
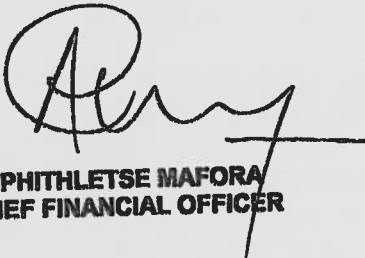
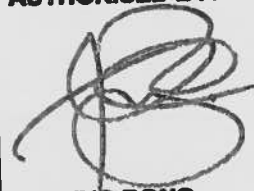





**elrc**

**EDUCATION LABOUR  
RELATIONS COUNCIL**

# **Contract Management Policy**

 <p><b>elrc</b> EDUCATION LABOUR RELATIONS COUNCIL</p>	<p><b>EDUCATION LABOUR RELATIONS COUNCIL</b></p>	<p><b>Doc No. SCM/F&amp;WE/001</b></p>	
		<p><b>Date: 22 FEBRUARY 2016</b></p>	<p><b>Rev 0</b></p>
<p><b>Title: CONTRACT MANAGEMENT POLICY</b></p>		<p><b>Document type: POLICY</b></p>	
<p><b>This document has been seen and accepted by the following: EXECUTIVE COMMITTEE OF THE COUNCIL</b></p>		<p><b>COMPILED/ REVIEWED BY:</b></p> <p><b>OMPHITHLETSE MAFORA CHIEF FINANCIAL OFFICER</b></p>	
<p><b>RECOMMENDED BY:</b></p>  <p><b>OMPHITHLETSE MAFORA CHIEF FINANCIAL OFFICER</b></p>	<p><b>APPROVED BY:</b></p>  <p><b>NOLIUSINDISO FOCA GENERAL SECRETARY</b></p>	<p><b>AUTHORISED BY:</b></p>  <p><b>LUVUYO BONO CHAIRPERSON OF THE COUNCIL</b></p>	
<p><b>DATE OF LAST REVIEW: FEBRUARY 2016</b></p>			
<p><b>DATE OF NEXT REVIEW: FEBRUARY 2018</b>  <b>NOTE: - This document may be changed before the stipulated period as and when a need arises as guided by the Documentation Policy.</b></p>			

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## **1. INTRODUCTION**

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1.1 Contract Management is the coordination and management of four core processes:

- 1.1.1 Planning;
- 1.1.2 Procurement;
- 1.1.3 Contract formation; and
- 1.1.4 Contract administration

1.2 There is no single 'right' way to contract. Various types of purchases and contracts may require different practices, processes and strategies for successful implementation, and such purchases and contracts should comply with the set regulations and processes.

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## **2. IMPORTANCE OF CONTRACT MANAGEMENT**

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2.1 Every transaction undertaken by an organisation involves a contract whether explicitly agreed in writing, or implicitly implied through actions.

2.2 Properly managed contracts can ensure that services are delivered according to specifications and at the agreed cost.

2.3 Improperly managed contracts may impact negatively on the institution and government as a whole.

2.4 Adverse effects of poor contract management include, but are not limited to:

- 2.4.1 Poor supplier, buyer, or other stakeholder relations;
- 2.4.2 Negative public perception;
- 2.4.3 Protracted legal disputes;
- 2.4.4 Cost overruns;
- 2.4.5 Goods and services outside of specification; and
- 2.4.6 Complete service delivery failure.

2.5 Good contract management is essential for good financial management and will contribute greatly to the effectiveness and efficiency of service delivery.

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## **3. CORRECTLY ACCOUNTING FOR CONTRACTS**

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3.1 Accounting for Contracts is concerned with recognition, measurement and disclosure of the financial implications resulting from contracts.

3.2 As mentioned above, all transactions are contractual, whether explicit or implied.

- 3.3 Efficiency in contract management is enhanced by conducting transparent, fair and appropriately responsible relationship management of a scale commensurate with the size and risk profile of each particular project.
- 3.4 Effectiveness relates to how well outcomes meet objectives. It concerns the immediate characteristics of the Council's outputs, especially in terms of price, quality and quantity and the degree to which outputs contribute to specified outcomes.
- 3.5 Council will make the maximum possible contribution to the relevant outcome. This entails comprehensive monitoring and assessment at all stages of the contract life-cycle to ensure the ongoing.

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#### **4. CONTRACT MANGEMENT ETHICS**

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- 4.1 Ethics are the moral boundaries or values that defines an Official's work. Ethical behaviour encompasses the concepts of honesty, integrity, probity, diligence, fairness, trust, respect and consistency. Ethical behavior identifies and avoids conflicts of interests and does not make improper use of an individual's position.

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#### **5. CONFLICT OF INTEREST**

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- 5.1 The Supply Chain Management (SCM) Policy provides that staff involved in procurement shall disclose any actual or perceived conflict of interest.
- 5.2 The potential for adverse impact with contract management because of actual or perceived conflict of interest is minimised by:
  - 5.2.1 Open, honest and cooperative business relationships with colleagues and suppliers;
  - 5.2.2 Ensuring the confidentiality and privacy of personal and commercial information obtained in performing the purchasing and contracting function;
  - 5.2.3 Avoidance of conflict of interest or perceptions of bias;
  - 5.2.4 Disclosure of possible conflict of interest, whether real or perceived;
  - 5.2.5 Fair dealing and impartiality in the conduct of relationship management.

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#### **6. VALUE FOR MONEY**

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- 6.1 Value for money is the fundamental principle underlying procurement and contract management. Value for money is enhanced in procurement by:
  - 6.1.1 Encouraging competition by ensuring non-discrimination in procurement and using competitive procurement processes;
  - 6.1.2 Promoting the use of resources in an efficient, effective and ethical manner; and
  - 6.1.3 Making decisions in an accountable and transparent manner.

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## **7. LIFE CYCLING COSTING**

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- 7.1 Life cycle costing for goods is the total cost that is incurred in buying, owning, use and disposal of items at the end of their usable life.
- 7.2 The life cycle costs for services includes the cost of the services, any continuing costs for the use of services and any costs that may be incurred in discontinuing the service.
- 7.3 Life cycle costing should be applied to all purchasing decisions (goods or services) where there is an ongoing cost of ownership (e.g. photocopiers). The four broad stages at which life cycle costing should be applied are:
- 7.3.1 The conceptual stage when a business case for justification of the purchase is being prepared;
  - 7.3.2 The evaluation stage when the potential offers from respondents are being assessed; and
  - 7.3.3 The in-service stage when decisions are being assessed; and
  - 7.3.4 The in-service stage when decisions are being made on whether to maintain, improve or dispose of the asset purchased (or in the case of a service, discontinue the service).

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## **8. ENCOURAGING COMPETITION**

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- 8.1 Competition is a key element of the procurement policy.
- 8.2 Effective competition requires non-discrimination in procurement and the use of competitive procurement processes.
- 8.3 All potential suppliers should have the same opportunities to compete for business.
- 8.4 The procurement process itself is an important consideration in achieving value for money.
- 8.5 Participation in a procurement process imposes costs on potential suppliers and these costs should be considered when determining a process proportionate with the scale, scope and relative risk of the proposed procurement.

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## **9. PLANNING**

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- 9.1 The first step in contract management is planning. Planning is crucial to the successful outcome of any procurement.
- 9.2 Proper planning reduce or eliminate the risk of error.

- 9.3 Planning includes several areas which assist in getting the project started- such as development of the contract management team, assessing the risk, developing a communication plan, determining the procurement method, planning for the content of the procurement and determining a cost estimate.

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## **10. SENIOR MANAGEMENT COMMITMENT**

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- 10.1 Each contract management initiative should include an executive sponsor, a Contract Manager, procurement department staff and program staff to assist in the contract management process.
- 10.2 The extent and degree of executive sponsorship and participation should be directly related to the level of risk associated with the procurement.

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## **11. IDENTIFYING RESOURCE AND RESPONSIBILITIES**

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- 11.1 The Contract Manager should be experienced with the proposed type and size of procurement.
- 11.2 The procurement department should review all contracts to ensure that procurement statuses are followed and that the procurement is handled in a fair and competitive environment.

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## **12. RISK MANAGEMENT**

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- 12.1 Risk management is a three-part process:
- 12.1.1 Identify risk;
  - 12.1.2 Quantify and analyse the likelihood and the potential impact of identified risks; and
  - 12.1.3 Mitigation and/or limitation of the risk.
- 12.2 Contract management risks are as varied as are the types of contracts. Risk categories common to contract management include:
- 12.2.1 Product risk
  - 12.2.2 Process risk
  - 12.2.3 Financial risk
  - 12.2.4 Schedule risk
  - 12.2.5 OH&S risk
  - 12.2.6 Business risk
- 12.3 There is no objective or mathematical formula that can be used to identify or quantify the risk imposed by a particular contract.
- 12.4 Risk determination is based on subjective experience.

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### **13. DETERMINE THE FORM OF CONTRACT**

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- 13.1 In most circumstances, it is necessary to have a written contract which provides the basis for a constructive and cooperative relationship between the Council and the contractor.
- 13.2 However, there are instances where a separate written contract may not be required. These include:
- 13.2.1 Commercially available software which may be purchased using a standard licensing agreement and standard purchase order for the contracted products;
  - 13.2.2 Lower value products or services may be purchased by using a purchase order;
  - 13.2.3 Products or services that are listed on a Panel of period contract as a preferred supplier.

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### **14. PANELS OR DEED OF STANDING OFFER**

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- 14.1 A panel or deed of standing offer can be held with a single contractor or a panel of contractors.
- 14.2 This arrangement allows quick easy access to goods and services without having to go through the mandatory procurement procedure for every acquisition.
- 14.3 The Contractor must provide specified goods or services for a predetermined rate and on terms and conditions agreed in the standing offer.

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### **15. CONTRACT INFORMATION**

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#### **15.1 Contract Basics**

- 15.1.1 A valid contract may be defined as "the creation by agreement of legally enforceable rights and obligations between two or more parties".
- 15.1.2 Officials who purchase goods and/or services on behalf of the Council should be aware that their actions are binding on the Council.
- 15.1.3 Care must be exercised not to:
- (a) Inadvertently enter a contract issued by a supplier with terms and conditions unfavorable to the Council.
  - (b) Create a contract orally or by exchange of informal documents or letters.
  - (c) Create a contract by issuing instructions to a supplier to proceed with the delivery of goods before a contract is signed and issued.
  - (d) Amend, vary or extend a contract either orally or by exchange of informal documents or emails.



## **15.2 Contract Creation**

- 15.2.1** The written contract must be an accurate reflection of the terms and conditions nominated in the request documentation and must take account of any matters of significance emanating from the post-evaluation negotiation process.
- 15.2.2** Contracts must be fair and reasonable for suppliers but at the same time they must protect the Council and its interests, both in the performance of the contractual arrangement and against possible civil action.

## **15.3 Sub-Contracting**

- 15.3.1** The contractor should ensure that any works or activities that are sub-contracted to another enterprise are done in compliance with the Council's SCM policy, prescripts and this policy.
- 15.3.2** The contractor should ensure that the intended sub-contractor has the capacity and ability to execute the sub-contract.
- 15.3.3** The main contract is expected to act in the best interest of the Council and does not transfer his/her duties to the Council, to the sub-contractor.
- 15.3.4** A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise.
- 15.3.5** All sub-contracts must be to an enterprise that has an equal or higher B-BBEE status level, unless the intended sub-contractor is specifically exempted by the General Secretary.

## **15.4 Contract Administration**

- 15.4.1** Contract administration is as important as the purchasing process and involves monitoring performance and ensuring that both parties meet the commitments made in the contract.
- 15.4.2** Successful contracts often depend on getting the relationship right.
- 15.4.3** This requires the commitment of both parties in achieving the objectives set out in the contract and establishing trust and mutual support.
- 15.4.4** Comprehensive and accurate records must be kept to establish and maintain an audit trail in relation to responsibilities, claims, payments, negotiations, agreed changes, incorrect deliveries, poor service and other significant activities.
- 15.4.5** This information must be filed for retrieval at a later stage, if required.

## **15.5 Contract Manager Responsibilities**

- 15.5.1** Once the contract is signed, there are a number of activities that should be addressed by the Contract Manager. The primary responsibilities of the Contract Manager are:
  - (a) Monitor the contractor's progress and performance to ensure goods and services conform to the contract requirements;

- (b) Authorise payments consistent with the contract terms;
- (c) Document significant events;
- (d) Maintain appropriate records; and
- (e) Resolve disputes in a timely manner.

## **15.6 Contract Administrator**

- 15.6.1** Contract administrators are responsible for the cost-effective contract management of supplies to support the Council's administrative activities.
- 15.6.2** They deal with suppliers who rely on trade with the Council for their income and spend a significant amount of the Council's money.
- 15.6.3** They need to have adequate knowledge and skills to deal in an ethical and fair way with Suppliers and to make sound purchasing and contract decisions.
- 15.6.4** Depending on the level of their involvement, individual Contract Administrators will need to be able to do some or the following:
  - (a) Establish and sustain contracting capability;
  - (b) Identify and manage risks;
  - (c) Establish effective supplier relationship management; and
  - (d) Establish systems and procedures.

## **15.7 Manage Contract Start-up**

- 15.7.1** After a contract has been awarded, it is important that the Contract Manager understands the contract provisions and contractual relationships. In particular, a detailed review of the contract as startup may identify issues that require clarification or elaboration with the contractor and this should be done as early as possible.

## **15.8 Contract Register**

- 15.8.1** A contract register must be maintained centrally and will contain all relevant contract details.

## **15.9 Identify and Manage Risk**

- 15.9.1** Risks and risk treatments established earlier in the contract management cycle need to be reviewed once the contract is signed and new risks and mitigation strategies need to be considered.
- 15.9.2** New risks may include:
  - (a) Contract Manager who does not have the time, or experience to capably manage the contract;
  - (b) Contractor failing to meet contract deliverables on time, to agreed standards, or to agreed contracting schedule;
  - (c) Contract Manager fails to act on contractor underperformance;
  - (d) Contract changes not dealt with as a contract variation; and
  - (e) Stakeholders not being consulted or kept informed.

## **15.10 Monitoring Performance**

- 15.10.1** Monitoring the performance of the contractor is a key function of proper contract administration, for both the contract administrator and manager.
- 15.10.2** The purpose is to ensure that the contractor is performing all duties in accordance with the contract and for the Council to be aware of, and address any developing problems or issues.

## **15.11 Contract Reporting**

### **15.11.1 Status Report**

- 15.11.1.1** Status reports, where applicable or required; describe the progress of the work.
- 15.11.1.2** The content of the status report should be consistent with and track the organisational structure of the statement of work or project plan, i.e. phases, segments, deliverables and products.
- 15.11.1.3** A status report should describe what work is complete and what work is pending, and that status should be contrasted against the contract schedule.
- 15.11.1.4** Only work that has been verified as completed or accepted can be categorised as complete.
- 15.11.1.5** If the scope of work has changed during the contract (by written amendment) insist that status reports track the original contract schedule, not a revised contract schedule as there is a risk that the schedule will continually change and the status report will be rendered meaningless.
- 15.11.1.6** If the contract does not provide for periodic status reports, the Council should ensure that the contractor is making sufficient progress.
- 15.11.1.7** This may be accomplished by requesting a status update from the contractor or a site visit to view the progress.

### **15.11.2 Activity Reports**

- 15.11.2.1** Activity reports describe any activity on the project (project activity is not the same as status report).
- 15.11.2.2** A project may have a great deal of activity without making substantive progress.
- 15.11.2.3** On the other hand, activity reporting can be a core feature of contract management, for example, activity reporting is critical to contract administration.

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## **16. CONTRACT PAYMENTS**

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- 16.1 The costs incurred by the contractor should be in accordance with the contract rate schedule.
- 16.2 Invoices should be reviewed to ensure that the contractor's billing coincides with the contract's progress and this requires that the contractor's progress be measurable.
- 16.3 Project and contract administration staff must approve invoices prior to payment. Payments for the correct invoices must be paid within 30 days from the date of a correctly rendered invoice being received or the goods and/or services, whichever is later.
- 16.4 The invoice should be reviewed to ensure:
- (a) The contractor is billing only for goods and/or services received;
  - (b) The goods and/or services have been accepted;
  - (c) The total payments do not exceed the contract limits and a payment certificate is prepared;
  - (d) A delegate with the relevant level of delegated authority has approved expenditure;
  - (e) The account has not previously been paid;
  - (f) The account is in the name of the payee;
  - (g) Expenditure is recorded against the correct charge code(s) as described in the delegate approval.

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## **17. WITHHOLDING PAYMENTS**

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- 17.1 The Council has the responsibility to protect its interests under appropriate circumstances.
- 17.2 It may be necessary to withhold payments from contractors. Circumstances where it may be necessary to withhold payment include, but are not limited to:
- 17.2.1 There is material breach of the contract by the contractor
- (a) Errors in the invoice
  - (b) Unsupported and/or undocumented costs
  - (c) Previous overpayments on the same contract
  - (d) Contractor's performance is non-conforming or unacceptable

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## **18. CHANGES TO THE CONTRACT**

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- 18.1 Throughout the term of the contract, it may become necessary to make changes to the contract. These changes can be minor administrative changes, such as change of address, or they can be substantial changes that affect the price and delivery.

**18.1.1. Administrative changes**

18.1.1.1. These changes are within the scope of the contract and does not affect or alter the rights of the parties.

**18.1.2. Substantive changes**

18.1.2.1. These contractual changes affect the rights of both parties. Such changes require bilateral amendments (agreements by both parties).

18.1.2.2. Examples of substantive changes include:

- (a) Changes in the price of the contract;
- (b) Changes in the delivery schedule;
- (c) Change in the quantity;
- (d) Change or nature of deliverables (i.e. the specifications);
- (e) Change of key personnel; and
- (f) Change of any terms and conditions.

**18.2 Constructive changes**

18.2.1 If a contractor perceives that the Council ordered work beyond the scope of the contract, the contractor may claim that the contract was "constructively" changed, and the contractor may be entitled to additional compensation for the changes.

18.2.2 Generally, a constructive change will require a bilateral amendment (agreements by both parties).

18.2.3 Constructive changes may occur when the Council:

- (a) Provide suggestions to a contractor;
- (b) Accelerate the delivery schedule;
- (c) Direct the work to be performed differently;
- (d) Change the sequencing of the work;
- (e) Delay accepting or rejecting deliverables;
- (f) Delay reviewing invoices and approving payment; and
- (g) Interfere with or hinder performance.

18.3 Any substantive or constructive changes to the initial contract may not be more than 15% on the initial contract value, otherwise a procurement process should be explored.

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**19. CONTRACT RENEWAL**

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19.1 Extension of term contracts - extension or renewal of contracts may take place only through the prior approval of the General Secretary.

19.2 All contract renewals will be done in two ways:

19.2.1 Prior to the expiry of the contract the user departments may indicate to the SCM unit their intention to start with competitive bidding for the continuation of the contracts. Any such process should follow the SCM policies and procedures.

19.2.2 A contract may be extended or renewed for a period not longer than a third (1/3) of the original contract period or 15% of the contract value, unless approved by the General Secretary.

19.2.3 In case of 19.2.2, competitive bidding is not required. However, the user department must ensure that the Council continues to receive value for money and that quoted prices are in line with market values.

19.2.4 Where a contract was awarded by the Bid Adjudication Committee, the renewal/extension should vest in the EXCO.

19.3 User departments are responsible for ensuring that timeous application is made for the conclusion of new contracts. Where justifiable reasons are provided for extending a contract, the user department shall make recommendations to the General Secretary.

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## **20. DELEGATION AND AUTHORISATION**

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20.1 The contract may be renewed with a written approval by either of the parties.

20.2 For extra contractual purchases, the Council reserves the right to procure outside any term contract if so approved by the General Secretary.

20.3 All contracts must be duly authorised by the General Secretary, her delegate or as per the delegations of authority policy.

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## **21. CONTRACT COMPLETION**

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21.1 The contract completion process is usually a simple but detailed administrative procedure.

21.2 The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining.

21.3 In addition, contract completion is the time to assess the success of the contract and determine if there are any lessons learnt for future contracting.

**22. AMENDMENT AND/OR ABOLITION OF THIS POLICY**

22.1 This Policy may be amended or repealed by the Executive Committee.

**23. APPROVAL OF POLICY**

23.1 The policy is hereby approved for and on behalf of the Council and will take effect immediately upon approval.

Signature: \_\_\_\_\_

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

