



**HARRY GWALA DEVELOPMENT AGENCY (PTY) LTD**  
[REG. No: 2011/001221/07]

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**POLICY: CONTRACT MANAGEMENT**

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<b>Administrative Responsibility:</b>	Chief Executive Officer
<b>Implementing Department / Departmental Unit</b>	Budget and Treasury / SCM

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## **PREAMBLE**

Government contracting shall be conducted in a manner that will:

- a) Stand the test of public scrutiny in matters of discretion and integrity, encourage competition, and reflect fairness in the spending of public funds
- b) Ensure the supremacy of functioning requirements
- c) Comply with Government's obligations under the related legislative and Policy prescripts.

Properly managed contracts by all stakeholders involved, can ensure that services are delivered within specifications as set and agreed to by all during the specifications phase and at the agreed costs, time period and qualities of the goods and services procured. All contracts must be managed throughout the contract Life Cycle, based on the level of management control appropriate for the classification of that contract.

Improperly managed contracts may impact negatively on service delivery.

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

- 1.1 good and services outside of specification
- 1.2 cost overruns
- 1.3 poor supplier, buyer or other stakeholder relations
- 1.4 negative public perception, and
- 1.5 potentially complete service delivery failure

**“Bid”** A written offer or stipulated form, in response to an invitation by a municipal entity for the provision of services or goods, > R200 00, in value.

**“Cession”** Means when a contract/agreement is relinquished to another individual/institution.

**“Closeout”** Means when a contract is considered complete and the service provider has complied with all terms and conditions of the contract, and the Municipal Entity has inspected and accepted the goods/services and/or works.

**“Consortium”** Means when a contract is considered complete and the service provider has complied with all terms and conditions of the contract, and the Municipal Entity has inspected and accepted the goods/services and/or works.

**“Contract”** Agreement (explicit or implied) legally binding two or more parties to the terms of the agreement.

**“Contract Administrator”** Agreement (explicit or implied) legally binding two or more parties to the terms of the agreement.

**“Contract Amendment”** Means changing the scope, nature, duration, purpose or objective of the agreement or contract.

**“Contract Life Cycle”** The stages of a contract encompassing planning, creation, collaboration, execution, administration and closeout or renew.

**“Contract Management”** Means the holistic term for all activities in the contract lifecycle that is undertaken by all role players involved in a contract and include the, Contract Manager, Contract Owner, contract champion and supplier.

**“Contract Manager”** Means the official responsible for overall contract management in a municipal entity.

**“Contract Owner”** Means the official that is ultimately accountable for the deliverables during the contract lifecycle relevant to the service delivery target that 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, VAT, etc.

**“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 a municipal entity.

**“HGDM”** Means the Harry Gwala District Municipality, a Category C Municipality established in terms of Section 155(1)(c) of the Constitution of the Republic of South Africa, 1996 and in terms of Section 12(1) of the Municipal Structures Act, 32 of 2000 (as amended) and its successors in title. Includes duly authorised officials of the Municipality who have been delegated any powers, functions and duties necessary to give effect to this Policy and decide upon and administer the matters referred to herein.

**“Company Secretary”** Means the person responsible to the Board for ensuring that proper corporate governance principles area adhered to:

**“Council”** Refers to the Municipal Council of the Harry Gwala District Municipality, as defined in Section 157 (1) of the Constitution of the Republic of South Africa, Act 108 of 1996, as amended from time to time.

**“CEO”** Means the Chief Executive Officer of the Harry Gwala Development Agency (Pty) Ltd

**“Meeting”** Means any meeting of the board or any board sub-committees (portfolio committee) as well as any other General meeting of the entity including meetings of Council, irrespective of the duration of such meeting.

**“MFMA”** Means the Municipal Finance Management Act 56 of 2003, as may be amended from time to time

**“MSA”** Means the Municipal Systems Act 32 of 2000, as amended from time to time

**“Non-Executive Director”** Means a non-executive director of the Agency appointed in terms of section 93E of the Municipal Systems Act, 32 of 2000

**“Shareholder”** Means the Harry Gwala District Municipality.

## **1.1 LEGAL FRAMEWORK**

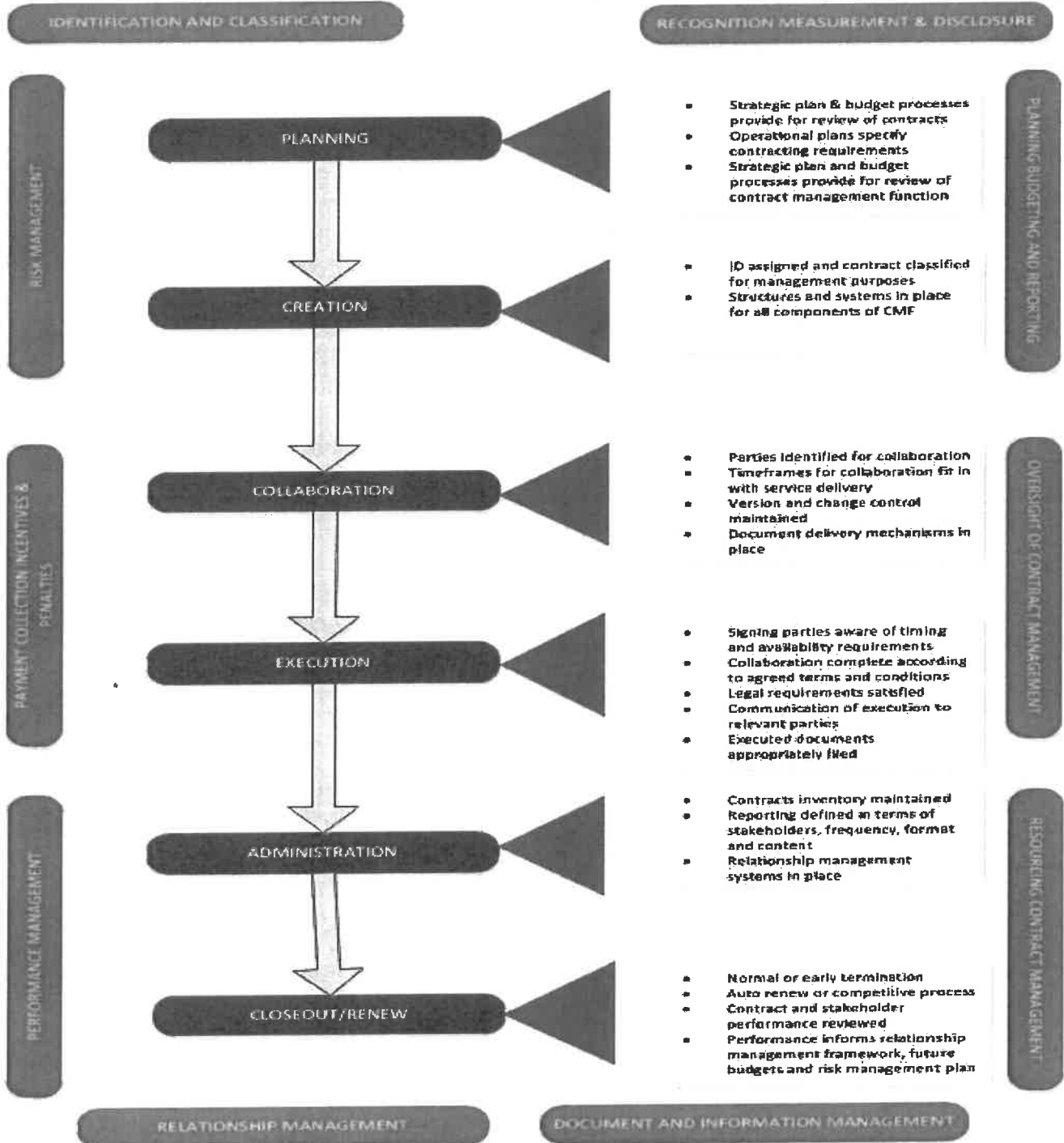
This policy is guided among others by the following legislation and agreements as amended from time to time:

- 4.1 Constitution of the Republic of South Africa
- 4.2 Local Government: Municipal Finance Management Act
- 4.3 Municipal Supply Chain Management Regulations
- 4.4 Local Government: Municipal Systems Act
- 4.5 Local Government: Municipal Structures Act
- 4.6 National Treasury Guidelines and Circulars
- 4.7 Costs Containment Regulations
- 4.8 Harry Gwala Development Agency Supply Chain Management Policy
- 4.9 Harry Gwala Development Agency Contract Management Procedure Manual

## **2. PURPOSE OF THE POLICY**

This policy framework is designed to support Harry Gwala Development Agency, in developing a sound, consistent and effective procedure to managing the diverse range of contracts. The objective of municipal entity procurement contracting is to acquire goods,

# POLICIES & PROCEDURES



**Figure 1: Contract Management Framework**

TYPE OF CONTRACT	DESCRIPTION
	<p>rather from the elements which fulfill the requirements of a binding contract.</p> <p>c) The contract is enforceable because the parties to the contract have met the requirements concerning the substance of the agreement rather than the requirements concerning the form of the agreement.</p> <p>d) An informal contract has the full weight of the law as long as the basic requirements of a contract have been met.</p>

**Table 3: Types and Description of Contracts**

This Policy Framework provides a standard approach to contracting Harry Gwala Development Agency, in the purchase of goods, services and/ or works that are similar in nature. The standard approach is based on a comprehensive analysis of contracts that municipality and municipal entity in the province usually enter into with respective service providers.

A further typology is provided below, on the basis of the type of contract that will best suit:

- a) The nature of the goods, services and/ or works being procured; or
- b) The nature and type of municipal entity that are entering into an agreement.

The types of contracts that should be used should take the form of any of the types listed below:

TYPE OF CONTRACT	DESCRIPTION
<p><b>Memorandum of Understanding (MOU)</b></p>	<p>a) A Memorandum of Understanding (MOU) is a legal document describing a bilateral agreement between parties.</p> <p>b) It expresses a convergence of will between the parties, indicating an intended common line of action, rather than a legal commitment.</p> <p>c) It is a more formal alternative to a gentlemen's agreement, but generally lacks the binding power of a contract.</p> <p>d) It is usually selected in agreements between Public Entities or between a Public Entity and a Non-Profit Organization, and does not involve an exchange of goods, services and/ or works for payment.</p>

TYPE OF CONTRACT	DESCRIPTION
<b>Umbrella Contract</b>	a) This is a type of contract where a number of service providers are appointed to a panel, from which the purchasing Municipal Entity purchases goods, services and/ or works on an as-the-need-arises basis or on a rotational basis. b) The “umbrella contract” tends not to have a fixed price. c) As a result, it should always be accompanied by a Purchase Order that provides the price and deliverables as an annexure to the main contract.
<b>Tripartite Contracts</b>	a) These are contracts that involve three parties.

**Table 4: Types and Description of Contracts**

## **5. PLANNING, BUDGETING AND REPORTING**

Planning, budgeting and reporting for contract management should be aligned to and integrated into the government-wide strategic and annual planning, budgeting and reporting cycle as outlined in the Framework for Strategic Plans and Annual Performance Plans.

Planning, budgeting and reporting within contract management are strongly aligned to the broader SCM life cycle. Contract management builds on the procurement life cycle. Like procurement planning, contract management planning should take place by Quarter 3 so that plans and budgets are finalized in time for the beginning of the financial year when the entity’s strategic and annual performance plans and budgets have been approved. In-year reporting must include a contract review component and contracts must be disclosed in the audited annual financial statements and annual report.

## **6. OVERSIGHT OF CONTRACT MANAGEMENT**

The policy framework places the responsibility of providing oversight of contract management activities on the Chief Executive Officer.

The Chief Executive Officer has the primary responsibility of ensuring that the necessary systems and standard operating procedures are in place for effective contract management. They also have to ensure that contracts are planned and budgeted for, that terms and conditions of the contracts are enforced, and Municipal Entity receives good value for money.

More specifically, the oversight of contract management must address the following key issues:

- a) The Harry Gwala Development Agency Contract Management Policy and Procedure Framework must be implemented to govern the contract management function and practices.
- b) Contracts must be properly enforced.
- c) A single person or committee must be allocated the responsibility for contract management.
- d) Roles for Contract Owners, Contract Managers and other stakeholders must be clearly defined.

Audits of the contract should also be conducted by a different team from that responsible for contract management, in order to gauge the effectiveness of the controls that are put in place for contract management. Audits should also be extended to other stakeholders, including service providers and contract owners, regarding the quality of the goods, works and services they provided or received.

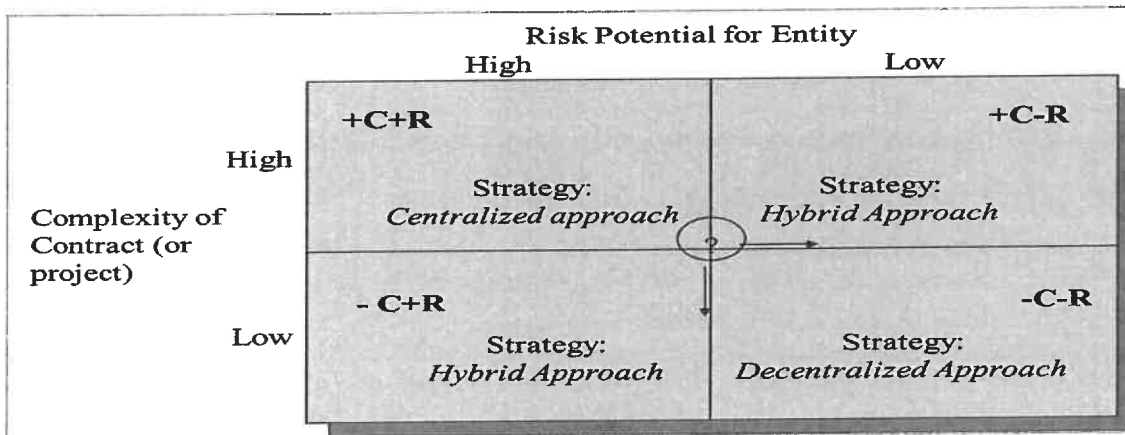
## 7. RESOURCING CONTRACT MANAGEMENT

The Chief Executive Officer must ensure that contract management activities are provided adequate resources in terms of:

- a) Teams and/or individuals that are dedicated to contract management and have the necessary level of senior management commitment and support. The teams or individuals should include individuals who exercise procurement delegations with experience and knowledge commensurate with the size, nature and complexity of the contracts they are responsible for;
- b) Requisite skills, capacity and competencies to drive contract management;
- c) Adequate budgets for the contract management function; and
- d) Enabling resources, tools and templates to facilitate contract management activities, especially records management and service provider performance management.

### 7.1 RESOURCING STRATEGY

The resourcing strategy should be carefully selected based on the classification of contracts. In classifying contracts, Chief Executive Officer will be able to identify contracts that require higher levels of management focus due to their size, level of complexity and levels of risk associated with the contract – among other things. This analysis will inform the resourcing strategy, as shown in Figure 5 below. A cross-tabulation of risk and complexity matrix suggests the following:



**Figure 2: Classification of Contract for Determining Resourcing Strategy**

- a) **+C+R** quadrant represents contracts that are highly complex and present major risks for the Municipal Entity. Failure to deliver on these contracts could have major adverse effects for Harry Gwala Development Agency. The recommended strategy for these contracts is to have a dedicated team assigned to managing the contract. It is important

ROLE	RESPONSIBILITIES
	<ul style="list-style-type: none"> <li>(d) Recommend the processing of payments consistent with the contract terms and conditions of payment.</li> <li>(e) Participate, as necessary, in developing the bid documents (specifications, scope and standards of delivery), as well as contract documents.</li> <li>(f) Resolve operational issues as they arise.</li> <li>(g) Generate change requests.</li> </ul>
<b>Contract Manager</b>	<p><b>The Contract Manager should be tasked with the following:</b></p> <ul style="list-style-type: none"> <li>(a) Establish procedures and guidelines for managing all contracts.</li> <li>(b) Authorize payments consistent with the contract terms and conditions of payment.</li> <li>(c) Manage risks and resolve disputes in a timely manner.</li> <li>(d) Maintain appropriate records.</li> <li>(e) Monitor performance data and address non-conformance.</li> <li>(f) Be the first line of dispute resolution.</li> <li>(g) Receive and consider performance reports from the service provider.</li> </ul>
<b>Contract Administrator</b>	<p><b>The contract administrator should be tasked with the following:</b></p> <ul style="list-style-type: none"> <li>a) Keep all contract records, including bid documents, letters of awards, purchase orders, signed contract documents and amendments or variations to the contract.</li> <li>b) Create and maintain the contract registers.</li> <li>c) Manage contract amendments and variations – including scope variations, extension of contract periods, renewal and others.</li> <li>d) Institute penalties and issue warning letters to non-performing service providers.</li> <li>e) Recommend the processing of payments after verifying performance with Contract Manager.</li> <li>f) Conduct regular legal and financial reviews of contracts.</li> <li>g) Open and close projects on the contract management system.</li> </ul>
<b>Budget and Treasury Office (SCM Unit)</b>	<p><b>Budget and Treasury Office (SCM Unit) section should be tasked with the following:</b></p> <ul style="list-style-type: none"> <li>(a) Establish the type of contract required.</li> <li>(b) Negotiate heads of agreement.</li> </ul>

In instances where an institution enlists the support of another public entity or solicits an external technically competent entity, the entity providing the expertise should be drawn in at the pre-bid stage to make input on the bid specifications and standards of delivery.

## **7.4 CODE OF CONDUCT**

Contract management requires high levels of integrity and Chief Executive Officer should develop a Code of Conduct that is applicable to all those involved in the Contract Management Life Cycle.

The Code of Conduct should outline the following aspects:

- a) The guiding principles that employees are to follow in order to conduct themselves and their work in a moral manner.
- b) The responsibilities of managers in creating and maintaining an ethical working environment.
- c) Ethical standards for employees directly or indirectly involved in SCM activities so as to ensure that the procurement process is conducted fairly.
- d) Confidentiality requirements so as to ensure that no service provider is disadvantaged in any way.
- e) Combative practices detailing illegal and unethical practices that are prohibited; and
- f) Punitive measures outlining the consequences of non-compliance to the Code of Conduct.

The Code must be designed in line with the prescripts of the MFMA, SCM Regulations, as well as the Code of Conduct for SCM Practitioners. It should also pronounce on how to deal with conflicts of interest, compel service providers to sign non-disclosure agreements and prohibit all forms of gifts between the service provider and officials involved at any of the stages of the Contract Management Life Cycle.

## **8. DOCUMENT AND INFORMATION MANAGEMENT**

This policy framework requires the Chief Executive Officer to maintain sound records, document and information management systems for contract management.

### **8.1 CONTRACT DOCUMENTATION**

- a) A valid contract is concluded and becomes binding when a bidder's bid is accepted by the municipal Entity against an official purchase order and a signed letter of acceptance, by an authorised person, has been sent before the validity period has expired.
- b) The contract concluded must consist of:
  - i) The GCC issued by the National Treasury;
  - ii) Where applicable, SCC that enhance the GCC in relation to the specific goods, services and/ or works procured;
  - iii) Submitted bid documents;
  - iv) Documentation for the claiming of preferential procurement points;
  - v) Tax clearance certificate; and
  - vi) Letter of acceptance.

- e) Contract Value (if applicable, include percentage escalation and any other financial value);
- f) Contract period (start date, end date, duration, extension date where applicable, and early termination date where applicable); and
- g) Payment history (milestones/deliverables, actual dates of payment, payment penalties levied).

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

- a) Checks and balances are being implemented for system access controls designed to ensure unauthorised employees do not have access to, and cannot amend or alter, contract information.
- b) Contract files and contract registers exist and are a true record of the status of the contracts.
- c) Payments are made on the basis of verifiable proof of delivery of goods, services or works as provided in the contract.
- d) The municipal entity conducts periodic quality assurance reviews of the information in the register.
- e) Payments are made in accordance with the terms and conditions of the contract.

## **9. RELATIONSHIP MANAGEMENT**

Relationship management in the contract life-cycle should involve a deliberate effort by all parties to ensure that Harry Gwala Development Agency risk is minimised and that the Municipal Entity resources are managed effectively, efficiently and economically as required by the MFMA.

Relationship management involves the relationships between the purchasing municipal entity, service provider's and all the relevant officials, such as Contract Managers, Legal Advisors, Contract Owner's and Senior Management.

The type of contract, its size and duration, as well as the culture of the parties and the personalities of the people involved, will influence the relationship between the parties. A framework for determining the type of relationship for contract management has been developed based on the level of specialisation and the accompanying level of responsiveness that is depicted in the figure below:

g) Type of contract.

### **10.1 PERFORMANCE TARGETS**

In order to determine the KPI's, it is necessary to:

- a) Identify the Agency's objectives and desired outcomes;
- b) Specify the inputs, activities and outputs necessary to achieve the agency's objectives and desired outcomes;
- c) Select indicators that will measure critical inputs, activities, as well as key outputs; and
- d) Ensure that the selected indicators are manageable and that the required data is easily available.

Once the KPI's have been defined they are used to specify performance targets which the municipal entity aims to achieve within a specific time period. The performance targets need to be:

- a) Specific and clearly identifiable;
- b) Measurable;
- c) Achievable;
- d) Relevant and linked to a desired outcome; and
- e) Time bound.

Performance standards also need to be set so as to identify the minimum level of performance that will be accepted by the agency. The performance standards and targets should be specified in the contract document and communicated to all parties prior to the commencement of the contract.

### **10.2 DELAYED PERFORMANCE**

The GCC provides that the service provider must perform in accordance with the contract specifications within the time schedule set out in the contract. If at any time during the contract period, the service provider is unable to perform in a timely manner, the service provider must notify the agency in writing of the cause of and the duration of the delay. Upon receipt of the notification, the agency should evaluate the circumstances and, if deemed necessary, the agency may extend the service provider's time for performance which will constitute an amendment to the contract. The agency may decide to impose a delay penalty.

In the event of delayed performance that extends beyond the delivery period, the agency is entitled to purchase commodities of a similar quantity and quality as a substitution for the outstanding commodities, without terminating the contract, as well as return commodities delivered at a later stage at the service provider's expense. Alternatively, the agency may elect to terminate the contract and procure the necessary commodities in order to complete the contract.

In the event that the contract is terminated the agency may claim damages from the service provider in the form of a penalty. The service provider's performance should be captured on the service provider database in order to determine whether or not the service provider should be awarded any contracts in the future.

- a) All amounts owed by the institution must be paid within thirty (30) days, unless stated otherwise within the contract, after the receipt of invoice.
- b) In the case of a civil claim, all payments must be settled within thirty (30) days from the date of settlement or court judgement.
- c) In the event that the municipal entity fails to pay within the prescribed period, it will be in breach of the contract. Only amounts under dispute can be withheld by the municipal entity.
- d) The Contract Manager must review all invoices submitted by the service provider in order to determine the validity of the costs claimed, as well as evaluate the total contract expenditure incurred against the actual progress of the contract.
- e) The Contract Manager must file a copy of all invoices and payment vouchers, if applicable, with the contract documentation for record purposes.
- f) In addition, the Contract Manager must maintain a payment register for each contract.
- g) The payment register is used to record all payments made to the service provider, as well as the balance of the contract value.
- h) The receipt of monies due to the municipal entity must be closely monitored and in the event that monies are not received within the specified terms, immediate action must be taken in order to recover all outstanding amounts.

## **11.2 INCENTIVES / DISCOUNTS FOR EARLY PAYMENT**

In some instances, service providers provide discounts for invoices settled within a period of 30-days. Contract Managers must negotiate these discounts vigorously and ensure that if indeed payment is made within 30-days, the discounts are deducted from the remaining contract amount.

In the event that the service provider fails to deliver any or all of the goods, services and/ or works within the time frame specified in the contract, the municipal entity will be able to penalize the service provider. The penalty is based on the delivery price of the outstanding goods, services and/ or works and uses the current prime interest rate to calculate an amount for each day that the delivery is outstanding up until the goods, services and/ or works are delivered to the agency. The penalty amount is deducted from the contact value.

Both incentives and penalties are used by the agency in order to meet its objectives. An incentive is used as a method of encouragement while a penalty is used as a form of discouragement. It is important that both incentives and penalties are enforced uniformly.

## **12. RISK MANAGEMENT**

Risk is defined as uncertainty of outcome, whether this is positive (i.e. an opportunity) or negative (i.e. a threat).

It is important that a thorough risk analysis is conducted at the signing of the contract agreement and a risk management plan is designed to run parallel to the implementation of the contract. In contract management, managing risk means identifying and controlling the factors that may have an impact on the fulfilment of a contract. Risks can relate to any aspect of the contract and include fluctuations in demand, lack of service provider capacity, changes to your requirements, industry standards or to legislation and the transfer of staff.

### **12.3 PROJECT RISKS**

The Contract Owner will need to compile a separate register for project risks, i.e. those risks that may be foreseeable during the procurement process and, if appropriate, construction or implementation phase of the project. It will be the Contract Owner's responsibility to oversee the management of these risks. The participants of the risk assessment workshop can help determine:

- a) Possible mitigating steps the project team can take to minimize each risk; and
- b) The estimated time and cost of each mitigating step.

### **12.4 RISK ASSESSMENT WORKSHOP**

The workshop must be attended by all members of the project team and the key stakeholders. The following steps will be followed:

- a) Brainstorm all possible risks – get the workshop members to list as many as they can think of - then classify them as operating risks and project risks.
- b) Each participant should then independently score (a) the potential impact and (b) the likelihood of each risk occurring, perhaps on a scale of 1 to 5.
- c) By multiplying the average scores for each risk, you can rank the risks in order of magnitude and importance.

### **12.5 RISK REGISTER**

During the procurement process there is a need to compile and maintain two risk registers to capture the likelihood, impact and mitigation of all identified risks, one for operating and emerging risks and one for project risks. The Contract Manager should continue to maintain and update the risk register throughout the operational phase of the contract, retiring operating risks that have been fully mitigated and adding emerging risks as time goes on.

Share the risk register with the service provider and encourage them to use it. They can then jointly operate the process for identifying emerging risks, developing and implementing mitigating actions and subsequently retiring them as appropriate.

Together, they should review all high- and medium-level risks routinely at regular review meetings.

### **12.6 RISK MANAGEMENT STRATEGIES**

Contract risk must be appropriately managed such that:

- a) All contracts set out risk identification, monitoring and escalation procedures and mechanisms which are in line with the municipal entity's Enterprise-Wide Risk Management Framework;
- b) All contracts identify contingency plans for service provider failure;
- c) The Contract Manager monitors the financial health, tax compliance and overall performance of the Service provider; and
- d) Contract terms and potential ramifications around key issues including termination, warranty, indemnity, security, confidentiality and dispute resolution are understood by the Contract Manager.

RISK	RISK MANAGEMENT STRATEGY
	d) Risks associated with the contract may include, but are not limited to, the following: <ul style="list-style-type: none"> <li>i) The service provider fails to adhere to the budget agreed upon;</li> <li>ii) The service provider fails to comply with the provisions contained within the contract;</li> <li>iii) The service provider lacks key staff members thus eroding the quality of the deliverables;</li> <li>iv) The service provider's delivery is disrupted by factors outside of their control, such as a natural disaster;</li> <li>v) The service provider's financial standing may deteriorate thereby decreasing their ability to meet the terms of the contract;</li> <li>vi) The municipal entity may lack the capacity to receive the commodity;</li> <li>vii) The municipal entity's demand for the commodity may fluctuate drastically; and</li> <li>viii) The municipal entity's requirements are changed fundamentally, such as a change in policy.</li> </ul>

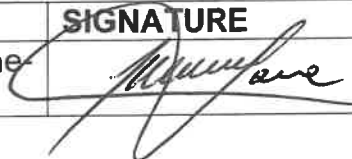
**Table 6: Risk Management Strategies**

In order to mitigate risk, the municipal entity compiles a contingency plan in order to maintain essential services. The contingency plan will be an express requirement for all contracts that exceed a value to be determined by the Provincial Treasury.

### 13. IMPLEMENTATION AND REVIEW

This policy will come into effect on the 1<sup>st</sup> July 2024 and shall be reviewed at least annually.

#### APPROVED BY:

NAME	SIGNATURE	DESIGNATION	DATE
Mrs T.T. Thiyane Magaqa		Acting Chief Executive Officer	22 May 2025