municipal Finance Management Act;
- 7.3. Municipal Supply Chain Management Regulations;
- 7.4. Local Government: Municipal Systems Act;
- 7.5. Local Government: Municipal Structures Act;
- 7.6. National Treasury Guidelines and Circulars;
- 7.7. Costs Containment Regulations;
- 7.8. Dr JS Moroka Local Municipality Supply Chain Management Policy;
- 7.9. Dr JS Moroka Local Municipality Contract Management Procedure Manual.

8. POLICY OBJECTIVES

- 8.1 To give effect to Section 217 of the Constitution of South Africa (1996) which stipulates that:

- 8.1.1 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:
 - 8.1.1.1 equitable
 - 8.1.1.2 transparent
 - 8.1.1.3 competitive
 - 8.1.1.4 cost-effective and
 - 8.1.1.5 fair
- 8.2 To provide for a manual and/or electronic, effective and efficient control of contracts procured through the SCM system ensuring:
 - 8.2.1 proper electronic and/or manual recording and enforcement of contracts throughout the contract life cycle (specifications to contract reviews);
 - 8.2.2 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;
 - 8.2.3 electronic and/or manual management of Contract Performance;
 - 8.2.4 compliance with the regulatory framework;
 - 8.2.5 to assist officials in understanding their legal and managerial responsibilities with regards to contract management;
 - 8.2.6 the optimization of efficient and sustainable financial wellbeing of the municipality, resulting in lower cost drivers, and
 - 8.2.7 the continuous development of effective Management Information systems, resulting in strategic support and risk preventions.
- 8.3 To ensure that no contract procurement of goods and services (excluding land sales or rentals) of the Dr JS Moroka Local Municipal Assets, takes place outside of the SCM System.

9. PRINCIPLES

- 9.1 All officials and other role players in the Supply Chain Management system of the Dr JS Moroka Local Municipality must implement this Policy in a way that gives effect to:
 - 9.1.1 Section 217 of the Constitution;
 - 9.1.1 Section 116 of the MFMA;
 - 9.1.1 Section 33 of the MFMA;
 - 9.1.4 SCM Policy;
 - 9.1.5 SCM Regulations
 - 9.1.6 any other legislation pertaining to SCM.

- 9.2 The application of this policy as well as the full use of the electronic contract management or manual contract management system shall be compulsory and consistent whenever the Municipality:
- 9.2.1 procures goods or services;
 - 9.2.2 disposes of goods no longer needed; and
 - 9.2.3 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.
- 9.3 The Accounting Officer must:
- 9.3.1 at least annually review the implementation of this Policy; and
 - 9.3.2 when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to Council;
 - 9.3.3 in terms of Section 62(1) (f) (IV) of the Act, take all reasonable steps to ensure that the Contract Management Policy as well as the Electronic Contract Management System is implemented.
- 9.4 A contract or agreement procured through the Supply Chain Management System of the Municipality must:
- 9.4.1 be in writing;
 - 9.4.2 captured and recorded in the Electronic Contract Management System of the Municipality;
 - 9.4.3 stipulate the terms and conditions of the contract or agreement, which must provide for: -
 - 5.4.3.1 the termination of the contract or agreement in the case of non- or underperformance;
 - 5.4.3.2 dispute resolution mechanisms to settle disputes between the parties;
 - 5.4.3.3 a quarterly periodic review of the performance of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and
 - 5.4.3.4 any other matters that may be prescribed.
- 9.5 Each Executive Manager, reporting directly to 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.
- 9.6 The Executive Managers must assist the Accounting Officer and/or any other delegated officials to take all reasonable steps to:
- 9.6.1 ensure that a contract or agreement procured through the supply chain management policy of the municipality is properly enforced;
 - 9.6.2 monitor on a quarterly basis the performance of the contractor under the contract or agreement.

- 9.6.3 administrate the contract with the necessary competencies and delegations, ensuring effective management of contracts.
- 9.7 Each Executive Manager must ensure that departmental Contract Officers conducts contractor performance evaluations and load individual Service Providers/Contractors Performance Reports to the Electronic Contract Management System within 10 (ten) business days after the end of each quarter.
- 9.8 The Executive Manager submits a consolidated report to the Municipal Manager within 15 (fifteen) business days after the end of each quarter for purposes of Section 116 (2) (b) of the Act.
- 9.9 The SCM Manager shall submit an institutional consolidated quarterly report on the performance of contracts or agreements for purposes of Section 116 (2) (d), to the Accounting Officer within 20 business days of the end of each quarter.
- 9.10 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.
- 9.11 In terms of Section 116(3) of the MFMA, (56 of 2003), amendments (in compliance with SCM procedures), may only be made after:
- 9.11.1 the reasons for the proposed amendment have been tabled in the council;
and
- 9.11.2 the local community has been given reasonable notice of the intention to amend the contract or agreement; and
- 9.11.3 has been invited to submit representations to the municipality.
- 9.12 Other contractual amendments shall be effected in accordance with the provisions of Circular 62 where the contract expansion or variation is not more:
- 9.12.1 20% (construction related goods, services and/or infrastructure projects),
and
- 9.12.2 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.
- 9.13 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 the process mentioned in Section 12 above.
- 9.14 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.

- 9.15 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.
- 9.16 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 (Section 116 (3) of the MFMA will be followed with section 33, when amending an existing contract for longer than 3 years).

10. POLICY CONTENT

10.1 MAINTENANCE AND CONTRACT ADMINISTRATION

- 10.1.1 Contract administration includes all administrative duties associated with a contract once it is adjudicated and implemented.
- 10.1.2 The contract should be signed by all parties concerned (The Municipal Manager should also ensure that the suppliers have the delegated powers to sign and amend the contractual agreement) and recorded in the Electronic Contract Management Register/System.
- 10.1.3 The contract will only be enforceable after all the signatures of the relevant parties are documented.
- 10.1.4 A signed service level agreement (if applicable) must be compiled and signed which will incorporate all the relevant sections of the tender documentation.

10.2. ROLES AND RESPONSIBILITIES OF OFFICIALS AND TERMS OF REFERENCE:

10.2.1 Manager SCM:

- 10.2.1.1 The Manager responsible for SCM is the SCM Official responsible for system administration status, (Assistant manager supply chain management) and SCM performance reporting on all contracts related activities.
- 10.2.1.2 For the purposes of **contract management** activities performed by the relevant role players, the Manager SCM (Deputy chief financial officer) will convene the meeting on contract management to report to the contract management committee on the following activities:
- 10.2.1.2.1 identification and classification of contracts for management purposes in terms of the SCM processes;
- 10.2.1.2.2 recognition, measurement and disclosure;

- 10.2.1.2.3 oversight of contract management as is provided for in this policy;
- 10.2.1.2.4 document and information management;
- 10.2.1.2.5 relationship management;
- 10.2.1.2.6 contractor performance management;
- 10.2.1.2.7 contract risk management;
- 10.2.1.2.8 inform the Asset Management section of the location of newly procured assets for asset register and insurance purposes; and
- 10.2.1.28 ensure performance of suppliers is managed appropriately to the terms and conditions of the contract.
- 10.2.1.29 Must request a report on Monitoring and evaluation of performance of the contracts from the end user departments.

10.3 Senior Legal advisor:

The Senior legal advisor who shall be from the Legal Services Department of the Municipality shall be responsible for the following activities:

- 10.3.1 ensuring that all the necessary legal formalities in entering into the contract are adhered to;
- 10.3.2 The senior Legal Advisor and the end user department must Keep a copy of the Service level agreement and the original SLA must be kept at record unit for audit purposes.
- 10.3.3 That reports on the SLA's developed are submitted to Committee on contract Management for consideration.
- 10.3.4 shall ensure that the following officials provide quality assurance prior development of the Service Level agreement namely;
 - 10.3.4.1 The Assistant Manager Supply Chain Management Unit.
 - 10.3.4.2 The Chief internal Auditor.
 - 10.3.4.3 The Assistant Manager Risk Management.
 - 10.3.4.4 The Assistant Manager IDP.
 - 10.3.4.5 The Assistant Manager Budget.
 - 10.3.4.6 The Assistant Manager Performance Management Service.
- 10.3.5 shall ensure that the Assistant Manager records and archives and assistant Manager SCM, provide a completed checklist of the bid documents and reports from the supply chain

management unit on the newly appointed contracts respectively.

10.4 Committee members:

- 10.4.1 Shall develop a schedule on contract management meetings.
- 10.4.2 That the committee shall convene a meeting on contract management once monthly unless circumstances necessitate that the meeting be held more than the specified time frame.
- 10.4.3 The Committee will develop a contract register in conformity with the treasury standard.
- 10.4.4 That the Committee will Consider irregularities on the appointed contracts and make recommendations.
- 10.4.5 The committee will determine the review of contracts for which extension is necessary for consideration by the Bid adjudication committee.
- 10.4.6 The committee will consider terminating and terminated contracts.
- 10.4.7 The committee shall consider a report on the contract(s) which are about to terminate at least six months prior the actual termination date and recommend to the Bid adjudication committee on a need for extension if necessary.
- 10.4.8 The committee must entertain reports by the end user departments on the performance management, monitoring and evaluation of contracts.

10.5 Municipal Manager

- 10.5.1 The Municipal Manager is responsible for signing of contracts with the relevant service providers, in line with the Delegation of Powers and Responsibilities.
- 10.5.2 The Municipal Manager is ultimately accountable for the institutional contract management.

10.6 Contractor Performance Evaluation

- 10.6.1. All project managers and/or end users must be responsible to monitor and evaluate the performance of contracts duly appointed in their respective departments.

11 RECORD KEEPING

- 11.1 Proper records regarding all aspects of the contract must be maintained in the Electronic Contract Management System and/or manually and kept in accordance with relevant legislation.
- 11.2 All communication related to contracts should be linked to the master document on the electronic contract management system.
- 11.3 Safe custody of all contract documents must be enforced by all relevant users.
- 11.4 Municipal Contracts Officer and the Executive Managers shall be responsible for the electronic capturing and feedback of contract/s to the Contract Management system in conjunction with the records department.
- 11.5 The originally signed contract should be sent to the records department (by the user departments) for safekeeping and storage. Directorates will however be allowed to keep copies of contracts and bid documents for assessment purposes
- 11.6 The records department is responsible for the booking systems of contracts.

12. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS

Dr JS Moroka Local Municipality may not enter into any contract that will impose financial obligations beyond the 3 (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.

13. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES

Disputes on procurement contracts between the municipality and service providers shall be dealt with in accordance with the provisions of the Dr JS Moroka Local Municipality Supply Chain Management Policy as required by Section 116(1) of the MFMA.

14. CONTRACT PRICE ESCALATIONS

- 14.1 An appropriate contract price adjustment formula must be specified in the bid documents if deemed necessary.
- 14.2 Escalation notification must be in writing and presented before the implementation date thereof.
- 14.3 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.

15. PERFORMANCE ON CONTRACTS:

15.1 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.

15.2 Municipality's Performance:

15.2.1 The municipality is required to pay creditors within 30 days of receiving all relevant invoice statements.

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

15.2.3 All parties involved must perform according to the terms and conditions of the relevant contract, while the contract is alive except for the deviations which procedure must be dealt with in terms of the Municipal Supply chain policy.

16 IN THE INSTANCE OF UNDER-PERFORMANCE

16.1. The Municipality will notify the service provider of underperformance identified.

16.2. Corrective action should be documented in writing by the project manager.

16.3. Should the service provider fail to remedy the breach in terms of clause 16.2, the Municipal Manager may terminate the contract.

17. REVIEW OF CONTRACTS

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 one (1) year subject to clause 10.4.5 above.

18 IMPLEMENTATION AND REVIEW PROCESS

This policy will come into effect on the 01st July 2022 and shall be reviewed at least annually or when required by way of a Council Resolution.