

MSUNDUZI MUNICIPALITY



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The Msunduzi Municipality

CONTRACT MANAGEMENT POLICY

*Adopted in terms of section 116 of the Municipal Finance Management Act,
No.56 of 2003 and the Municipal Supply Chain Management Regulations*

**MUNICIPAL CONTRACT MANAGEMENT POLICY
LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003
Date of adoption:**

Council resolves in terms of section 116 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the Contract Management Policy of the Msunduzi Municipality.

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1. GLOSSARY OF TERMS

Term	Definition
Accounting Officer (in relation to a municipality)	The municipal official referred to in section 60 of the MFMA (2003); and includes a person acting as the accounting officer.
Act or MFMA	Municipal Finance Management Act, Act no 56 of 2003
Circular 62	Communication from National Treasury by means of a Circular to enhance compliance and accountability to SCM Regulations and the MFMA of 2003.
Category Management	A 'Category' is an area of spend determined by known market boundaries separating different products, services or industries. Category management recognises that suppliers within a certain market are likely to have similarities which enable a tailored approach to procurement.
Confidential information	Information that, if released, may prejudice the business dealings of a party e.g. price, discounts, rebates, profits, methodologies and process information.
Contract	The agreement that results from the acceptance of a bid by the Municipality (mutual agreement)
Contract Management	The process that ensures both parties to a contract fully meet their respective obligations as efficiently and effectively as possible, in order to continually deliver both the business and operational objectives required from the contract.
SCM Contract Manager	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	The Deputy Municipal Manager, Process Manager or Senior 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 responsibility holder.
Contract Alteration	Changing technical writing or input errors to the agreement of the contact without changing the scope of contract.
Contract Amendment	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	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).
Council Staff	Includes full-time and part-time Council Staff, and temporary employees, suppliers and consultants while engaged by the Council
Delegation (in relation to a duty)	Includes an instruction or request to perform or to assist in performing the duty.
Deputy Municipal Manager	Appointment according to sect 56 of the Systems Act.
Force Majure	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 damage caused by force majeure or for failure to carry out a contract if prevented (Term and condition in this regard will be determined by every individual contract/s).
Procurement	Procurement is the whole process of acquisition of external goods, services and works. This process spans the whole life cycle from initial concept through to the end of the useful life of an asset (including disposal) or the end of a service contract.
e-Procurement	e-Procurement is integral to the overall development of procurement processes and Involves the use of an electronic system/s to acquire and pay for supplies, services and works.

Term	Definition
Official (in relation to a municipality)	Is: <ul style="list-style-type: none"> • An employee of the Msunduzi municipality; • A person seconded to 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.
Tender Process	The process of inviting parties to submit a quotation by tender using public advertisement, followed by evaluation of submissions and selection of a successful bidder or tenderer.
Probity	Within Local Government, the word “probity” is often used in a general sense to mean “good process.” A Procurement process that conforms to the expected standards of probity is one in which clear procedures that are consistent with the Council’s policies and legislation are established, understood and followed from the outset. These procedures need to consider the legitimate interests of suppliers and ensure that all potential suppliers are treated equitably.
Users	All officials as set out in the organogram of the Msunduzi municipality involved with contracts.

SECTION 1

IMPLEMENTATION OF CONTRACT MANAGEMENT POLICY

2. INTENT AND OBJECTIVES

To establish sound and consistent contract management practices with respect to contract management activities within Council.

2.1 OBJECTIVES

To ensure that this policy:

Give effect to Section 217 of the Constitution of South Africa (1996) that stipulates:

2.1.1 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:-

- 2.1.1.1 Fair
- 2.1.1.2 Equitable
- 2.1.1.3 Transparent
- 2.1.1.4 Competitive and
- 2.1.1.5 Cost-effective

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

2.1.3 Proper recording and enforcement of contracts throughout the contract life cycle (specifications to contract reviews);

2.1.4 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;

2.1.5 Management of Contract Performance;

2.1.6 Compliance with the regulatory framework;

2.1.7 To assist officials in understanding their legal and managerial responsibilities with regards to contract management;

2.1.8 The optimization of efficient and sustainable financial wellbeing of the municipality, resulting in lower cost drivers, and

2.1.9 The continuous development of effective Management Information systems, resulting in strategic support and risk preventions.

2.1.10 The protection of SCM processes, in that no contract procurement of goods or services (excluding land sales or rentals of Msunduzi Municipal Assets, which are managed by Real Estate Property Management Services), takes place outside of the SCM System

3. SCOPE

All contracts and other documents which create legally binding obligations of the Msunduzi Municipality including, but not limited to, supply chain and procurement contracts. This Policy will apply to a contract until contractual obligations have been concluded.

4. EXCLUSIONS

- 4.1. Employment contracts
- 4.2. Non-binding memoranda of understanding

SECTION 2

STATUTORY AND REGULATORY FRAMEWORK FOR MANAGING CONTRACTS

5. APPLICATION AND FRAMEWORK OF THE CONTRACT MANAGEMENT POLICY

5.1. All officials and other role players in the Supply Chain Management system of the Msunduzi Municipality must implement this Policy in a way that gives effect to:

- 5.1.1. Section 217 of the RSA Constitution;
- 5.1.2 Section 116 of the MFMA;
- 5.1.3 Section 33 of the MFMA;
- 5.1.4 SCM Policy;
- 5.1.5 SCM Regulations
- 5.1.6 Any other legislation pertaining to SCM.

5.2 This Policy applies when the Municipality:

- 5.2.1 procures goods or services;
- 5.2.2 Disposes of goods no longer needed; and
- 5.2.3 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.

5.3 Adoption, Amendment and Implementation of the Contract Management Policy

5.3.1 The accounting officer must:

5.3.1.1 At least annually review the implementation of this Policy; and

5.3.1.2 When the accounting officer considers it necessary, submit proposals for the amendment of this Policy to Council;

5.3.1.3 In terms of section 62(1) (f) (IV) of the Act, take all reasonable steps ensure that the Contract Management Policy is implemented.

5.4 Conditions of Contract

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

5.4.1.1 be in writing;

5.4.1.2 stipulate the terms and conditions of the contract or agreement, which must provide for:

5.4.1.2.1 the termination of the contract or agreement in the case of non- or underperformance;

5.4.1.2.2 dispute resolution mechanisms to settle disputes between the parties;

5.4.1.2.3 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

5.4.1.2.4 any other matters that may be prescribed.

5.5 Administrative Capacity

5.5.1 The relevant DEPUTY MUNICIPAL 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.

5.6 Management of Contracts

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

5.6.1.1 Ensure that a contract or agreement procured through the supply chain management policy of the municipality is properly enforced;

5.6.1.2 Monitor on a monthly basis the performance of the contractor under the contract or agreement.

5.6.1.3 Administrate the contract with the necessary competencies and delegations, ensuring effective management of contracts.

5.6.2 The Contract Owner must ensure that contract champions submit suppliers' performance reports to the SCM contract manager within five (5) business days after the end of each month.

5.6.3 The SCM Contract Manager submits a consolidated report to the relevant Deputy Municipal Manager and Contract Owner within 10 business days after the end of each month for purposes of Section 116 (2)(b) of the Act.

5.6.4 The SCM Contract 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.

5.7 Amendment of Contracts

- 5.7.1 A contract or agreement procured through the supply chain management policy of the municipality may be amended by the parties, in exceptional circumstances in order to mitigate abuse, in perception after the fact to prevent financial inefficiencies and influencing financial sustainability.
- 5.7.2 In terms of Section 116(3) of the MFMA, (56 of 2003), amendments (in compliance with SCM procedures), may only be made after:
- 5.7.2.1 the reasons for the proposed amendment have been tabled in the council; and
 - 5.7.2.2 the local community has been given reasonable notice of the intention to amend the contract or agreement; and
 - 5.7.2.3 the local community has been invited to submit representations to the municipality.
- 5.7.3 Amendments of contracts where the expansion or variation is not more than (NT Circular 62):
- 5.7.3.1 **20%** (construction related goods, services and/or infrastructure projects), and
Contracts may be expanded or varied by not more than 20% or R20 million (including all applicable taxes) for construction related goods, works and/or services
 - 5.7.3.2 **15%** (all other goods and/or services) of the original value of the contract must
15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount.
 - 5.7.3.3 be submitted directly to the Contract Management Office for approval and further reference to the SCM Bid Adjudication Committee system for approval in terms of the relevant delegations.
- 5.7.4 Amendments of contracts where the expansion or variation is more than the threshold prescribed by National Treasury (Circular 62), must be dealt with in terms of the provisions of section 116(3) of the MFMA, and are exempt from this process.
- 5.7.5 Amendments to the contract, without influencing the value or term of the contract, within the scope of the original terms and conditions, may be altered, provided that both parties have consensus on the amendment and the contract amendment is in writing and signed by both parties.
- 5.7.6 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.

- 5.7.7 When an amendment has a budgetary implication for a term longer than three (3) 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 three (3) years.
- 5.7.8 No Contract can be amended after the original contract **has ceased** to exist

Contract Management Practices

6. ADMINISTRATION AND MAINTENANCE

Contract administration ensures the formal governance of the actual contract and changes to the contract documentation. The administrative function is then concerned with the mechanics of the relationship between the Council and the Supplier/Service Provider.

- 6.1 Contract administration includes all administrative duties associated with a contract once it is adjudicated and implemented. Maintaining an updated contract file, including: a hard, signed copy of the contract that is easily accessible when required and all on-going correspondence and contract information.
- 6.2 No rights in terms of an awarded contract will accrue before the SCM appeal period and/or appeal has been finalised.
- 6.3 The contract must 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). Using contract management software to record key information, such as supplier contact details and the scope of services they provide to the Msunduzi Municipal Council.
- 6.4 The contract will only be enforceable after all the signatures of the relevant parties are documented and safe custody of all contract documentation ensured by the relevant stakeholders i.e. Contracts Management Section.
- 6.5 A signed Service Level Agreement (where and if applicable) must be compiled and signed which will incorporate all the relevant sections of the tender documentation.
- 6.6 All once-off purchases shall have a specified end delivery date.
- 6.7 The SCM Contracts Manager must ensure there is regular reporting of contract information, including payments, compliance levels, performance metrics and variations
- 6.8 Contract Champions and Contract Owners are responsible for the electronic capturing of the contract information and maintenance thereof on the Contract Management system.
- 6.9 An inventory of all contracts must be maintained on a contract register. It is important for the contract register to be updated and maintained daily for all formal and informal contracts. The contract register serves as an early warning signal to identify potential over or under spending, pending closeout contracts or potential renewal contracts.

7. CONTRACT MANAGEMENT ROLES AND RESPONSIBILITIES OF OFFICIALS:

In a contract management system, resource capacity is important to manage the actual contract in particular, high value infrastructure related contracts with a greater operational risk that may require considerable resources. The municipality will ensure that the right municipal personnel are assigned to carry out the contract management activities in crucial projects. The contract management team together with the Contract Manager must:

- Have a detailed knowledge of the specification, governing contract and other relevant issues such as SLAs and KPIs.
- Actively participate in the bidding process or have a full handover from the staff responsible for the tendering/contract award.
- Have the appropriate contract management skills, commercial awareness and industry expertise to manage the contract and resolve any issues.
- Hold the necessary delegated authority to monitor the financials and ensure variations are appropriately approved by Procurement and in accordance with Council requirements as per the relevant Circular.

7.1 SCM Contract Manager:

7.1.1 The SCM Contract Manager is the SCM official responsible for system administration, status and SCM performance reporting on all contracts related activities.

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

7.1.2.1 Identification and classification of contracts for management purposes in terms of the SCM processes;

7.1.2.2 Recognition, measurement and disclosure;

7.1.2.3 Oversight of contract management as is provided for in this policy;

7.1.2.4 Document and information management;

7.1.2.5 Relationship management:-

7.1.2.6 Performance management;

7.1.2.7 Contract risk management.

7.2 Contract Champion

7.2.1 The contract champion is responsible for the following activities:

7.2.1.1 ensuring that all the necessary legal formalities in entering into the contract are adhered to;

7.2.1.2 ensuring that purchase orders are processed on the financial system in accordance with the pricing schedule;

- 7.2.1.3 maintaining adequate records (paper and/or electronic) in sufficient detail on an appropriate contract file to provide an audit trail;
- 7.2.1.4 inform the Asset Management section of the Expenditure Department of the location of newly procured assets for asset register and insurance purposes; and
- 7.2.1.5 where appropriate, in terms of Council's Delegations, authorize invoices due for payment.
- 7.2.1.6 to take appropriate action in consultation with the contract owner and the SCM contract manager, where a contractor is underperforming or is in default or breach of the contract.
- 7.2.1.7 ensure performance of suppliers is managed appropriately to the terms and conditions of the contract.

7.3 Contract Owner

- 7.3.1 The contract owner is responsible for ensuring that contract champions are assigned to all contracts.
- 7.3.2 The contract owner is ultimately responsible for management of the activities.
- 7.3.3 The Contract Owner must monitor delivery under the contract to ensure that it achieves its original objective and effect any necessary changes to the contracts

7.4 Deputy Municipal Manager

- 7.4.1 The Deputy Municipal Manager is responsible for signing of contracts with the relevant service provider, in line with the Delegation of Powers and Duties Policy.
- 7.4.2 The Deputy Municipal Manager is ultimately accountable for the contract.

8. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS

Msunduzi 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.

9. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES:

The accounting officer is responsible to establish a dispute resolution mechanism as per paragraph 5.4.1.2.2 and also as required by section 116(1) of the MFMA and paragraph 50 of the SCM Policy.

10. CONTRACT PRICE ESCALATIONS:

- 10.1 An appropriate contract price adjustment formula or specified terms of price escalation must be specified in the bid documents
- 10.2 Escalation notification must be in writing and presented timeously before the implementation date thereof.

his must be in light with industry provisions in line with the CIPX

- 10.3 User departments/Business Units are responsible for the management, verification and implementation of price escalations as per originally agreed terms and conditions set out in the specifications of the contract. Proof of evidence must be kept for the newly agreed escalations on the contract system for all other relevant stakeholders to access.
- 10.4 No price escalation should preferably be considered for a contract less than twelve (12) Months.
- 10.5 Contractual Price Adjustment may be considered provided that the service provider provides documentary proof or an audit certificate of price adjustment claimed to warrant such adjustment.

11. PERFORMANCE ON CONTRACTS:

- 11.1 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 (Paragraph 9). **(Reconcile this statement)**
 - 11.1.1 ***Municipality's Performance:***
 - 11.1.1.1 The Msunduzi municipality is required to pay creditors within thirty (30) days of receiving all relevant invoice statements.
 - 11.1.1.2 The municipality is also required to create a favourable environment to receive services and goods without preventing the supplier to perform their duties.
 - 11.1.1.3 All parties involved must perform according to the terms and conditions of the relevant contract, within the validity period of the contract.
 - 11.2.1 ***Supplier Performance:***
 - 11.2.1.1 The supplier of goods and services is required to perform as per the terms and conditions agreed upon and should inform the municipality if circumstances prevents them to perform, with reasons provided, within five (5) working days **(to be included in all contracts)**.
 - 11.2.1.2 For all relevant deviations from the agreed terms and conditions of any contract, the key performance indicators (KPI's) should be reviewed as well as the alignment with the strategic objectives as enshrined in the IDP.
 - 11.2.1.3 Suppliers performance will be reviewed by Msunduzi Officials i.e. SCM : Contracts Monitoring on a monthly basis (every 25th of the month) giving effect to section 116 of the MFMA, 2003 and the Performance Management System Implementation Policy
 - 11.2.1.4. Prescribed procedures to evaluate performance of service providers must be complied with. (Refer to the Performance Management Framework Policy)

THE FOLLOWING PROCEDURES NEED TO BE FOLLOWED:

1.	The requirements of this policy must be included in the contract between the Msunduzi Municipality and the Supplier/Service provider.
2.	The performance of the Supplier/Service provider under the contract or service level agreement must be assessed monthly by the assigned Contract Monitoring Officer.
3.	The assessment must be completed in the contract management system.
5.	The quarterly assessment and reporting must be completed within fifteen (15) working days after the end of each quarter. (Refer to the Performance Management Framework Policy, paragraph 9.2.1).
6.	The Contract Monitoring 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.
7.	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.
8.	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.
9.	in the eventuality of under-performance within a contract:- <ul style="list-style-type: none"> a) The Msunduzi Municipality will facilitate support interventions to service providers in the identified areas of underperformance ideally through the SMME/Enterprise Development initiatives/programmes b) Service providers who have been identified as under-performing in identified areas must be informed of these support interventions. c) The impact of support interventions must be monitored by the Enterprise/SMME Development component. d) Support and corrective action should be documented in writing within the contract management system e) The records of the support interventions must be documented, signed by both parties and appropriately filed in the contract management system.

12. Managing Relationships (Supplier Relationship Management)

Relationship management underpins successful contract management and fundamentally it must be established in the earlier stages of the procurement lifecycle. It is then inherently important for the Contracts manager to nurture the relationship between the Msunduzi Council and Suppliers/Service Providers against awarded contracts. This will ensure that the Contract Management Section is aware of any problems or issues that can arise during the contract cycle.

The Contracts Manager will ensure that an appropriate type of relationship established is based on where the category and the contract sit in its supplier portfolio analysis, which cannot be the same across but not limited to the following:-

- Number of suppliers in the market place and associated industry dynamics
- Relationship type between the parties i.e. long term strategic vs. transactional
- The details of the good or service to be provided and complexity of requirements
- Duration of contract

NB: The Contracts Manager must establish and maintain a constructive relationship with the Supplier and have regular communication. Providing positive and constructive feedback will assist in maintaining such a relationship.

13. Contract Monitoring

Contract Monitoring section will focus on collecting and analysing information to provide assurance to the Council that progress is being made in line with agreed timeframes and towards providing the contract deliverables. The Key Performance Indicators (KPIs) must be clearly set within the contract scope of works and then measured, reported and monitored on a regular basis in correlation with the Project Plan. The information provided by a supplier for monitoring purposes must be reviewed and audited, as necessary, to ensure its accuracy and reliability.

The Project Manager/Business Unit also has responsibility for ensuring that the Msunduzi Council complies with its responsibilities under the contract.

Details of areas that need to be monitored include:

- a) Specific goods or services provided on time to the required quality;
- b) Client or user satisfaction;
- c) Performance against contract requirements;
- d) Invoicing and payments; and
- e) Council contract compliance.

NB: *Regardless of how the contract monitoring function is performed by the Contract Monitoring section, accountability for accepting contract deliverables remains with the Council.*

14. Negotiate Contract Variations

This policy allows for the provisions to ascertain reasonableness in contract variations as a standard feature of all

contracts in line with the regulatory parameters. The functionality and execution for varying of the contract scope will be controlled by Contract Management section and approved by the Council within the respective delegations of authority. The variation mechanism system must provide for variations to be agreed between the Council and the Supplier in writing through a written formal amendment of the contract and should only occur in defined circumstances.

Proposed variations would be assessed to ensure that they do not breach legislation, procurement policy and financial delegation levels and the reasons clearly documented.

The Bid Adjudication Committee would receive the variation submissions from the responsible Contract Owner as a governance structure and would then ensure variations are analysed and assessed independently of the Contract Management Section prior to approval and sign off. Necessary negotiations are necessary for significant variations.

The Variation submission may include but not limited to the following in line with the actual Contract:-

- Change in scope of work (positive and negative)
- Change in execution of the work
- Change in resources or facilities required
- Revision of rates
- Extension of the duration of the contract
- Settlement of a claim arising from the contract

NB: *Under no circumstances must Variations be used to mask poor performance or serious underlying problems, as the effect on original timeframes, deliverables and value for money must be assessed.*

15. IMPLEMENTATION AND REVIEW OF CONTRACTS

15.1 In terms of section 116 (1) of the MFMA, a contract or agreement procured through the Supply Chain Management system must have a periodic review once

15.2 This policy will be effective from the date approved by Council of Msunduzi Municipality.