

# INTSIKA YETHU MUNICIPALITY

EC 135



## FINAL CONTRACT MANAGEMENT POLICY

2022-2023

## TABLE OF CONTENTS

NO.	DESCRIPTION PAGE	PAGE NO.
1.	Preamble	3
2.	Definitions	3-4
3.	Abbreviations	4
4.	Contract Management	5
5.	Objectives	5
6.	Procedures when drafting contracts	6
7.	Statutory and regulatory framework	6
8.	Adoption ,amendment and implementation	6
9.	Conditions of Contract	6
10.	Management of contracts	7
11.	Amendment of contracts	7
12.	Maintenance and contract administration	7
13.	Contracts Management components	8
14.	Procedures when drafting contracts	8
15.	Performance monitoring	9
16.	Payment procedures	9
17.	Contract administration	9
18.	Records Management	10
19.	Roles and responsibilities of officials	10
20.	SCM Contract Management	10
21.	Price increases	11
22.	Contracts having budgetary implications	11
23.	Breach of contract	11
24.	Notice of termination	11
25.	Penalties	12
26.	Performance of service providers	12

## PREAMBLE

Properly managed contracts by all stakeholders involved, can ensure that services are delivered within specifications as set and agreed by all during the specifications phase and at the agreed cost,(inclusive of escalation clauses in contracts) time period and qualities of the goods and services procured.

All contracts must be managed throughout the contract life cycle, based on the level of management control appropriate for the classification of that contract.

Improperly managed contracts may impact negatively on service delivery. Adverse effects of poor contract management include but are not limited to;

- ✓ Goods and services outside of specification
- ✓ Cost overruns
- ✓ Poor supplier, buyer or stakeholder relations
- ✓ Negative public perception and
- ✓ Potentially complete service delivery

Effective contract management is vital for the efficient operation of any municipality. The importance of contract management in municipalities has been emphasized by introduction of the Municipal Finance Management Act no 56 of 2003.

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 conjunction with the SCM Policy of Intsika Yethu Municipality.

## DEFINITIONS

In this policy, unless the context indicates otherwise-

Accounting Officer	Means the municipal official referred to in Section 60 of the MFMA(2003), and include a person acting as the accounting officer
Act or MFMA	Means the Local Government: Municipal Finance Management Act,2003 (Act no.56 of 2003)
Circular 62	Means communication from National Treasury by means of a Circular to enhance compliance and accountability to SCM Regulations and the MFMA of 2003
Construction Industry Development Board(CIDB)	Means the construction industry development board, 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 within a specific department, responsible for all day to day activities (including performance management and dispute resolution) during the life cycle of the contract , relevant to his/her department. The contract champion can also be seen as the Budget holder
SCM Contract 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
Contract owner (Director)	Means 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 performing the duty. Such delegation must be in writing
Force Majeure'	Is the expression used to denote irresistible superior force which might cause damage or prevent the execution of an obligation, therefore supplier is not liable for damages 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 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 other than as an employee

#### ABBREVIATIONS

<b>BEE</b>	Black economic empowerment
<b>B-BBEE</b>	Broad –based black economic empowerment
<b>BSC</b>	Bid specification committee
<b>BEC</b>	Bid evaluation committee
<b>BAC</b>	Bid adjudication committee
<b>GCC</b>	General conditions of contract
<b>MSA</b>	Municipal Systems Act ,2000 (Act no 32 of 2000)
<b>MFMA</b>	Municipal Finance Management Act (Act no 56 of 2003)
<b>SCC</b>	Special conditions of contract
<b>SDA</b>	Service delivery agreement
<b>SLA</b>	Service level agreement

## 1. CONTRACT MANAGEMENT

1.1 Contract Management is an agreement, based in consensus between legal subjects with contractual capacity which is legal, physically possible and complies with the prescribed formalities and which is reached with the intention of creating a legal obligation with resultant rights and duties

## 2. OBJECTIVES

2.1 To give effect to Section 217 of the Constitutions of South Africa that stipulates that:

- When an organ of state in the national ,province 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 and
  - ✓ Fair

2.2 The effective and efficient control of contracts procured through the SCM system ensuring that;

- ✓ 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), optimising 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

2.3 To ensure that no contract procurement takes place outside of the SCM system

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2.5 The benefits of good contract management are;

- ✓ Optimised delivery of service
- ✓ 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 the Contract

2.6 Failure to implement adequate contract management could result in the following risks;

- ✓ Paying for goods and services which do not meet the standards as set out in the contract
- ✓ Significantly higher costs
- ✓ Revenue collection delays
- ✓ Customer and supplier dissatisfaction
- ✓ Overcharges by suppliers
- ✓ Erroneous payments

- ✓ Service delivery issues
- ✓ Missed savings opportunities
- ✓ Failed compliance with regulatory requirements
- ✓ Increased risk
- ✓ Complications associated with audits
- ✓ Accidental renewal of goods and services
- ✓ No verification of timelines and accuracy of payments, receipts and deliverables
- ✓ No monitoring of use of discounts and rebates
- ✓ No monitoring of use of discounts and rebates
- ✓ No monitoring of supplier performance across contracts and
- ✓ No enforcement for non-performance

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

Applications and framework of the contract management policy. All officials and other role players in the Supply Chain Management system of the Municipality must implement this policy in a way that gives effect to;

- ✓ Section 217 of the Constitution
- ✓ Section 116 of the MFMA
- ✓ Section 33 of the MFMA
- ✓ SCM Policy and
- ✓ Any other regulations pertaining to Supply Chain Management

**This policy applies when the municipality;**

- ✓ Procures goods or services
- ✓ Disposes goods no longer needed
- ✓ 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

### **3. ADOPTION, AMENDMENT AND IMPLEMENTATION OF THE CONTRACT MANAGEMENT POLICY**

The accounting officer must;

- ✓ At least annually review the implementation of this policy
- ✓ When considers it necessary, submit proposals for the amendment of this policy to Council and
- ✓ In terms of Section 62(1)(f)(iv) of the Act, take all reasonable steps to ensure that the contract management policy is implemented

### **4. CONDITIONS OF CONTRACT**

A contract or agreement procured through the Supply Chain Management system of the municipality must;

- ✓ be in writing
- ✓ stipulate the terms and conditions of the contract or agreement, which must include provisions for the termination of the contract or agreement in the case of none-or underperformance;
- ✓ dispute resolution mechanisms to settle disputes between the parties;
- ✓ 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
- ✓ any other matters that may be prescribed.

## 5. MANAGEMENT OF CONTRACTS

The Accounting Officer and delegated officials must take all reasonable steps to;

- ✓ ensure that a contract or agreement procured through the supply chain management policy of the municipality is properly enforced
- ✓ monitor on a quarterly basis the performance of the contractor under the contract management by also doing site visits and site meetings
- ✓ administrate the contract with the necessary competencies and delegations, ensuring effective management of contracts

## 6. AMENDMENT OF CONTRACTS

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

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

- ✓ the reasons for the proposed amendment have been tabled in the Council
- ✓ the local community has been given reasonable notice of the intention to amend the contract or agreement and has been invited to submit representations to the municipality

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

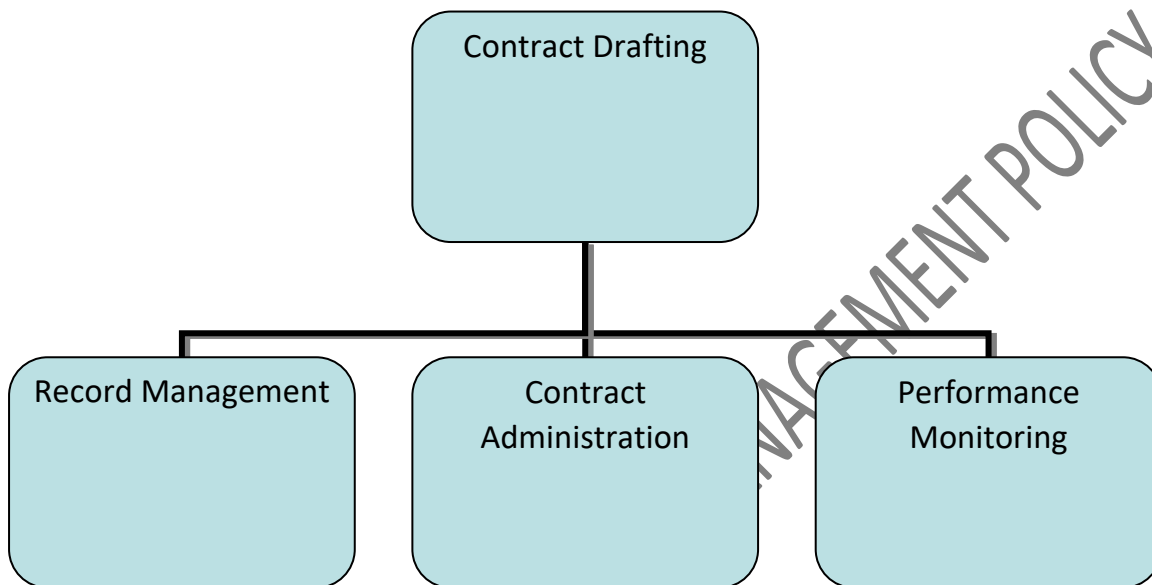
- ✓ 20% on construction related goods, services and /or infrastructure projects
- ✓ 15% on all other goods and /or services of the original value of the contract, must be submitted directly to Supply Chain Manager for approval amendment of contracts where the expansion or variation is more than the threshold 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
- ✓ 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 provided the reasons for the proposed amendment have been tabled in the Council, the contract amendment is in writing and signed by both parties
- ✓ When an amendment has a budgetary implications for a term longer than three(3) years, Section 33 of the MFMA will apply to this amendment
- ✓ 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

## 7. MAINTANANCE AND CONTRACT ADMINISTRATION

- ✓ Contract administration includes all administrative duties associated with a contract once it is implemented
- ✓ No rights in terms of an awarded contract will accrue before the appeal period and/or appeal has been finalised
- ✓ 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)

- ✓ 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)
- ✓ A signed service level agreement (if applicable) must be compiled and signed which will incorporate all the relevant sections of the tender documentation
- ✓ All once off purchases shall have a specified end delivery date

## 8. CONTRACTS MANAGEMENT COMPONENTS



### 8.1 PROCEDURES WHEN DRAFTING CONTRACTS

Contract drafting is a process which includes the pre & post processes involved in the actual drafting of the contract, from the negotiation phase up to the final contract where consensus is reached by all parties

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

- Termination of the agreement in case of none or under-performance
- Dispute resolution mechanisms to settle disputes between the parties
- Price of the goods or services to be delivered to the municipality and performance will be evaluated.
- Penalties in case of non-performance or under performance
- Duration of the contract
- 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.
- All contracts that have serious financial implications for the municipality should be handed over to the municipal legal adviser for review before being signed by the Accounting Officer or delegated official.

The following are regarded as contracts that have serious financial implications:

- Contract value to the amount of R200,000.00 or more
- Contract for the period of more 12 months and more



## **9. PERFORMANCE MONITORING**

Performance monitoring is the process which ensures that the actual implementation of the terms and conditions of the contract are in line with the signed contract

Non- performance is dealt with through issuing notice of breach or invoking of the penalty clause, done by the end-user who informs the SCM office

MFMA compels a municipality to ensure performance monitoring of its service providers and its critical impact on municipalities' performance and service delivery

Contract management office is responsible to ensure that performance procedures and measurements are in place at the commencement of the project to ensure that the performance of service providers is monitored from day one

### **9.1 PAYMENT PROCEDURES**

Advanced payments are prohibited. The user department must ensure that the contract obligations are met and that payment is done in accordance with the services rendered.

Supply Chain Management office will assist the end user department with the implementation of penalties as and when needed

### **9.2 CONTRACT ADMINISTRATION**

Contract administration includes all administrative duties associated with a contract once it is adjudicated and implemented and includes the process from the opening of a contract file, issuing of notices, extensions, terminations, breach of contract and contract variations and to ensure compliance at all times , as well as record management and the capturing of information on the Contract register

The accounting officer of Intsika Yethu Municipality must—

- Take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the municipality is properly enforced;
- monitor on a monthly basis the performance of the contractor under the contract or agreement;
- establish capacity in the administration of the municipality
- to assist the accounting officer in carrying out the duties set out in bullet one and two above,
- to oversee the day-to-day management of the contract or agreement; 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 the municipality may be amended by the parties, but only after the reasons for the proposed amendment have been tabled in the council of the municipality
- has been given reasonable notice of the intention to amend the contract or agreement;
- has been invited to submit representations to the municipality

### 9.3 RECORDS MANAGEMENT

Proper records regarding all aspects of the contract must be maintained and kept in accordance with relevant legislation by SCM to provide an audit trail

The original signed contract and all relevant communication must be kept by Supply Chain Management Unit

No Directorate shall keep original bid documents and Contracts in their offices

Directorates will however be allowed to keep copies of contracts and bid documents for assessment purposes

All communication related to contracts should be linked to the master document

### 10. ROLES AND RESPONSIBILITIES OF OFFICIALS

Contract Champion

The contract champion is responsible for the following activities;

- ✓ planning and budgeting for contracts
- ✓ ensuring that all the necessary legal formalities in entering into the contract are adhered to
- ✓ inform the asset management section of the expenditure of the location of newly procured assets for asset register and insurance purposes
- ✓ where appropriate , authorise payments due in terms of the contract and council's delegations
- ✓ submit quarterly performance reports to the relevant contract owner/Director /Accounting officer on service provider's/ suppliers' performance in meeting the terms and conditions of the contract
- ✓ to take appropriate action on consultation with the Supply Chain Management where a contractor is underperforming or is in default or breach of contract
- ✓ ensure performance of suppliers is managed appropriately to the terms and conditions of the contract including establishing and managing of non-performance is addressed with at least a formal letter advising specific non-performing areas and stating remedial action/s required within specific time frames
- ✓ good performance is recognised and communicated through established channels and
- ✓ all parties participate in joint performance reviews where appropriate and seek improvement opportunities
- ✓ Submit original signed contract or copy thereof
- ✓ Where the municipality is a "LESSOR" a copy of the contract must be submitted to the Revenue Section with an instruction to collection the payment/s

### 11. SCM CONTRACT MANAGEMENT

For the purposes of contract management activities performed by the relevant role players, the SCM person responsible for contracts will monitor and report on the following activities;

- ✓ Identification and classification of contracts for management purposes in terms of the SCM processes

#### 11.1. Contract Owner/Director

The Director is responsible for co-signing of contracts with the relevant service provider

Directors is ultimately accountable for the contract and is also responsible for ensuring that contract champions are assigned to all contracts.

## **12. PRICE INCREASES**

Price increases shall be dealt with as stipulated in the SCM Policy  
All request for

## **13. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE (3) FINANCIAL YEARS**

Intsika Yethu 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 MFMA have been fully complied with.

## **14. BREACH OF CONTRACT**

In the event of poor or non-performance, the Contract champion must convene a meeting with the service provider to inform them of their poor or non-performance. Minutes as well as attendance registers must be provided to SCM

14.2 In the event that the Service Provider continues with poor or non-performance, the Contract Champion must provide all the information to SCM for the drafting of a Breach Notice in terms of the Contract.

14.3 After the breach period (normally 14/30 days) the Contract Champion will be requested to confirm whether the Service Provider remedied the breach.

14.4 In the event that the Service Provider did remedy the breach, the Contract will continue. In the event that the Service Provider did not remedy the breach, the Contract will be terminated and an alternative Service Provider should be appointed in consultation with SCM.

## **15. NOTICE OF TERMINATION**

15.1 Supply Management Unit will distribute a notice of termination to the Contract Champion and relevant stakeholders 6 (six) months prior to termination of Contract in order for the Contract Champion to commence with the tender process for the appointment of new Service Providers (if necessary).

15.2 In the event that no feedback is received from the Contract Champion on the due date as provided in the notice, the Contract will be terminated on the termination date.

## **16. TERMINATION OF PROCUREMENT CONTRACTS**

16.1 Contracts will terminate on the termination date, unless prior approval is received from the Contract Champion for the extension.

## **17. PERFORMANCE MONITORING**

17.1 Contract Champions must ensure that performance monitoring is done throughout the contract period.

17.2 Contract Champions must provide reports to SCM on a quarterly basis on the overall performance of all long term Service Providers for that quarter, which

reports shall be filed in the Contract file for audit purposes. Performance Reports are filed on the Contract file.

- 17.3 Contract Champions must provide performance checklists for goods/services delivered to supply chain when the invoice is received and must be attached to the invoice.

## **18. PENALTIES**

- 18.1 In the event that the Service Provider fails to perform the services within the period(s) specified in the Contract, the Contract Champion may deduct from the Contract price, as a penalty, the sum as stipulated in the Contract for the unperformed Services.
- 18.2 Imposing of penalties must be approved by the delegated authority who signed the Contract and all such approvals must be attached to the invoice.
- 18.3 The Service Provider must be informed in writing of any deduction from the Contract price. All such correspondence must be submitted to SCM for record purposes and should also be reported in the quarterly performance reporting.

## **19. PERFORMANCE OF SERVICE PROVIDER**

- 19.1 In the event that the Service Provider encounter conditions impeding timely delivery of goods or services, the Service Provider shall within a reasonable time notify the Contract Champion in writing of the fact of the delay, its likely duration and its causes). As soon as practicable after receipt of the Service Provider's notice, the Contract Champion must evaluate the situation and decide to extend the service Provider's time for performance, with or without the imposition of penalties.
- 19.2 Should the Service Provider fail the deliver services in accordance with the terms as agreed upon in the Contract, the Contract Champion must inform the Service Provider in writing to re-do the work within 5(five) days at no additional cost to Municipality.

## **20. 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 the SCM Policy.

## **21. CONTRACT PRICE ESCALATIONS:**

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

## **22. PERFORMANCE ON CONTRACTS:**

- 22.1 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.

**Municipality's Performance:**

- ✓ The municipality is required to pay creditors within 30 days of receiving all relevant invoice statements.
- ✓ The Municipality is also required to create a favourable environment to receive services and goods without preventing the supplier to perform their duties.
- ✓ All parties involved must perform according to the terms and conditions of the relevant contract, while the contract is alive.

**Supplier Performance**

- ✓ The supplier of goods and services is required to perform as per terms and conditions agreed upon and should inform the municipality if circumstances prevents them to perform, with reasons provided, within 5(five) working days (to be included in all contracts).
- ✓ 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.

**23. EFFECTIVE DATE**

This policy will be effective from the approved by Council of the Intsika Yethu Municipality.