

EMTHANJENI MUNICIPALITY



CONTRACT MANAGEMENT POLICY (Local Government Framework of Infrastructure Development Procurement Management)

2022/2023 FINANCIAL YEAR

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DEFINITIONS

This policy must be read in conjunction with the Supply Chain Management Policy.

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 includes 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 in relation and pursuant to the objects of, the MFMA.

Construction Industry Development Board (CIDB): means the Construction Industry

Contingencies means a percentage of concept budget allowed for unforeseeable programmatic and design changes which occur over the course of the execution.

Contract Alteration means changing grammatical 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 and also extends to any concomitant price variations and variation orders. (In context of Circular 62 and section 116 (3) of the MFMA).

Contract Lifecycle Management means the process by which the municipality strengthens and taps into the value of its contract portfolio, this includes risk management, managing budgets and successful delivery of the project according to management expectations.

Contract Lifecycle means the period from the planning of the contract, its inception, management, and termination of such contract.

Contract Management means the administrative activities by all role players, including the SCM Contract Manager, Contract Owner, Project Manager and Service Provider or Supplier, associated with contracts, and includes processes associated with the invitation to bid, bid evaluation, award of contract, contract implementation, measurement of work completed, and computation of payments. It also includes monitoring the contract relationship, addressing related problems, incorporating necessary changes or modifications in the contract, ensuring both parties meet or exceed each other's expectations, and actively interacting with the contractor to achieve the contract's objective(s).

Contract means the acceptance of a bid (offer) by the Municipality pursuant to the compliance with the EMTHANJENI Local Municipality Supply Chain Management Policy/ Model SCM Policy for Infrastructure procurement, its enabling legislation and any other requirements in law.

Contract Owner means the Municipal Manager, an Senior Manager Infrastructure Services (Divisional head) including Chief Financial Officer, or a delegate (also a Project 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. Director Appointment according to sect 56 of the Local Government: Municipal Systems Act Delegation (in relation to a duty) includes an instruction or request to perform or to assist in performing the duty.

Contract variation or variation order means an alteration to the scope of works in a construction or service contract in the form of addition, subtraction, substitution or omission from the original scope.

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.

Development Board (CIDB), a national body established by the Construction Industry Development Board Act of 2000 (Act 38 of 2000)

Employer's health and safety agent: the person appointed as agent by the employer in terms of Regulation 4(5) of the Construction regulations and named in the contract data as the being the employer's agent responsible for health and safety matters.

Force Majeure is the expression used to denote irresistible superior force which might cause damage or prevent the execution of an obligation, therefore suppliers are 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).

Health and safety plan: a documented plan which addresses hazards identified and includes safe work procedures to mitigate, reduce or control the hazards identified

Official 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.

Price escalation means the changes in the cost or price of specific goods or services in a given economy over a period.

Project funding means the allocated funds to cover all costs associated with acquisition, implementation, monitoring and handover/commissioning of the project. A project may be funded from more than one source as per the approved budget.

Project Manager 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 (with delegated powers to perform this function).

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.

Service Level Agreement (SLA) means an agreement between a service provider and the SPM that defines the level of service expected from the service provider. This agreement is either included in the contract or serves as an addendum to the contract. The SLA is subservient in its interpretation and application to the main contract.

Standard contract is a contract between two parties where the terms and conditions of the contract are set by one of the parties and the other party has little or no ability to negotiate more favorable. In the case of the municipality, standard contracts shall be initiated by the municipality as the employer and negotiate in good faith with the contracted service provider. For software maintenance, the contract shall be initiated by the service provider as they carry extensive knowledge of their systems, and the municipality shall cover itself in the Master Agreement on the system, software application or program developed.

Standard forms of contract for Infrastructure delivery:

Means the standard forms of contracts selected from, and be suitable for use under the conditions described in Annexure A: Table 2: Approved forms of contract related to the delivery and maintenance of infrastructure. The standard forms of contract shall be used with minimal contract amendments which do not change their intended usage and shall only be amended when absolutely necessary to accommodate special needs. Adjudication shall be used to resolve disputes arising during the performance of a contract prior to proceeding to either arbitration or litigation.

Users means all officials as set out in the organogram of the EMTHANJENI Local Municipality involved with contracts and includes officials performing various functions in terms of such contracts.

ABBREVIATIONS

AMU	Asset Management Unit
B-BBEE	Broad-Based Black Economic Empowerment
B.o.Q	Bill of Quantities
BTO	Budget and Treasury Office
GCC	General Conditions of Contract.
MFMA	Municipal Finance Management Act, 2003 (Act No. 56 of 2003)
MSA	Municipal Systems Act, 2000 (Act No. 32 of 2000)
NT	National Treasury established by section 5 of the Public Finance Management
PMS	Performance Management System
SCC	Special Conditions of Contract
SCM	Supply Chain Management
SLA	Service Level Agreement
VAT	Value Added Tax
LED	Local Economic Development
FIDPM	Framework for Infrastructure Delivery and Procurement Management
PG	Procurement Gate

1. 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 VAT and escalation clauses in contracts) time period and qualities of the goods and services as well as infrastructure 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.

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 conjunction with all the SCM Policies of the EMTHANJENI Local Municipality.

2. OBJECTIVES

The objectives of this policy are to give effect to Section 217 of the Constitution of South Africa (1996) which stipulates that:

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:

- a) Equitable
- b) Transparent
- c) Competitive
- d) Cost-effective and
- e) Fair

This is also aligned with the Municipal Finance Management Act, Chapter 11. The Supply Chain Management Policy ensures effective and efficient control of contracts procured through the SCM procedures, thus ensuring that:

- a) Proper recording and enforcement of contracts throughout the contract life cycle prevails (specifications to contract reviews);
- b) Support the demand management framework as set out in Circular 62 of National Treasury (August 2012), optimizing proper planning, resulting in effective service delivery;
- c) Compliance with the regulatory framework;

- d) To assist officials in understanding their legal and managerial responsibilities with regards to contract management.
- e) The optimization of efficient and sustainable financial wellbeing of the municipality, resulting in lower cost drivers, and
- f) Continuous development of effective Management Information Systems, resulting in strategic support and risk preventions.

The existence of Contracts Management Policy is to ensure that no contract procurement of goods and services (excluding land sales or rentals of EMTHANJENI Local Municipal Assets, which are managed by LED department), takes place outside of the SCM System.

3. STATUTORY AND REGULATORY FRAMEWORK FOR MANAGING CONTRACTS

3.1. Application and Framework of the Contract Management Policy 5.1.1. All officials and other role players in the Supply Chain Management system of the EMTHANJENI Local Municipality must implement this Policy in a way that gives effect to:

- g) Section 217 of the Constitution;
- h) Section 116 of the MFMA;
- i) Section 33 of the MFMA;
- j) Model SCM Policy;
- k) SCM Regulations
- l) Framework for Infrastructure Delivery and Procurement Management
- m) any other legislation pertaining to SCM.

This Policy applies when the Municipality:

- a) Procures goods, services and infrastructure related works;
- b) Disposes of goods no longer needed; and
- c) 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.

3.2. Adoption, Amendment and Implementation of the Contract Management Policy

The Accounting Officer must:

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

3.3. Application of Policy

The policy applies to all transactions per the Supply Chain Management processes and undertaken by the EMTHANJENI Local Municipality which involves a contract whether explicitly agreed in writing, or implicitly through actions.

3.4. Framework for Infrastructure Procurements

The framework for infrastructure procurement outlines the minimum infrastructure procurement policy requirements for municipal planning and implementation. The strategic direction set in the Integrated Development Plan (IDP) informs the framework for infrastructure procurement.

3.3.1 Procurement Gate 8 (PG8)

- a) Administer and monitor the contract. (See Annexure A: In order for the administration and contract facilitation, concurrence with Project Stage Deliverables for Stages 5 and 7 must be completed)
- b) Minimum Requirements for PG 8:
 - 1. Finance department to:
 - i. Capture contract award data.
 - ii. Manage cash flow projection.
 - iii. Administer contract in accordance with the terms and provisions of the contract.
 - 2. Delivery department to:
 - i. Ensure compliance with contractual requirements.

PG 8 is complete when a delegated person captures the contract Completion/termination data (close out reports and relevant documents), including Payment certificates due.

4. BASIS FOR BINDING THE MUNICIPALITY IN A CONTRACT

The Supply Chain Management Policy of the municipality gives guidance for procurement of goods and services as per various thresholds determined by the monetary value. The policy stipulates that procurement of goods and services up to R30 000.00 inclusive of VAT shall be done through written quotations evaluated on the basis of price only, preferably from the service providers registered in services with the value exceeding R200000.00. The level of complexity of contract will depend on the nature of services, quality and other special conditions of delivery.

Where the above supply chain processes could not be fulfilled, an authorized deviation by the Municipal Manager also leads to a binding agreement.

It is based on the above approaches that an official of the municipality may enter into a binding agreement between the municipality and the service provider.

Appointment of a service provider without following the above procedures may lead to invalid contracts, and the official involved may be held responsible for financial misconduct and be subjected to Disciplinary action, and the resultant expenditure will be irregular and may be recovered from such official.

Local Government Supply Chain Management Regulations permits the Accounting Officer to ratify minor non-compliances from SCM Policy by Bid Committees and Officials

4.1. Conditions of Contract

A contract or agreement procured through the Supply Chain Management System of the Municipality must:

- 4.1.1. be in writing;
- 4.1.2. stipulate the terms and conditions of the contract or agreement, which must Provide for:
- 4.1.3. the termination of the contract or agreement in the case of breach or non- 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;
 - the municipality's liability and indemnity exposure;
 - Vis Major; and
 - any other matters that may be prescribed

The relevant Senior Manager, with delegated powers from the Municipal Manager, must establish capacity in his/her directorate to assist the accounting officer in carrying out the duties set out in section 116(2) of the MFMA.

4.2. 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.

- a) Monitor on a monthly basis the performance of the contractor under the contract or agreement.
- b) Administer the contract with the necessary competencies and delegations, ensuring effective management of contracts.
- c) The Senior Manager Infrastructure Services must ensure that Project Managers submit suppliers' performance reports to the PMS Manager within five (5) business days after the end of each month.
- d) The **PMS Manager** submits a consolidated report to the relevant Director and Contract Owner within 10 business days after the end of each month for purposes of Section 116(2) (b) of the Act.
- e) The PMS Manager submits a consolidated report on the performance of contracts or agreements for purposes of Section 116 (2) (d), to the Accounting Officer within 15 business days of the end of each quarter.

4.3. Contract Lifecycle Management

Contract Lifecycle is a back to back process of acquisition to the award of contract. The cycle further entails execution, closure and handover of the project to the relevant official representing the municipality.

The Municipality recognizes the following steps in contract lifecycle management as elaborated below:

1. Contract requisitioning – this is the first action of defining the purpose and request
2. Authoring – this involves the development of the contract documentation, version control and validation. Legal experts or suitably experience Officials must be involved in authoring the contract.
3. Negotiation – the ability to analyze the versions of contracts and the relevant attachments as influenced by the discussions between the parties to the contract. The Accounting Officer may appoint an Official to assist in the negotiations or may make use of external experts depending on the complexity of the service and contract.
4. Approval- routing the contract document and the necessary attachments for review and approval. The Project Manager must approve the draft contract prior to the final version being submitted to the Accounting Officer or his delegate for signature.
5. Execution – the process of allowing the contracted service provider to perform duties as outlined in the contract document. The Project Manager must ensure that the performance by the other party is not delayed or impeded in any way where it is within the Municipality's control.
6. Obligations management – involves that deliverables are being met and maintain compliance at all times. The Project Manager must ensure that all deliverables are quality assessed and controlled.
7. Contract amendment – process of keeping track of original terms in addition to current obligations to deliver on the contract. Where any such amendment is proposed, the Project Manager must prepare a report and motivation accompanying such proposal for the approval of the Contract Owner and the furtherance of complying with clause 4.4.
8. Audit and reporting – access to the entire contract for audit tracking, reporting and easy integration with other systems. It is the responsibility of the Project Manager to ensure that a comprehensive file to auditing standards are kept in a safe place and that access to such file is available by authorized personnel.
9. Renewal – contract extensions after the expiry dates. The Project Manager must advise the Contract Owner is good time regarding the renewal clauses and the financial implications thereof.

4.4. 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, and to prevent financial inefficiencies and negatively influencing financial sustainability.

In terms of Section 116(3) of the MFMA, (56 of 2003), amendments (in compliance with SCM procedures), may only be made after the initial, original contract has been signed. The MFMA requires that the reasons for the proposed amendment must be tabled in the council; and

- a) The local community has been given reasonable notice of the intention to amend the contract or agreement; and have been invited to submit representations to the municipality.
- b) Amendments of contracts where the expansion or variation is not more than (National Treasury 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 Head of Supply Chain Management Division for approval and further reference to the Bid Committees, and or Chief Financial Officer or Municipal Manager (depending on delegations) committee system for approval.

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.

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.

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.

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).

4.4.1. Procedures for contract amendment

Contract amendment may include change in some elements of scope of work as a result of unforeseen circumstances, change in area of work, or change in the number of units or materials for the benefit of the organization.

- 4.4.1.1. The Project Manager shall prepare a report to the Senior Manager Infrastructure Services motivating the need for contract amendment or adjustment.

The Motivation will be prepared in a prescribed format with the following Information as mandatory:

- Current project in brief
- Project status
- Contractor performance is summary
- Project Funding and expenditure to date

- Proposed amendment (scope, area, associated costs, funding)
- Reason for amendment contrary to inviting bids for the new scope
- Benefits arising from the amendment
- Cost implication and funding of such costs

- 4.4.1.2. The Supply Chain Management Division must provide their Written professional opinion of the compliance with the Supply Chain Management Policy as well as the Municipal Finance Management Act. The Senior Manager Infrastructure Services in whose purview the contract resides and for whom the amendment report has been prepared shall submit the completed report under their signature to the Chief Financial Officer.
- 4.4.1.3. The CFO will then in turn solicit the approval of such from the Municipal Manager upon the CFO's satisfaction that the report is complete and sufficiently substantiated.
- 4.4.1.4. Should the Municipal Manager support the proposed amendment the CFO shall prepare an item for the Municipal Council using the motivation provided by the Project Manager and Senior Manager Infrastructure Services initially. The SCM shall facilitate the notification to the public with regards to the amendment and receive any objections or comments.
- 4.4.1.5. Once the comments are received, the SCM Unit and the CFO will Advise the Municipal Manager and the Senior Manager Infrastructure Services concerned.
- 4.4.1.6. Contract amendment shall require signing of the addendum to the original Contract by all parties to the contract. It should however be noted that amendments should be made in line with the allocated budget as per the approved budget for the project/service. If the amendment requires additional funding, the above process can only resume once funds are confirmed in respect of the work to be done.
- 4.4.1.7. For MIG funded projects, confirmation must be obtained from the PMU Office with regards to approved funding on the project and procedures for Budget Maintenance must be fulfilled prior to taking the recommended steps for Contract Amendment.

4.5. Contract Variation

Contract variation refers to the variation of actual work that needs to be done or the methodology, approach or resources planned to be used in the execution of the project. Contract variation shall be initiated by the appointed contractor after demonstrating the benefits of varying the original contract bills of quantity or other inputs used in the implementation of the contract agreement.

Issues of quality, subsequent maintenance costs and materials and the completion period must be considered prior to agreeing with the variation.

The process shall entail a request letter from the contractor to the Project Manager, and the request shall entail cost and benefits of the variation, financial implications, advantages of the variation and the impact or implications on quality of the

product/service at the end of the day.

The variation must be considered by the Contract Owner concerned, and once agreed upon, the Contract Variation Agreements shall be signed by all parties concerned. The Senior Manager Infrastructure Services shall inform the Chief Financial Officer to assess the impact of the variation on the project for Assets Management and SCM purposes and information.

Where contract variation requires additional funding, not exceeding 20% of the contract value, which is within the approved budget for current and subsequent year for that line item or project, reference will be made to Accounting Officer's guidelines for implementing Supply Chain Management Regulation. The request shall be approved by the Accounting Officer on recommendation of the Chief Financial Officer.

4.5.1. Procedures for Contract Variation

Activity	Responsible person
The contractor or service provider shall propose variation order to the Project Manager responsible and overseeing the contractor, with a full cost-benefit analysis, financial implications, future maintenance costs and availability of parts/materials	Contractor/Service provider
The Project Manager shall consider the request and present such to the Senior Manager Infrastructure Services responsible to obtain concurrence	Project Manager
The concurrence shall be presented to the Budget and Treasury Office (CFO) with all the inputs received thus far for recommendation to approve to the Accounting Officer	Senior Manager Infrastructure Services /CFO
The Senior Manager Infrastructure Services and CFO shall submit the variation to the Accounting Officer for approval	Senior Manager Infrastructure Services /CFO
The Service Provider shall be informed of the acceptance of the variation and all necessary documents shall be signed and filed	Project Manager
The Accounting Officer shall submit the approved contract variation order to municipal council for noting	Municipal Manager

4.6. Contract Contingencies

A contingency clause is a provision in the contract that requires a specific event or action to take place for a contract to be considered valid. A contingency clause should clearly outline what the condition is, how the condition is to be fulfilled and which party is responsible for it.

In construction contracts, contingencies are those unforeseen conditions experienced during contract execution. These conditions need to be dealt with to enable the contractor to proceed with executing the scope of work as per the agreement.

The contingency is brought to the attention of the Project Manager responsible for that work, and upon assessment agree that the circumstances are indeed a contingency. A recommendation to proceed with work aimed at resolving the contingency shall be made by the Project Manager and approved by the relevant Senior Manager Infrastructure Services.

The approval shall be in writing, and once signed off by all parties, it shall be communicated to the Chief Financial Officer to ensure that the correct budget/line item is used for the processing of invoices against the contingency budget as per the signed agreement.

Contingency fees are normally set at a percentage not exceeding 10% of the project costs as per the bidding document.

Where contingencies are expected to exceed 10% or the contract terms conditions, the CFO must be notified so as to provide professional advice on the process which must be followed in this regard.

4.7. Contract budget adjustment

Projects whose costs are not time bound like consultancy services and similar advisory services executed through use of human resources to execute and budgeted for in the capital budget, can only be adjusted by way of council resolution, through an adjustment budget or through adhering to MFMA Section 29 – Unforeseen and unavoidable expenditure.

A differentiation should be made between project budgets overrun or over-expenditure and additional funding required as a result of contract value as per the winning bid price offer. In cases of projects funded under capital budget, the following process must be followed:

Where the amount that the project is awarded for exceeds the budget – Capital	
Confirmation of funding of project	Chief Financial Offer
Successful bidder price exceeds the budget	Negotiate scope reduction to align award
	amount with available funds
Successful bidder price exceeds the budget	An award can only be made once there is confirmation that the quoted price is fully funded in either current year's budget, or will be funded through an adjustment budget or in the following year's budget.
Where the project is overspending	

Oversee project implementation against project plan which is addendum to the Service Level Agreement entered into	Project Manager
Monitor claims against BoQ or project costing as per MBD3.1	Project Manager
Query any claims that exceed BoQ as per tender documents upon receipt of invoices	Project Manager
Obtain clarification from Contractor/Consultants on claims/quote variations, and the impact of the variation on entire project budget/costs	Project Manager
If clarification is satisfactory, report in writing to Budget and Treasury Office (CFO) the implications of the variances	Senior Manager Infrastructure Services
Approval of invoice for payment	Senior Manager Infrastructure Services
Perform project budget forecast	Senior Manager Infrastructure Services and CFO
Advise CFO on projections and for noting for budget adjustment	Senior Manager Infrastructure Services

5. MAINTENANCE AND CONTRACT ADMINISTRATION

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

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 and the date of such enforcement shall be the date of the last authorized signature.

A signed service level agreement (if applicable) must be compiled and signed which will serve as an annexure to the contract.

All once-off purchases shall have a specified end delivery date.

5.1. Processing of payments procedures

For civil contracts, all invoices shall be delivered to the Engineer responsible together with Consultant report detailing the BoQ used during the period the invoice applies. After satisfying themselves with the contents of the invoice, the Consultant Report, and an Engineers Certificate shall be completed accordingly within the department.

Upon completion of the Engineers Certificate, a voucher for payment shall be completed and presented to the Budget and Treasury Office to confirm the vote number and that the contractor is being paid as per the Bid Adjudication Minutes.

These documents shall be prepared in triplicate (white, blue, yellow) with all signatories on all documents. All vouchers shall be signed by the Engineer or Divisional Head and approved by Senior Manager Infrastructure Services, which must first be submitted to Supply Chain Management for verification of validity of the contract and status of suppliers' company profile (CSD) requirements and Municipal Rates & Services. All payment documents shall be forwarded to the Expenditure Division by Supply Chain Management for processing.

All queries regarding the payment shall be directed to the Engineer responsible for the function. The Expenditure Section shall complete the payment reference number on the voucher and forward yellow copy to Assets Management Unit (AMU) (for use in capitalization and unbundling of assets). AMU shall liaise with BTO for the completion of commitments and grants registers. The Expenditure Section shall update the Civil Contracts Register and ensure that the Engineers certificates per project follow a chronological order and that the line item used is consistent throughout the project execution and payment period.

Virement's on the capital budget shall be done by the Chief Financial Officer in line with Council resolutions.

5.2. Contractor performance reporting

It is imperative that upon signing the Contract and Service Level Agreement that a project scorecard is completed as well. The project scorecard shall indicator the following;

- Key Performance Area
- Key Strategic Objective
- Key Performance Indicator
- Key Activities and milestones
- Project performance evaluation scorecard
- Project Plan
- Project deliverables

The above shall be used to appraise the project progress as well as the contractor. The scorecard shall be submitted with payments documents. The Expenditure Section shall forward the project scorecard to Head of SCM for the purposes of compiling project performance and contractor performance report.

The Head of SCM shall submit to the CFO, monthly a consolidated project and contractor performance report. The CFO may further interact with the Senior Manager Infrastructure Services on any matters requiring their attention as per the report submitted by SCM Unit. The Project Manager shall include this report when report on Performance Management System monthly, and shall be part of the project file.

5.3. Contract administration

Contract administration is the function of the Project Manager and shall be overseen by the Senior Manager Infrastructure Services responsible. Contract administration includes the following activities and responsibilities:

Contract Initiation	Through SCM Processes
Negotiations	Including SCM Practitioners and Manager Financial Services and CFO
Appointment of Contractor/Service Provider	Municipal Manager
Contractor Engagement Authoring Service Level Agreement	Project Manager and Legal
SLA Meetings	Project Manager, Legal and Senior Manager Infrastructure Services
Contractor Invoices	Project Manager, Senior Manager Infrastructure Services and Expenditure Section
Contractor Performance Reporting	Project Manager and Senior Manager Infrastructure Services
Contract Amendment/Variation/Contingencies	Project Manager/ Senior Manager Infrastructure Services CFO/Municipal Manager
Termination of contract	Senior Infrastructure Services Manager/CFO/Municipal Manager
Project Close-Out	Project Manager/Assets Management/ IDP

5.4. Once-off service delivery contracts

It is advised that for contractor appointment with a value up R200 000.00 and the nature of appointment is services related, that a service level agreement be entered into for the purposes of specifying;

- Nature of services (scope of work)
- Service standards and compliance requirements
- Timelines
- Claims procedures and milestones
- Quality of reports
- Timeframes
- Progress report and meetings
- Contract termination clauses
- Domicilia

Where the contract involves delivery of goods, the appointment letter should state all of the above as preconditions, and such appointment letter will serve as an annexure to the contract. Quality and place become critical for delivery and invoicing.

5.5. Closing of contract and project sign off

Once the terms and conditions of the contract had been fulfilled, the Project Engineer (Consultant) will prepare a project completion certificate with the following details;

- Date of commencement of the project
- Project costs (list of all invoices submitted and the value of each)
- Retention fees held and the release date of such
- Project successes and challenges
- List of all variations, amounts and summary of details
- BoQ of materials used
- Any warranties certificates, guarantees and Standard Operating Manual where necessary.
- Confirmation of the satisfactory completion of all obligations by the other party per the contract.

All the above shall be part of the project certificate. The certificate shall be submitted to the Assets Management Unit for unbundling of work in progress and capitalization.

5.6 OHS Compliance

Reference should be made to the **Generic occupational health and safety specification for construction work contracts** which will be provided to all service providers upon appointment by the municipality.

This health and safety specification in respect of a construction work contract:

- a) Provides the overarching framework within which the contractor is required to demonstrate compliance with certain requirements for occupation health and safety established by the Occupational Health and Safety Act of 1993 during construction;
- b) Establishes the manner in which the contractor is to manage the risk of health and safety incidents during the construction stage; and
- c) Establishes the manner in which the employer's health and safety agent will interact with the contractor.

6. RECORD KEEPING

Proper records regarding all aspects of the contract must be maintained and kept in accordance with relevant legislation.

All communication related to contracts should be linked to the master document on the electronic system.

Safe custody of all contract documents must be enforced by all relevant users.

Users are responsible for the electronic load and feedback of contract/s to the operating system in conjunction with the records department.

All files to be checked monthly to ensure that all necessary documents are in place.

7. REPORTING OF BAD PERFORMANCE AND REMEDIAL ACTION

During monthly reporting, the Project Manager is expected to report any concerns of performance, quality and communication from the service provider's side. In the scorecard, indication must also be made of achievement of timelines and staying within the budget without compromising quality.

The Project Manager may recommend to the Senior Manager Infrastructure Services and with motivation, to terminate the contract for various reasons. The Senior Manager Infrastructure Services will in turn consult with the Legal Section.

Notwithstanding the above, prior to any legal action in whatever way, it is the Policy of the Municipality to always consider the impact to the community and the interests of the municipality, of any action it may take when invoking any legal or other remedies against a party in breach of such contract.

A letter to terminate a contract shall be issued only on instruction by the Contract Owner and through the legal section after having complied with any provisions contained for the remedy of breach and taking cognizance of repercussions and costs after consultation with the CFO.

All the team members involved in these discussions must firstly consider any remedial action to prevent or avoid termination or litigation. The Municipal Manager may serve as Dispute Resolution Mechanism in such cases where the relationship is breaking down or performance is beyond tolerance and impacts on project execution and financials associated with the project.

8. BLACKLISTING OF SERVICE PROVIDERS

Bidders or contractors shall be reported to National Treasury for blacklisting under the following circumstances;

- Failure to disclose honestly, the relationship of the company, its shareholders, owners, and/or directors with any organs of state.
- False CIDB or fraudulent CIDB Certificates.
- False or fraudulent tax clearance certificates
- False or fraudulent municipal accounts
- Termination of contracts due to breach of contract

As soon as one of the above instances is found, the Chief Financial officer shall communicate with the service provider/contractor affected to confirm the information obtained against such. Once the finding is confirmed, a report from the Project Manager responsible for that contract or service level agreement must be obtained with regards to the project status. The service provider may be requested to finish the project as soon as it is practical and vacate the site with immediate effect.

Such service provider will also be blacklisted using the SPM internal blacklist register controlled by the Head of SCM and the Bid Committees shall be informed of the Blacklisted Bidders to avoid making further awards to the company in future. A bidder reconstituted and bearing another name shall for the purposes of this register also be considered an undesirable bidder where the service providers consist of substantially the same

components (including human resources and directors or owners) which gave rise to the blacklisting of first instance.

The blacklist register shall have the following information:

- Name of the Bidder/Company, including the Trading as name
- Company registration details
- VAT Number
- Tender reference number
- Copy of MBD4
- Report proving false declaration
- Copy of letter sent to the Bidder and their response if any
- Letter of notice of blacklisting

Only the BEC, BAC and Legal Services shall have access to this report. The register shall be signed off by Head of Legal Services in the municipality.

9. ROLES AND RESPONSIBILITIES OF OFFICIALS

Various municipal officials play a particular role in as far as Contracts Management function is concerned. The roles are outlined in paragraphs that follow:

9.1. The Municipal Manager

- The Municipal Manager is responsible for obtaining the approval of the Supply Chain Management Policy of the municipality as well as the appointment of Bid Committees. In terms of the Supply Chain Management delegations, the implementation of the policy and compliance thereof has been delegated to the Chief Financial Officer.
- The Municipal Manager approves all specifications for bids and may delegate this function to the Bid Specifications Committee. There is a Bid Evaluation Committee that is responsible for evaluation of all bids received and compiles a report with a recommendation to the Bid Adjudication Committee.
- The BAC recommends the successful bidder to the Municipal Manager where the Municipal Manager upon consideration of the BAC and BEC reports and their concomitant recommendations on that specific bid, to award the tender to the successful Bidder.
- The Municipal Manager appoints successful bidders, whilst the Chief Financial Officer signs and issues all letters of notices to unsuccessful bidders per bid. The appointment letter includes the signing of the MBD7 – form of contract which must be accepted by the Bidder.
- In cases where a service level agreement is entered into, the Municipal Manager or his delegate may sign the SLA upon advice by Legal Services of the municipality. The Municipal Manager further delegates contracts management to the Senior Manager Infrastructure Services responsible.

9.2. The Chief Financial Officer

- The Chief Financial Officer is the custodian of the Supply Chain Management Policy and must ensure compliance across the organization for all procurement financial thresholds. The Chief Financial Officer is also responsible for the updating of the Supplier Database, and by sub-delegation to the supply chain management section, issues orders as per requisitions and arrange for the delivery of items.
- The Chief Financial Officer is also the Chairperson of the Bid Adjudication Committee and as such must report all bids awarded to the Municipal Manager. The Chief Financial Officer must oversee the updating of the Tender and Contracts Registers and ensures completeness and compliance of such.
- The Chief Financial Officer may sign Contracts and Service Level Agreements as and when necessary and when delegated by the Municipal Manager to.
- The Chief Financial Officer coordinates contract performance reporting to Council for the Municipal Manager.

9.3. Senior Manager Infrastructure Services

The Senior Manager Infrastructure Services is the Project Manager and is responsible for the following activities:

- Ensuring that all the necessary legal formalities in entering into the contract are adhered to.
- Ensuring that purchase orders are processed on the financial system in accordance with the pricing schedule;
- Maintaining adequate records (paper and/or electronic) in sufficient detail on an appropriate contract file to provide an audit trail;
- Inform the Asset Management section of the Expenditure Department of the location of newly procured assets for asset register and insurance purposes; and
- Where appropriate, in terms of Council's Delegations, authorize invoices due for payment.
- To take appropriate action in consultation with the Contract Owner and the SCM Unit, where a contractor is underperforming or is in default or breach of the contract.
- Ensure performance of suppliers is managed appropriately to the terms and conditions of the contract.

9.4. Project Manager

- The contract owner is responsible for ensuring that Project Managers are assigned to all contracts.
- The contract owner is ultimately responsible for management of the activities.
- The Project Manager must coordinate the signing of contracts with the relevant

service provider, in line with the Delegation of Powers and Duties Policy. However, the Senior Manager Infrastructure Services is ultimately accountable for the contract.

- Proper records regarding all aspects of the contract must be maintained and kept in accordance with relevant legislation. All communication related to contracts must be linked to the master document on the electronic system, by the relevant official.
- Safe custody of all contract documents must be enforced by all relevant users. Project Managers and Contract Owners are responsible for the electronic capturing of the contract information and maintenance thereof on the Contract Management system.
- The original signed contract must be sent to the records department, and a copy to the Contract
- Management office for safekeeping and storage. The records department is responsible for the administration of archived contract documentation.

9.5. IDP Office

- The IDP Office is responsible for coordinating performance reporting once a bid has been awarded.
- The IDP Office will liaise with the Senior Manager Infrastructure Services/Project Manager with regards to targets against the actual, and coordinate the Top Layer SDBIP which may incorporate indicators accomplished by way of SLA. The IDP Office may be provided with the copy of the SLA as part of the KPI file necessary for performance reporting.

9.6. PMU Office

- The Project Management Unit oversees project implementation, grant expenditure and related reporting to the transferring department. The Unit is more concerned about qualitative reporting on the project as such, project designs, materials usage, and site meetings are coordinated with the PMU.
- The PMU is the custodian of layout plans/designs of projects (civil/town planning/engineering).
- Minutes of site meetings must be submitted to PMU for comments which may be useful in future meetings, bringing management's perspective on contractor performance, quality and timelines concerned

9.7. Internal Audit

The Internal Audit Unit is responsible for assurance audit in as far as performance management and internal controls are concerned. The section is responsible to test the level of compliance with regards to this policy and may inspect project files and test completeness in as far as documents and reporting is concerned. Part of the assurance procedures, is to check the validity of contracts and the level of risk exposure of the municipality and how the contract mitigates this risk.

MFMA Circulars also guides that the Municipal Manager may request the Internal Audit to validate the capability of the service provider in executing a project by testing its

functionality, experience as well as financial resource strength necessary.

As part of auditing performance, the Internal Audit Section may assess the adherence to the PID or PIP and make recommendations to management.

9.8. Head of Supply Chain Management Division or his/her delegate

The Head of Supply Chain Management Unit or his/her delegate, is responsible for ensuring that the system put in place to administer supply chain management policy is in place. SCM administers and maintains these systems and coordinate compliance reporting on all contracts and related activities.

For the purposes of Contract Management, the following are the activities performed by the SCM aimed at monitoring and reporting on the following:

- Identification and classification of contracts for management purposes in
- Terms of the SCM processes;
- Recognition, measurement and disclosure;
- Oversight of contract management
- Document and information management;
- Relationship management
- Performance management;
- Contract risk management.

9.9. The Expenditure Manager

- Expenditure Management Section is responsible for the processing of payments based on terms and conditions of all contracts entered into. Expenditure Control Section must be provided with BoQ, PIP or PID, milestones and payment schedules for each contract.
- The Section must make sure that the contract clearly describes the project, the cost center, the line manager, funding sources and the responsible person so that all signatures as per the payment documents are matched with the SLA.
- The Section must also test compliance with Value Added Tax Guidelines as well as with SCM compliance in so far as facilitating payment is concerned. The control of banking details of all contractors is exercised by the Demand Management Section and Expenditure Section uses the
- Creditor reference number for payments purposes. The section records payments against a project based on the sequential numbering of payment certificates duly signed by the Engineer of the KPI Owner, referring to supply chain bid reference numbers. The expenditure section monitors progress payments made against the awarded amount and must report any over-expenditure to the Senior Manager and CFO.
- It is the function of the expenditure section to identify any irregular expenditure incurred and report these prior to payment to the chief financial officer to verify if the expenditure/payment is irregular and shall receive further instruction from the CFO.

9.10. Employer's health and safety agent or his/her delegate

- Audit the contractor's compliance with the requirements of the Generic occupational health and safety specification for construction work contracts prior to the commencement of any physical construction activities on the site;
- Accept or reject the contractor's health and safety plans, giving reasons for rejecting such plans;
- Monitor the effective implementation of all safety plans;
- Conduct periodic and random audits on the health and safety file to establish compliance with the requirements of this specification;
- Visit the site at regular intervals to conduct site inspections, and based upon such visits issue, wherever necessary, Improvement Notices, Contravention Notices and Prohibition Notices, to the contractor or any of the contractor's subcontractors with a copy to the contract

10. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS

EMTHANJENI Local 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.

11. 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 Section 58 of the SCM Policy.

12. CONTRACT PRICE ESCALATIONS

There are requirements that must be complied with for requests for price escalation during the implementation of contracts for procurement of goods and infrastructure projects under extraordinary circumstances pursuant to and in accordance with MBD 3.2. No contract price escalation for consulting services shall be allowed.

The extraordinary circumstances refer to event or occurrence or series of events or occurrences during contract implementation which gives rise to price escalation. These occurrences or events are unforeseen and inevitable as a result of nature or act of men. An appropriate contract price adjustment formula or specified terms of escalation must be specified in the bid documents. Escalation notification must be in writing and presented before the implementation date thereof. 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 they must keep proof of evidence to the newly agreed escalations on the system for all other relevant stakeholders to access.

13. PERFORMANCE IN TERMS OF CONTRACTS

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 authorized supply chain management processes were followed and whether the objectives of this Policy were achieved in terms of the Performance Management System Policy.

13.1. 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 favorable environment to receive services and goods without preventing the supplier from performing their duties.
- All parties involved must perform per the terms and conditions of the relevant contract, while the contract subsists.

13.2. 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 prevent them to perform, with reasons provided, within 5 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.

Suppliers' performance will be reviewed by Officials on a monthly basis (every 25th of the month) giving effect to section 116 of the MFMA, 2003.

The following procedures need to be followed:

- The requirements of this policy must be included in the contract of the service provider.
- The performance of the service provider under the contract or service level agreement must be assessed monthly by the Reporting Officer.
- The assessment must be completed in the contract management system.
- The Reporting Officer must complete the Service Provider Assessment on the contract management at the end of each month.
- The quarterly assessment and reporting must be completed within 15 working days after the end of each quarter.
- The Reporting Officer must provide a copy of the assessment to the Service Provider at the end of each quarterly assessment period and on completion or termination of the contract.

- Supply Chain Management Unit (Contract Management Office) will review the quarterly Service Provider assessments within 20 days after the end of each quarter and submit a summary report to Council.
- The Accounting Officer need to develop the necessary forms and report structures to be utilized to manage the above processes. The forms and reporting requirements need to be reviewed on a regular basis.
- In the instance of under-performance:
 - The Municipality will facilitate support interventions to service providers in the identified areas of underperformance. Service providers who have been identified as under-performing in identified areas must be informed of these support interventions.
 - The impact of support interventions must be monitored by the Reporting Officer.
 - Corrective action should be documented in writing within the contract management system
 - The records of the support interventions must be documented, signed by both parties and appropriately filed in the contract management system.

14. 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 three years.

The contract owner or champion must conduct, as appropriate, within 3 months after the expiry of contracts, post contract reviews

This policy will come into effect on 1 July 2022.

15. ADOPTION. IMPLEMENTATION AND REVIEW PROCESS

This policy has been considered and approved by the Council of EMTHANJENI Local Municipality on this **day** _____