CHAPTER 17
MANAGING CONTRACTS

17.1 INTRODUCTION

17.1.1 Contract management is the process that enables both parties to enter into contract to meet their obligations in order to deliver the objectives required from the contract. It also involves building good working relationships between the customer and provider. It continues throughout the duration of a contract and involves proactive management to anticipate future needs and reacting to situations that may arise.

17.1.2 The aim of contract management is to obtain the goods or services as agreed in the contract and to achieve value for money. This means optimising the efficiency and effectiveness of the services or the relationship described by the contract, balancing costs against risks and actively managing the customer-provider relationship. Contract management may also involve aiming for continuous improvements in performance over the duration of the contract.

17.1.3 The practices and principles that shape contract management are set out in Contract Management Best Practice Guidelines, Chief Directorate: Legal Services, Corporate Services Centre, Western Cape Government, March 2013, which accompanies Provincial Treasury Circular 21/2013. That guide must be consulted and read in conjunction with this Volume.

17.2 CONTRACT MANAGEMENT ACTIVITIES

17.2.1 Contract management activities are grouped into three areas:

(a) Service delivery management: ensures that the service is being delivered as agreed, to the required level of performance and quality. This is the role of the line management component using the contract.

(b) Relationship management: keeps the relationship between the two parties open and constructive, aiming to resolve or ease tensions and identify problems timeously. This responsibility is primarily that of line management supported by SCM.

(c) Contract administration: handles the formal governance of the contract and changes to the contract documentation. This is the role of SCM.

17.2.2 All three activities must be managed optimally to ensure effective and efficient contract management.

17.2.3 Adequate preparation and concluding the correct type of contract are essential foundations for good contract management. The arrangement must be flexible to accommodate change. A key factor is "intelligent customer capability": the knowledge of both the customer's and the provider's business, the service being provided and the contract itself. The capability, which touches all three areas of contract management,

forms the interface between supply and demand that is, between the business needs of the customer (which refers to the line management) and the provider.

17.2.4 Contracts need to be managed according to the Contract Management Framework (CMF) outlined in the Contract Management Guide (CMG) issued by National Treasury in August 2010. Contract Management best practice guidelines issued by the Chief Directorate Legal Services Corporate Services Centre dated March 2013.

17.3 ELEMENTS OF CONTRACT ADMINISTRATION

The elements of contract administration include the following:

(a) Ensuring that all relevant documentation setting out the rights and obligations of both parties are in place, and signed;

(b) Ensuring change control, i.e. managing changes, amendments and variations to any part of the original agreement (only by written amendment signed by both parties);

(c) Implementing corrective action whenever significant/unacceptable deviations against the original agreement occur;

(d) Managing the payment system especially the 30-day period within which payments must be made; and

(f) Managing the process of default and application of penalties.

17.4 ELEMENTS OF CONTRACT MANAGEMENT

The elements of contract management include the following:

(a) Measuring performance against contract requirements or service level agreements;
(b) Managing compliance to delivery instructions, quality and quantity control
(c) Report on supplier poor performance to the Contract Administration section.

17.5 NOTIFICATION OF ACCEPTANCE

17.5.1 Successful bidders shall be advised, in writing, of the acceptance of their bid/s. Awards shall be published in the Government Tender Bulletin and on the eTender Publication Portal of National Treasury as well as other media by means of which the bids were advertised. Bids are not available for perusal by the public, but, at the written request of a Bidder or interested party in terms of the procedures for the Promotion of Access to Information Act, the following particulars may be furnished where the information has not been published in the Government Bid Bulletin. The particulars to be published are as follows:

(a) name of the contractor;

(b) the relevant price and delivery method;

(c) the brand name of the product or the name of the manufacturer, and

(d) where applicable, the preferences claimed.

17.5.2 Where no bid/s has/have been accepted, particulars of the bids received are not made public. The application to advertise must preferably be lodged with the Government Printer or eTender Publication Portal or any other media after the letter of acceptance and Service Level Agreement (SLA) is issued.

17.5.3 Where practical, the letter of acceptance and/or SLA (where applicable) must preferably be collected by the contractor and signed at the WCED Head Office. Where impractical in respect of learner transport contracts, it must be sent to the Education District Office where the bidder is requested to sign the documents. However, the documents may be sent by registered mail / faxed or scanned and submitted via e-mail when the aforementioned cannot be achieved. The date of signature on the WCBD 7.1 Contract Form shall be regarded as the date of notice of acceptance of the offer and resultant contract. Therefore, the contract is effective from the time that the letter of acceptance is registered/faxed/emailed to the successful bidder.

17.5.4 Letters of acceptance and SLAs are signed by an official delegated the authority to do so. This is an administrative arrangement and although the Accounting Officer accepts accountability for the contract which is concluded, the signatory remains co-responsible for the contract and for the correctness of the data/information supplied.

17.5.5 The letters of acceptance and the SLAs serve as the basis for placing orders and for the administration of the contract as well as for the settlement of disputes. The format and contents of the letters of acceptance must therefore be such that supply chain management practitioners may carry out the aforementioned actions in a meaningful and responsible manner. Therefore, all relevant information must be included in the letters of acceptance. In particular, it is essential that any conditions or stipulations, laid down by the WCED must be clearly and unambiguously included in the Bid Documents or letters of acceptance.

17.5.6 Care must be taken that letters of acceptance and the SLA contain no conditions and do not imply the approval of conditions that the delegated person has not approved. All SLAs must be legally vetted by Legal Services before they are issued to contractors. Any conditions set by the bidder as well as any special conditions that may have been approved, must also be included in the letters of acceptance and SLAs.

17.5.7 In the case of joint bids or bids on behalf of companies still to be incorporated, the Department's rights must be protected at all times by binding all parties to the contracts both separately and individually. The firms and/or persons concerned must therefore each receive a letter of acceptance and copy of the SLA addressed to their own addresses and care must be taken that they all have signed the bid documents.

17.5.8 In the case where a company is to be established, the contract must be ceded to the new company as soon as it has been incorporated.

17.5.9 Error and/or mistakes in the letters of acceptance must, in all cases, be reported to the Director: Procurement Management immediately. As the very first step, the original letter must be retracted, in writing, without delay. If the successful bidder refuses to accept the corrective notice, it must be reported to the Director: Procurement Management immediately. Where it is not possible to recover the letter of acceptance unconditionally,

all particulars of the incorrect acceptance must be reported to the Accounting Officer or delegated official via the relevant SCM Committee together with a recommendation regarding the corrective steps which are envisaged. A legal opinion may be obtained where necessary.

17.5.10 Where further documentation is signed by all parties concerned as an agreement in addition to the letter of acceptance, it is regarded as part of the formal contract. An SLA is a document, which defines the relationship between two parties: the provider and the recipient. This is an extremely important document for both parties. If used properly it must:

(a) Facilitate service delivery in line with the specification;

(b) Provide a framework for understanding;

(c) Simplify complex issues;

(d) Reduce areas of conflict and lay down procedures for resolution;

(e) Encourage dialogue in the event of disputes; and

(f) Eliminate unrealistic expectations.

17.5.11 Specifically, it must embrace a wide range of issues. Amongst these are the following:

(a) Services/product to be delivered;

(b) Performance, Tracking and Reporting;

(c) Problem Management;

(d) Legal Compliance and Resolution of Disputes;

(e) Customer Duties and Responsibilities;

(f) Security;

(g) Confidential Information; and

(h) Termination clauses.

17.6 CONTENT OF CONTRACTS

The contract concluded must amongst others consist of:

(a) general conditions of contract issued by the National Treasury;

(b) where applicable, special conditions in relation to the specific goods or services procured;

(c) Service Level Agreement (SLA), where applicable;

(d) submitted bid documents;

(e) documentation for the claiming of preferential points (WCBD6.1);

(f) WCBD4;

(g) a valid tax compliance status verified on the CSD; and

(h) letter of acceptance.

(i) WCBD7.1 Contract form

17.7 GCC, SCC, AND SLA

The GCC, SCC, and SLA were discussed earlier in this AOS. Their management and maintenance form a particularly important part of Contract Administration.

17.8 GENERAL CONDITIONS OF CONTRACT

General Conditions of Contract issued by National Treasury must form part of all bid documents and may not be amended.

17.9 SPECIAL CONDITIONS OF CONTRACT/SERVICE LEVEL AGREEMENT

The special conditions should include, but are not limited to:

(a) a preamble that serves to explain the rationale for the conclusion of the contract or to provide contextual or background information;

(b) governance protocols;

(c) reporting on performance in terms of the contract or agreement in respect of contracts that extend over a period of time;

(d) a periodic review of the contract or agreement by the parties in respect of contracts that extend over a period of time;

(e) clauses that clearly and unambiguously set out the rights and obligations of the parties, relevant to the specific subject matter in respect of which the contract is entered into;

(f) service levels, if applicable; and

(g) incorporation of other documents as annexures.

17.10 CONTRACTS IN RELATION TO INFORMATION TECHNOLOGY

17.10.1 Contracts relating to information technology must be prepared in accordance with the State Information Technology Agency Act, 1998 (Act 88 of 1998), State Information Technology Agency Amendment Act, 2002 (Act 38 of 2002) and any regulations issued in terms of the Acts.

17.10.2 National Treasury SCM Practice Note 5 of 2009/10 and National Treasury SCM Circular no 2 of 2017/18 provides guidance to the procedures to be followed when procuring ICT related goods/services through SITA.

17.11 LEGAL VETTING OF CONTRACTS

17.11.1 The Accounting Officer must ensure that all contracts entered into by the Department are legally sound. Where Service Level Agreements are part of the contract it must be forwarded to Legal Services for vetting. In the event of any uncertainty, the matter must

be referred to the Deputy Director-General: Legal Services in the Department of the Premier. (DoTP)

17.12 ACCESS TO CONTRACTS/INFORMATION

17.12.1 Under normal circumstances, bids (awarded) are not accessible to the public. However, on written request, interested parties may request the following information in terms of the procedures for the Promotion of Access to Information Act (PAIA), if said information has not been published in the Government Tender Bulletin:

(a) names and addresses of all bidders;

(b) the prices and basis of delivery offered by all bidders;

(c) the brand name of the product and the name of the manufacturer, in respect of the accepted bid (only the accepted bid); and

(d) the preference points claimed by the successful bidder.

17.12.2 In addition to the information provided in paragraph 16.10.1 (Provincial Treasury SCM Practice Note 1, Chapter 2 and the PAIA), any further information may be furnished, as deemed necessary, by the Department and as guided by the applicable legislation, the Constitution, POPIA and relevant case law.

17.12.3 Any information requested, if not provided in terms of the Promotion to Information Act, will be furnished at the discretion of the Department and will be guided by legislation and policy. The Department may withhold information or publication of the information if:

(a) it will impede law enforcement; or

(b) it will not be in the public interest;

(c) it will harm the legitimate interest of the Department;

(d) it might hinder fair competition between suppliers, bidders or contractors; and

(e) a case/matter is *sub judice*.

17.13 MONITORING

17.13.1 Constant monitoring by Project Managers or representatives who requested the goods/services is essential to ensure that contractors meet their contractual obligations and that contracts are executed with as little disruption as possible. There are several ways in which monitoring may be undertaken:

(a) <u>Regular site inspections</u>.

In respect of a service, where the service is being rendered at the departmental site or at the contractor's own site, the relevant Project Manager or representative must visit the site regularly to ascertain whether the service is being rendered in accordance with the contract.

(b) <u>Regular meetings</u>

The relevant Project Manager or representative should have regular meetings with contractors to discuss contract issues i.e. progress, foreseeable contract problems, price variations, etc.

(c) Reporting

(i) Regular reports from contractors as well as the SCM Unit are crucial for efficient contract management. Contractors must be informed via the SLA that reporting must take place on predetermined issues. The timeframes for this reporting must also be made known to the contractor prior to the start of the contract.

(ii) For products, a contractor may be requested to report on the following issues:

- Number of orders received;
- Date of orders and from what component;
- Quantities ordered on individual items; and
- Delivery date of orders.

(iii) The information must be scrutinised and matched with the Department's records to ascertain whether there are any anomalies in the rendering of the service or delivery of the product.

(iv) When the Department renews an existing contract or enters into a new contract, these reports play a crucial role in the Demand Management phase as it provides crucial historical/current contract/item information. This in turn, has a direct influence on the Acquisition Management phase as it influences the form of bidding used.

(i) Requirements for service performance reports and management information should be defined before and during contract negotiations and confirmed during the transition period of the contract. Information requirements may change during the lifespan of the contract, which should be flexible enough to allow for this. Where possible, the provider's own management information and performance measurement systems should be used.