

ELIAS MOTSOLEDI LOCAL MUNICIPALITY



POLICY NAME	Contract Management Policy And Procedure
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TABLE OF CONTENTS

- 1. PRE-AMBLE**
- 2. DEFINITIONS AND ABBREVIATIONS**
- 3. PURPOSE**
- 4. OBJECTIVES**
- 5. STATUTORY AND REGULATORY FRAMEWORK FOR MANAGING CONTRACTS**
- 6. PRINCIPLES REGULATING MANAGEMENT OF CONTRACTS**
- 7. MAINTENANCE AND CONTRACT ADMINISTRATION**
- 8. ROLES AND RESPONSIBILITIES OF OFFICIALS**
- 9. RECORD KEEPING**
- 10. PERFORMANCE ON CONTRACTS**
- 11. CONTRACT REVIEWS**
- 12. EFFECTIVE DATE**
- 13. SHORT TITLE**
- 14. SIGNATORIES**

1. PRE-AMBLE

- 1.1 All transactions undertaken by the Elias Motsoaledi Local Municipality involves a contract whether explicitly agreed in writing, or implicitly implied through actions.
- 1.2 Properly managed contracts by all stakeholders involved, can ensure that services are delivered within specifications as set and agreed by all during the specifications phase and at the agreed cost, (Inclusive of escalation clauses in contracts) time period and qualities of the goods and services procured.
- 1.3 All contracts must be managed throughout the Contract Life Cycle, based on the level of management control appropriate for the classification of all contracts.
- 1.4 Improperly managed contracts may impact negatively on service delivery. Adverse effects of poor contract management include but are not limited to:
 - 1.4.1 Goods and services outside of specification;
 - 1.4.2 Poor supplier, buyer or other stakeholder relations;
 - 1.4.3 Negative public perception, and
 - 1.4.4 potentially complete service delivery failure.
- 1.5 Good contract management by all stakeholders involved is essential for good financial management and will contribute greatly to the effectiveness and efficiency of service delivery. In effect it would give strategic direction to all directorates following a centralised strategy of contract management. This policy must be read in coincidence with the SCM Policy of the Elias Motsoaledi Local Municipality.

2. DEFINITIONS:

In this Policy, unless the context indicates otherwise:

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.

Bid: a written offer or stipulated form, in response to an invitation by the Municipality for the provision of services or goods, > R200 00, in value.

Cession: an agreement which provides that the transferor transfers its rights and obligations to the third party.

Closeout: when a contract is considered complete and the service provider has complied with all terms and conditions of the contract, and the Institution has inspected and accepted the goods/services and/or works.

Consortium: is an association of two or more individuals/companies with the objective of participating in a common activity or joining their resources to achieve a common goal.

Contract Agreement: a legally binding agreement between two or more parties whether explicit or implied.

Contract Administrator: the official that is responsible for the continuous updating of the contract register, management and control of all documentation relating to the contract.

Contract Amendment: changing the scope, nature, duration, purpose or objective of the agreement or contract in line with the MFMA provisions.

Contract Life Cycle: the stages of a contract encompassing planning, creation, collaboration, execution, administration, monitoring and closeout or renew.

Contract Management: the holistic term for all activities in the Contract Life Cycle that is undertaken by all role players (Contract Manager, Contract Owner and Service Provider) involved in a contract and include the, SCM processes, formulation of contracts, implementation and monitoring and performance.

Contract Manager: an official responsible for overall contract management in the Municipality.

Contract Owner: an official that is ultimately responsible for the deliverables, implementation and monitoring of performance, the contract seeks to achieve.

Contract Price: the all-inclusive price of the contract over the complete duration of the contract and includes price escalations, cost of contract variations, disbursements, contingencies and VAT, etc.

Service Provider: the contracting party that represents a Supplier, Service Provider or Vendor.

Deliverable: any measurable, tangible, verifiable outcome, result or item that must be produced, delivered or constructed to meet the strategic objectives and service delivery targets of the Municipality.

Extension: when the Municipality decides to increase the term of a contract/agreement mutually agreed upon in writing, in line with the provisions of MFMA.

Memorandum of Understanding (MOU):

A Memorandum of Understanding (MOU) is a legal document describing a bilateral agreement between parties.

Memorandum of Agreement (MOA):

A MOA is a contract between parties that defines the obligations of all parties to cooperate on an agreed project or meet an agreed objective.

Lease Agreement: a legally binding agreement through which one person (Municipality) gives use and enjoyment of its property to another person (Tenant) for a specified period, in return for payment of rental.

Service Level Agreement (SLA): is a contractual agreement that is legally binding and entered into by a Service provider and the Municipality that specifies services that will be rendered, in lieu of specified payment. The SLA details the nature, quality, cost and scope of the service to be provided over a specified period of time.

Policy: Contract Management Policy and Procedure for Elias Motsoaledi Local Municipality.

Procurement: Procurement is the whole process of acquisition of external goods, services and works, in line with the provisions of MFMA.

Users: All officials as set out in the organogram of the Elias Motsoaledi local municipality involved with contracts.

ABBREVIATIONS:

AO	Accounting Officer
ASB	Accounting Standards Board
CLMS	Contract Life-Cycle Management System
CMD	Contract Management Database
ECM	Electronic Content Management
MFMA	Municipal Finance Management Act, Act No. 56 of 2003
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding

NT	National Treasury
SBD	Standard Bidding Documents
SCM	Supply Chain Management
SLA	Service Level Agreement
TR	Treasury Regulations

3. PURPOSE

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

4. OBJECTIVES

To ensure that this policy:

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

4.1.1 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: -

4.1.1.1 Fair

4.1.1.2 Equitable

4.1.1.3 Transparent

4.1.1.4 Competitive and

4.1.1.5 Cost-effective

4.2 The effective and efficient control of contracts procured through the Supply Chain Management System ensuring:

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

4.2.2 Support to the demand management framework as set out in MFMA Circular 62 of National treasury (August 2012), optimizing proper planning, resulting in effective service delivery;

4.2.3 Management of Contract Performance;

4.2.4 Compliance with the regulatory framework;

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

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

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

4.3 To ensure that no contract procurement takes place outside of the SCM process.

5. STATUTORY AND REGULATORY FRAMEWORK FOR MANAGING CONTRACTS

5.1 Application and Framework of the Policy

5.1.1 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:

5.1.1.1 Section 217 of the Constitution;

5.1.1.2 Section 116 of the MFMA;

5.1.1.3 Section 33 of the MFMA;

5.1.1.4 Supply Chain Management Policy; and

5.1.1.5 Any other regulations pertaining to Municipal Supply Chain Management

5.1.2 This Policy applies when the Municipality:

5.1.2.1 procures goods or services;

5.1.2.2 Disposes of goods or assets no longer needed; and

5.1.2.3 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.

5.1.2.4 When the Municipality leases its Municipal assets to individuals and institutions.

5.1.2.5 When the Municipality enters into MUO or MOA with individuals and institutions

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

5.2.1 The accounting officer must:

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

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

5.1.3.3 In terms of section 62(1) (a) to (f) of the MFMA, take all reasonable steps to ensure that the Policy is implemented.

6. PRINCIPLES REGULATING MANAGEMENT OF CONTRACTS

6.1. Conditions of Contract

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

6.1.1.1 be in writing;

6.1.1.2 Stipulate the terms and conditions of the contract or agreement, which must provide for:

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

6.1.1.2.2 Dispute resolution mechanisms to settle disputes between the parties;

6.1.1.2.3 Price of the goods or services to be delivered to the municipality and performance will be evaluated.

6.1.1.2.4 Penalties in case of non-performance or under performance

6.1.1.2.5 Duration of the contract (All once-off purchases shall have a specified end delivery date)

6.1.1.2.6 The deduction of performance retention fee on all consultancy services

6.1.1.2.7 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

6.1.1.2.8 Any other matters that may be prescribed.

6.1.2 All contracts that have serious financial implications for the municipality should be handed over to the municipality legal adviser for review before being signed by the Municipal Manager or delegated official. The following are regarded as contracts that have serious financial implications:

6.1.2.1 Contract amounting to the value of R200 000 or more

6.1.2.2 Contract for the period of more than one year

6.1.3 All Lease Agreements in respect of the leased Municipal properties or land must:

6.1.3.1 Be advertised in terms of SCM Systems for tenants to bid or tabled before the Municipal Council in a case where a tenant made a proposal to the Municipality requesting to lease a property or a land.

6.1.3.2 All the Lease Agreements must be in writing and be signed by both the parties (Municipality and Tenant).

6.1.3.3 The rental amount in respect of Lease Agreements tabled before the Municipal Council should comply with the approved leasing tariffs.

6.1.3.4 The rental amount in respect of Lease Agreements awarded in terms of SCM System shall be in terms of the SCM processes.

6.1.3.5 The duration of the lease period may not exceed a period of three years.

6.1.3.6 There must be a register of all Lease Agreements entered into in place and which will be updated on a regular basis.

6.1.4 All MOUs and MOAs entered on behalf of the Municipality must be

6.1.4.1 In writing and signed by the Accounting Officer.

6.1.4.2 MOUs and MOAs with financial implications must be tabled before the Municipal Council for approval resolution.

6.1.4.3 There must be a register in place and which will be updated regularly for all MOUs and MOAs entered into.

6.1.5 The 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.

6.2 Contract Documentation

A valid contract becomes binding when the following documents are in place and signed.

6.2.1 Appointment letter

An appointment letter which is signed by the Accounting Officer and has been accepted by the Service Provider's duly authorized person and has been sent before the validity period has expired.

6.2.2 The scope of work and bill of cost

A signed copy the scope of work and bill of cost (annexures or and appendix) submitted by the Service Provider when bidding to the tender, extracted from the tender document should form part of the contract.

6.2.3 Contract data and quotation

In respect of construction contracts, a copy of contract data signed by both parties (Municipality and Service Provider) and the quotation submitted by the Service Provider when bidding to the tender or project.

6.3 MAINTENANCE AND CONTRACT ADMINISTRATION

6.3.1 Contract File

A contract file should be opened for each contract that includes the following documentation:

6.3.1.1 Appointment letter;

6.3.1.2 A contract, signed by all parties;

6.3.1.3 All correspondence between parties the contracting parties;

6.3.1.3 Record of amendments to the contract (including extension of time frames or expansion of scope);

6.3.2 Contract Register

A contract register should be created and updated regularly. This register should include the following information:

6.3.2.1 Tender or contract number

6.3.2.2 Name of the supplier

6.3.2.3 Brief description of the goods or services to be provided

6.3.2.4 Contract Value (if applicable, include percentage escalation and any other financial value);

6.3.2.5 Contract period (start date, end date, duration, extension date where applicable, and early termination date where applicable);

6.3.3 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 line with MFMA provisions Section 116, section 33 and Circular 62. Amendments may only be made under the following circumstance:

6.3.3.1 The reasons for the proposed amendment have been tabled in the council; and

6.3.3.2 The local community has been given reasonable notice of the intention to amend the contract or agreement; and

6.3.3.3 The local community has been invited to submit representations to the municipality.

6.3.3.4 Amendments of contracts where the expansion or variation is not more than 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 Accounting Officer for approval and further reference to the SCM committee system for approval.

6.3.3.5 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.

6.3.3.6 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.

6.3.3.7 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.

6.3.3.8 When an amendment has a budgetary implication for a term longer than 3 (three) years, section 33 of the MFMA will apply to such an amendment.

7. ROLES AND RESPONSIBILITIES OF OFFICIALS:

7.1 Accounting Officer

7.1.1 The Accounting Officer and delegated officials (departmental heads) must take all reasonable steps to:

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

7.1.1.2 Oversee the monitoring on a monthly basis the performance of the service provider in terms of the contract or agreement.

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

7.1.1.4 Ensure that all SLA, lease agreement, MOUs and MOA entered into are signed upon advice by the Legal Services of the Municipality.

7.1.1.5 The accounting officer is responsible to establish a dispute resolution mechanism as required by section 116(1) of the MFMA and Section 58 of SCM Policy.

7.2 Supply Chain Management

7.2.1 The Supply Chain Management is tasked with the following:

7.2.1.1 Keep tender or bid records, including bid documents, appointment letters, quotations, contract data and amendments or variations to the contract.

7.2.1.2 To submit bid or tender documents for due diligence to the compliance office before approval by the accounting Officer.

7.2.1.3 To submit bid or tender documents for drafting of contracts to the Legal Office within **14 days** after the Accounting Officer has approved the appointment of the Service Providers.

7.2.1.4 For appointment of service providers in terms of, MFMA and SCM Policy.

7.2.1.5 To ensure all the processes of Supply Chain are complied with when procuring goods and services.

7.3 Compliance Office

7.3.1 The Compliance Office is tasked with the following:

7.3.1.1 Ensure that the SCM processes (Specifications, evaluation and adjudication) complied with all relevant legislation before the Accounting Officer can approve.

7.3.1.2 Monitor compliance in respect of contract amendments and variations – including scope variations, extension of contract periods, renewal and others.

7.3.1.4 Receive and consider performance reports of the Service Provider from the Contract Owners.

7.3.1.5 Submits a consolidated report on the performance of contracts or agreements to the Accounting Officer.

7.4 Contract Owner/Champion

7.4.1 The contract owner is tasked with the following:

7.4.1.1 Monitor the service provider's progress and performance to ensure goods, services and/ or works conform to the contract requirements.

7.4.1.2 Hold regular meetings with the Service Provider to review progress, discuss problems and consider necessary changes.

7.4.1.3 Consider project reports to advise the Compliance Office of the performance or non-performance of the service provider and risks associated with the project.

7.4.1.4 Recommend the processing of payments consistent with the contract terms and conditions of payment.

7.4.1.5 Participate, as in when it is necessary, in developing the bid documents (specifications, scope and standards of delivery).

7.4.1.6 Resolve operational issues as they arise.

7.4.1.7 Review and signing of contracts for the onward submission to Legal services within **7 days**.

7.4.1.8 To keep records of payment history (milestones/deliverables, actual dates of payment, payment penalties levied).

7.4.1.9 Submit suppliers' performance reports to the Compliance Office within 5 business days after the end of each month.

7.4.1.10 ensure implementation of the contract or agreement.

7.4.2.14 Institute penalties and issue warning letters to non-performing service providers.

7.5 Legal Services

7.5.1 Legal services section should be tasked with the following:

7.5.1.1 Establish the type of contract required.

7.5.1.2 Negotiate terms of agreement.

7.5.1.3 Draft contract documents, based on bid documents for specific contracts.

7.5.1.4 Oversee the signing of contracts.

7.5.1.5 Ensure that contracts are signed by the Accounting Officer and/or any official delegated by the Accounting officer

7.5.1.6 Create, maintain and update contract registers.

7.5.1.7 Resolve disputes.

7.5.1. To oversee the day-to-day management of the contract or agreement.

7.6 The Expenditure Manager

7.6.1 Internal Audit (Contract reviewers) are tasked with the following:

7.6.1.1 Expenditure Management Section is responsible for the processing of payments based on terms and conditions of all contracts entered into.

7.6.1.2 Ensure that no payment is effected without a valid and signed Service Level Agreement or agreement

7.6.1.3 The Section must ensure that payment is made within 30 days after receipt of the invoice

7.6.1.4 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.

7.7 Internal Audit

7.7.1 Internal Audit (Contract reviewers) are tasked with the following:

7.7.1.1 Conduct scheduled audits of contracts, based on the provisions of this policy framework read together with the SCM Policy.

7.7.1.2 Establish if sufficient checks and balances exist in the contract management life cycle.

7.7.1.3 Internal Audit must conduct scheduled audits of the document and information systems that are set up in the Municipality. The audit should verify that:

7.7.1.3.1 Checks and balances are being implemented for system access controls designed to ensure unauthorized employees do not have access to, and cannot amend or alter, contract information.

7.7.1.3.2 Contract files and contract registers exist, and are a true record of the status of the contracts.

7.7.1.3.3 Payments are made on the basis of verifiable proof of delivery of goods, services or works as provided in the contract.

7.7.1.3.4 The Municipality conducts periodic quality assurance reviews of the information in the register.

7.7.1.3.5 Payments are made in accordance with the terms and conditions of the contract.

7.7.1.3.6 Record of reviews and audits conducted on the contract;

8. RECORD KEEPING

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

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

9. PERFORMANCE ON CONTRACTS:

9.1 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 authorized supply chain management processes

were followed and whether the objectives of this Policy were achieved in terms of the Performance Management System.

9.1.1 Municipality's Performance:

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

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

9.1.1.3 All parties involved must perform according to the terms and conditions of the relevant contract, while the contract is active.

9.2.1 Service Provider Performance:

9.2.1.1 The service provider is required to perform as per terms and conditioned 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).

9.2.1.2 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 established.

10. CONTRACT REVIEWS

10.1 When the Municipality is not satisfied or there are problems with the service provider's performance, the Municipality must:

10.1.1 Review the conditions causing the problems and determine whether or not the Municipality itself has significantly contributed to the problem;

10.1.2 Review the contract and other relevant documentation in order to identify the rights and responsibilities of each party; and

10.1.3 Notify the service provider in writing that their performance does not comply with the terms and conditions set out in the contract.

10.1.4 The written notification sent to the service provider should clearly identify the following:

10.1.4.1 The problem so as to avoid any misunderstanding;

10.1.4.2 The corrective actions that are to be taken;

10.1.4.3 The time frame allowed for the service provider to address and correct the problem; and

10.1.4.4 The consequences that would arise in the event that the problem is not corrected within the specified period.

11. REVIEW OF THE POLICY

11.1 This Policy is the policy governing contract management in the municipality. The Municipal Council must approve any reviews to this policy.

11.2 Whenever the Minister of Finance or the National Treasury or the Auditor General requires changes to the policy by means of legislation or requests, it should be reviewed promptly in accordance with such requirements, giving full details of the reasons for the revision.

11.3 The Accounting Officer if deems necessary can table the policy before Council for the review of the policy.

12. EFFECTIVE DATE

This policy will be effective from the date approved by Council of the Elias Motsoaledi Local Municipality

13. SHORT TITLE

CONTRACT MANAGEMENT POLICY AND PROCEDURE