

**The Contract Management Framework
Dzongkhag Thromdes (TT, PT, GT and SJT)**

**Municipal Finance and Management Component
Bhutan Second Urban Development Project (BUDP-2)**

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1. Introduction

1.1. Importance of Contract Management

Every transaction undertaken by Thromdes involve a contract whether explicitly agreed in writing, or implicitly implied through actions. Properly managed contracts can ensure that services are delivered within specification and the agreed cost. Improperly managed contracts may impact negatively on Thromde. Adverse effects of poor contract management include but not limited to:

- a. Poor supplier, buyer or other stakeholders' relations;
- b. Negative public perception;
- c. Protracted legal disputes;
- d. Cost overruns;
- e. Revenue collection delays;
- f. Customer and supplier dissatisfaction;
- g. Overcharges by suppliers;
- h. Erroneous payments;
- i. Service delivery issues;
- j. Missed saving opportunities;
- k. Failed compliance with regulatory requirements;
- l. Increased risks;
- m. No monitoring of supplier performance across contracts;
- n. Good and services outside of specification; and potentially
- o. Complete service delivery failure.

Hence, good contract management is essential for good financial management and will contribute greatly to the effectiveness and efficiency of service delivery. Financial Management and related governance reform being introduced in the Thromdes to improve service delivery through securing sound and sustainable management of financial affairs of Thromdes. Improved financial management will lead to:

- a. Improved information for making policy choices (allocation of resource to programmes);
- b. More efficient use of resources in delivering the chosen programmes; and
- c. Increasing the rate of delivery of basic services and associated elimination of service delivery backlogs.

This is achieved primarily through:

- a. Enhancing transparency and credibility of information contained in budgets, in-year reports and end of year reports such as the annual financial statements and annual reports; and
- b. Improving financial management and internal controls.

Transparency and accountability support the concept of accountability. Information with these attributes can be more reliably used to hold government accountable for delivering on promised

service delivery within approved budgets. This corresponds with an increased focus on measuring outputs and outcomes and not just what was spent and what was received.

Implementation of commitment and accrual accounting will lead to increased transparency and credibility of budgets, in-year reports, annual financial statements and annual reports.

Improved contract management in Thromdes in terms of management practices and financial disclosure can, for instance, lead to:

- a. Increased awareness of all forms of contracts and their implications;
- b. Identifying non-performing supplies, buyers and other stakeholders who are either performance managed or replaced;
- c. Enhances risk management;
- d. Identifies savings and additional revenue opportunities;
- e. Provides clear and complete records for audit;
- f. Development of strategic supplier, buyer and other stakeholder relationship with a view to improving service delivery and reducing cost; and
- g. Better value for money achieved in the acquisition and sales of goods and services.

1.2. Contract Management Components

Contract Drafting

Contract drafting is a process which includes the pre-& post processes involved in the actual drafting of the contract, from the negotiation phase up to the final contract where consensus is reached by all parties.

Performance Monitoring

Performance monitoring is the process which ensures that the actual implementation of the terms and conditions of the contract are in line with the signed contract. Nonperformance is dealt with through issuing notice of breach/or invoking of the penalty clause.

The Local Government Act 2009, Public Finance Act and the Thromde Finance Policy requires Thromdes to ensure performance monitoring of its Service Providers and its critical impact on Thromdes' performance and service delivery.

The contract management team is therefore responsible to ensure that performance procedures and measurements are in place at the commencement of the Project to ensure that the performance of Service Providers is monitored from day one.

Payment Procedures

Advanced payments should be as per the PRR 2009, Financial Management Manuals and the Internal Control Guidelines. The User Division must ensure that the Contract obligations are met and the payment is done in accordance with the payment terms prescribed in the Contract

Agreement. Contract & Performance Management will assist the User Divisions with the penalties as and when needed.

Contract Administration

Contract administration is the process from the opening of a contract file, issuing of notices, extensions, terminations, breach of Contract and Contract variations and to ensure compliance at all times, as well as record management and the capturing of information on the Contract Register.

Record Management

The management and administration of all contracts of the Thromde have to be centralized to Legal Services office.

Access to contract documents should be restricted to relevant divisions and contract & performance management officials only. All requests for Contract documents should be directed to the Contract the Performance official of his/her delegated authority.

2. Contract Management Scope

Thromdes are required to manage several contracts. The contracts can be classified as follows:

Procurement Contracts	Non Procurement Contracts	Lease Agreements
<ul style="list-style-type: none"> •Contractors Agreements •Consultancy Agreements •Purchase Contracts •Rental Agreements •Maintenance Agreements •Civil Contracts 	<ul style="list-style-type: none"> •Funding Agreements •Enviornmental Clearance Agreements •Service Agreements •MOU •Employment Agreements 	<ul style="list-style-type: none"> •Lease Agreements •Usage Agreements •Advertising Agreements •etc.

3. Procurement Contracts

Majority of contracts executed by the Thromdes are the Procurement Contracts.

3.1. Background

A significant portion of the public fund is allocated in the procurement of goods and services. The procurement is equally made from both current and capital expenditure with more procurement from the former. A large share of agency budget is spent on procurement, especially of works such as roads and other infrastructure, services such as professional services, and goods such as general tools and instruments. Public procurement is a vital activity by government and public enterprises in ensuring that they meet their mandates in providing public services. It involves large shares of government spending, which makes it all the more important that is managed in an efficient and effective manner that contributes to sustainable development. Thromdes being agencies responsible to provide services to the urban residents are required to do large scale procurement.

In Bhutan the Procurement Rules and Regulations 2009 (PRR 2009) and subsequent revisions, provide the legal framework for public procurement practices. Thromdes also follow the provisions of Procurement Rules and Regulations 2009. Ministry of Finance is the public agency entrusted with the development and management of procurement policy of all public agencies. Chapter 7 of financial rules and regulations of the Five-Year Plans stressed the need for separate rules on public procurement. The drafting of a manual for procurement took place in 1998. All public agencies followed the Financial Management Manual of MOF until 2008. In 2005, the Ministry began implementing procurement reforms in five major aspects:

- a. Strengthening of legal framework (renewing the procurement manual and its accompanying documents e.g. standard bidding documents for goods, works and consulting services;
- b. Creation of PPPD office in April 2007 under Department of National Properties;
- c. Capacity building to build local procurement capacity implemented together with the educational institutes;
- d. Addressing the need for procurement grievance mechanism; and
- e. Assessing the readiness for adopting electronic forms of government procurement (e-GP).

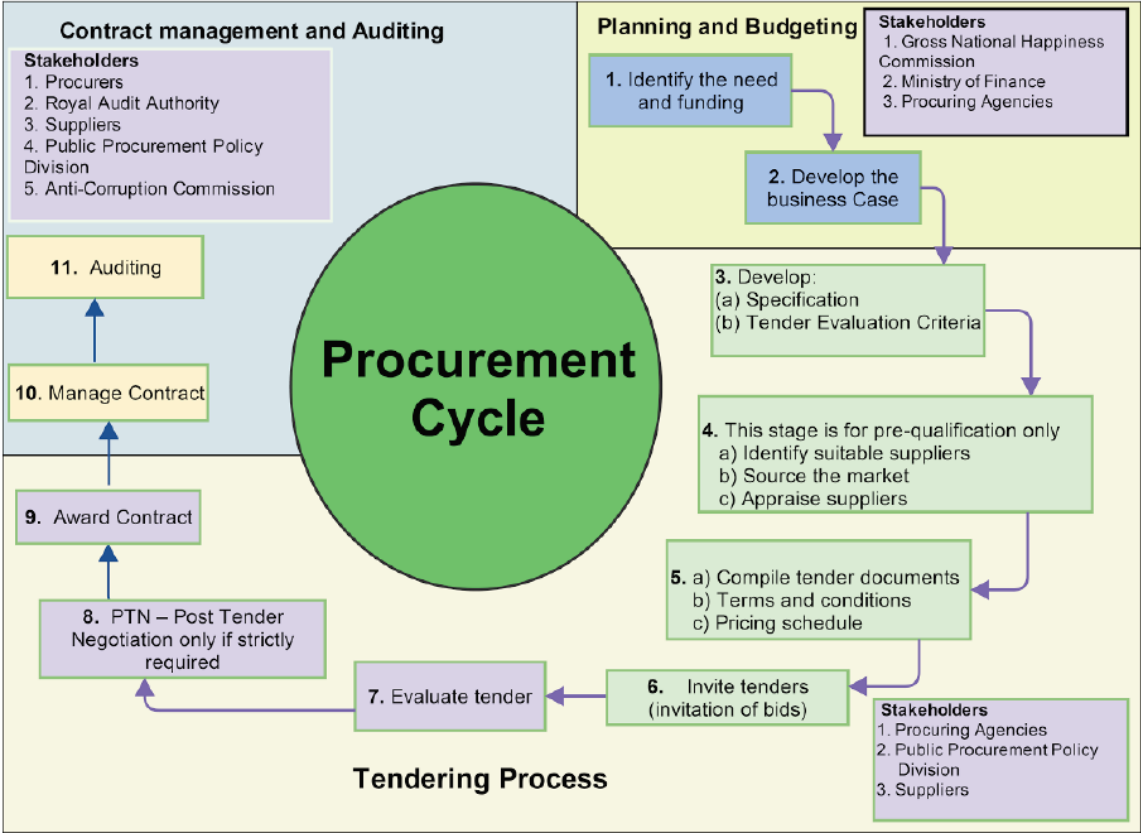
To ensure the smooth application of procurement rules and regulations across all public agencies and to strengthen the monitoring of all public procurement aspects, the MOF created the Public Procurement Policy Division (PPPD) under Department of National Properties in 2008. Much effort has been devoted to bringing the past procurement rules and regulations of Bhutan and existing best international procurement practices into the PRR 2009. Procurement in the public sector in Bhutan is largely based on the PRR 2009 and its subsequent revision, which defines procurement as the purchase of goods, services or the engagement of contractors for execution of works by procuring agencies. Thromdes also base the procurement process as per PRR 2009.

PRR 2009 along with SBDs and SRPs provides for sound, transparent and clear procedures with fair and equitable procurement opportunities, well defined roles and responsibilities of the procuring agencies and the bidders, well defined evaluation criteria and a formal dispute resolution process. In addition, any procurement activity is followed by mandatory and regular auditing, which reviews financial aspects of project expenditure and checks the specific steps of the procurement cycle.

3.2. Public Procurement Cycle

PRR 2009 ensures that tenders are effectively advertised through print media, broadcast television and internet-based channels. Procurement is also adequately planned from the need identification phase through to the contract management phase. Generally, the contract management is defined between the procuring agency and the supplier or service provider. Communications by the procuring agency appear to be transparent with most procuring agencies maintaining proper records and information the public on the bid opening and contract negotiations. However, there are concerns among the procuring agencies that there is shortage of experienced and skilled

professional staff in the procurement departments/division. In addition, most procurement officers are not involved in planning, writing specification and budgeting.

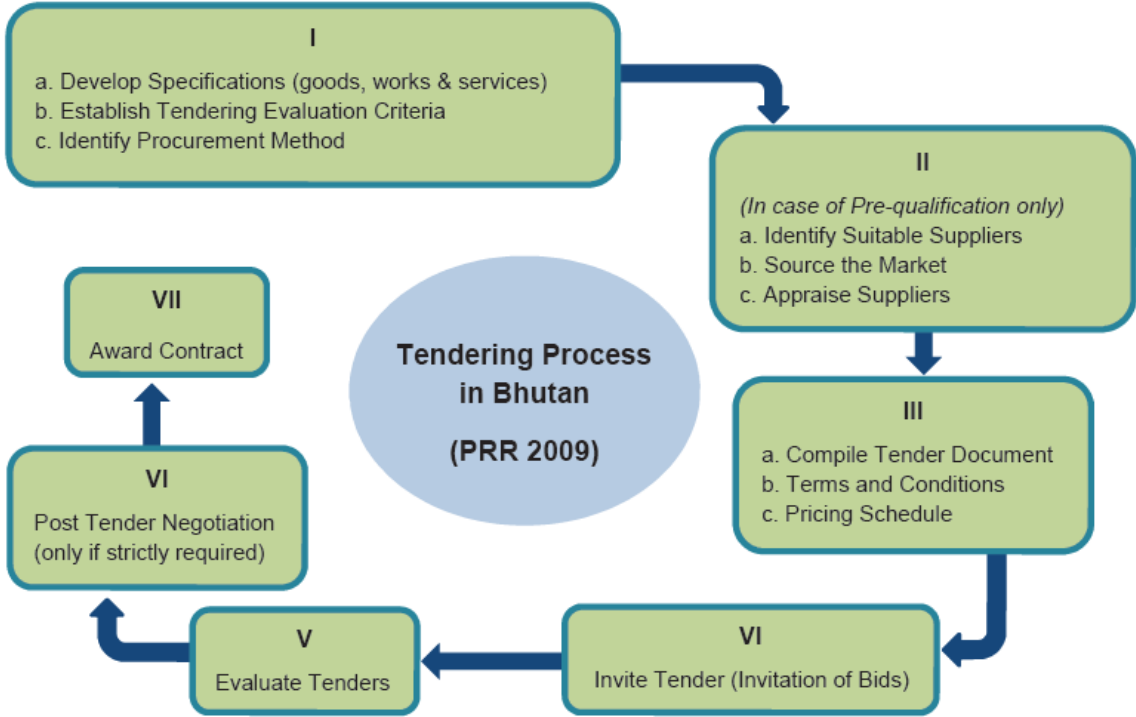


3.3. Planning and Budgeting

While the main purposes of Five-Year Plan and annual work plans are to information the government’s strategic planning and programming mandates, they influence and affect procurement planning by pre-determining the broad and general procurement needs of the agency and allocating specific budget. The Gross National Happiness Commission (GNHC), Ministry of Finance and the agencies (Thromdes) are the main stakeholder of planning and budgeting phase of procurement cycle.

3.4. Tendering

The tendering is the main process in the procurement cycle which involves a series of steps depicted in the figure below. The tendering process is what is commonly and widely considered as “procurement” in Bhutanese public procurement.



The Public Procurement Policy Division, procuring agencies and the suppliers are the main stakeholders involved in this phase of procurement cycle. PPPD is not directly involved in the tendering process. However, it is responsible in promoting an open and uniform purchasing policy and to ensure an effective and efficient use of financial resources. Procuring agency is the most important stakeholder in tendering process responsible for preparation of technical specification, selection criteria, comply with PRR 2009 and manage contracts. Suppliers/Contractors fulfill the terms and conditions set out in the bidding documents.

3.5. Contract Management and Auditing

While contract management and auditing should be important phases of procurement cycle. However, these are not strictly or expressly considered parts of procurement in Bhutan. Contract management and auditing affect procurement decisions considerably. Internal controls and auditing at the procuring agency level, as well as effective external audit system are key elements to ensure economy, efficiency and effectiveness in the use of public resources. Together they form the governance and public financial management system particularly important for effective and efficient operations of the public procurement system.

All procuring agencies including Thromdes take extra care to ensure compliance with PRR 2009. All due process is followed during tendering and the most cost-effective decision is made. Unfortunately, more often than not, the cost effectiveness and value for money is determined by the price at the point of purchase, often times even more than the technical and functional aspects. The strict rules and regulations of the Royal Audit Authority is the most common reason cited by the procuring agencies for awarding contract to the lowest bidder. It should be noted that, in fact,

PRR 2009 allows for procuring agencies to awards contracts to a “lowest evaluated bidder” that offers best value for money, based on various aspects such as, but not limited to, technical requirements, after-sales services, security of supplies and price thereof, running costs, date completion and goods of Bhutanese origin. Stakeholders in the contract management and auditing phase are procuring agencies, PPPD, Royal Audit Authority, Suppliers/Contractors and Anti-Corruption Commission.

3.6. Bhutanese Public Procurement Principles

The regulation of public procurement in Bhutan is developed under a set of principles that include guaranteeing transparency through the application of standard procedures, achieving uniformity of procedures across agencies, ensuring economy and efficiency in the procurement, and ensuring fair and equal access to all suppliers, consultants and contractors. Furthermore, to ensure the smooth application of procurement rules and regulations across all public agencies and to strengthen the monitoring of all the public procurement aspects.

3.7. Decision Making Hierarchy

PRR 2009 prescribes a hierarchy of seven tender committees at different levels of the organization with different composition, decision making powers and thresholds as follows:

- a. Gewog Level Tender Committee
- b. Field Level Tender Committee
- c. Departmental Tender Committee
- d. Autonomous Bodies Tender Committee
- e. Ministerial Tender Committee
- f. Higher Level Tender Committee for Autonomous Bodies

3.8. Public Procurement Methods

Depending on the value of the tender, different methods of public procurement is followed. As general rule, highest value procurement must follow Open Tendering, the mid-level values follow Limited Tendering, and the lower Thresholds may follow the Limited Enquiry process. Direct Contracting and Framework Contraction (in procuring consumables) are also followed for certain procurement activities.

Sl. No.	Method	Procurement Type and Tender Value	Tendering Process Characteristics
1	Open Tendering	Goods and Consultancy Services: Above Nu. 200, 000. Works: Above Nu. 1, 000, 000.	i. Basic Method ii. Notification in Mass Media (Newspaper, Website, Television) iii. Equal opportunities for all iv. Minimum time for submission of bids: 30 days
2	Limited Tendering	Goods and Consultancy Services: Above Nu. 100, 000 up-to Nu. 200,000.	i. A pre-qualification procedure adopted with invitation to select bidders

		Works: Above Nu. 200,000 up-to Nu. 1,000,000.	ii. Minimum time for submission of Bids: 14 Days
3	Limited Enquiry	Goods and Consultancy Service: Up-to Nu. 100, 000. Works: Up-to Nu. 200, 000.	i. Comparison of bids from atleast three domestic bidders ii. Used in absence of sufficed number of bids iii. Minimum time for submission of Bids: 5 Days
4	Direct Contracting	<ul style="list-style-type: none"> i. Procuring Agency directly contacts bidders from whom it intends to solicit quotation ii. Agency can provide additional works within 20% of the contract value for works and 15 % for goods iii. Used when potential bidders are not available iv. Minimum time for submission of bids: Mutual Agreement v. Max. 0.02 million for day to day administration purposes vi. Max. 0.3 million in remote areas where potential are not available after open tendering 	
5	Frame work Contracting	<ul style="list-style-type: none"> i. Used for supply of designated items over a given period of time ii. Agency and suppliers agree on terms and conditions and price to finalize the contract iii. Contract is valid for one financial year iv. Minimum time for submission of bids: Depends on the selection method of procurement 	

3.9. Procurement by Thromdes

The clauses in the Local Government Act (LGA) 2009 which pertain to procurement mostly entrust the local governments with the responsibility to procure in accordance with the provisions of the Public Finance Act and the Procurement Rules and Regulations. Clauses 55(b), 221, 222, 223 and 224 all make reference to the national laws, rules and regulations governing procurement and call for prudent management of funds according to those laws, rules and regulations.

4. Non-Procurement Contracts

Thromdes execute non-procurement contracts when any party is hired to provide services on behalf of Thromde like cleaning services, tax collection services, waste management, environment protection, etc. Other contracts like those signed with the entertainment service providers can also be considered as non-procurement contracts.

Volume of non-procurement contracts are very less as compared to the procurement contracts. These contracts are source of revenue for Thromdes and it is required to monitor in order to ensure timely realization of revenue against the contracts.

5. Lease Contracts

Lease contracts include contracts executed with parties that lease land from Thromdes, equipment from Thromdes, stall rentals, shed rentals, etc. These contracts also form source of revenue for Thromdes.

6. Contract Management Framework

PRR 2009 covers details the activities that are to be executed up to contract signing. Contract management success and the activities undertaken are strongly influenced by what has happened during tendering/contract award phase, in terms of both ‘hard’ outputs, such as the terms and conditions that have been agreed, and the type of relationship between the Thromde and suppliers/contractors/service providers that has been established during the tendering/contract award phase. In this way, the tendering/contract award phase and the contract management phase should be seen as a continuum rather than distinct phases, with contract management planned for from the start of the procurement process.

The focus of this framework is on the activities to be undertaken during the operational phase of the contract, i.e. after the contract has been awarded and once contract execution has begun.

6.1. Good Practices in Contract Management



6.1.1. Structure and Resources

Planning and Governance -- Preparing for contract management and providing oversight:

- a. There is a planned transition from the tendering/contract award phase to the contract management phase, and a handover to contract manager/responsible division; the cost of contract management should be included in the business case and budgets.
- b. Contract ownership is clear, with the budget holder, senior responsible staff, and contract manager/manager designate clearly defined; there is continuity of governance as far as possible;

- c. There are well defined processes and a clear contract management plan, with a focus on outputs and a ‘whole life’ approach to performance;
- d. Overall ownership of the contract management across the Thromde is clear, with a ‘contract management responsible staff’ with responsibility for driving Thromde wide contract management performance;
- e. Contract management processes are aligned with, among others, wider Thromde governance processes, operational divisions, and risk structures;
- f. Contract Management issues and performance are reported through the governance structure with senior level engagement;
- g. Regular assessment and evaluation take place to ensure that the cost of contract management activities is justified and proportionate to the benefits obtained;
- h. Knowledge management is embedded, capturing key data and lessons from contract management process and experience both within the Thromde and more widely;
- i. Professional contract management guidance is developed, or identified from external sources, and made available to contract management team.

People – Ensuring the right people are in place to carry out the contract management activities:

- a. The contract manager (or contract management team):
 - i. Contract manager/contract management team is appointed at Thromde and is responsible for management of all contracts;
 - ii. The contract manager/contract management team has continuity (ideally through involvement during tendering/contract award processes) and a handover from the staff responsible for tendering/contract award;
 - iii. The contract manager/contract management team has detailed knowledge of the contract and other relevant issues, such as service level agreements, and ongoing supplier performance;
 - iv. The contract manager/contract management team has the appropriate skills (both specific contract management skills and more general commercial awareness and expertise), with access to relevant training and development. Experienced contract managers are utilized in key contract;
 - v. Contract Managers/contract management team have accurate job descriptions, roles are positioned at an appropriate level;
 - vi. Contract manager/contract management team have clear objectives and reporting lines and their performance is managed through reviews and appraisals;
 - vii. The contract manager/contract management team leader has appropriate authority to manage the contract effectively.
- b. Wider staff requirement for contract management:
 - i. Balanced contract management team are brought together, with appropriate range of skills; the teams may vary in composition over the life of the contract to meet specific needs;

- ii. Contract Management is adequately resourced, in proportion to the importance of the contract, and there are enough staff to carry out the required activities.

Administration – Managing the physical contract and the timetable for making key decisions

- a. Hard copy contracts are logged, and are easily accessible when required; for complex contracts, a summary and/or contract operations guide is produced;
- b. Adequate tool is used to keep information in search friendly way; relevant ongoing contract management information and documentation is retained and managed;
- c. There are mechanisms in place for identifying key contract ‘trigger points’, such as notice periods;
- d. There are regular and ad hoc reporting of contract management information;
- e. There are mechanisms in place for handling administration around contract closure or termination.

6.1.2. Delivery

Managing Relationships – Developing strong internal and external relationship that facilitate delivery

- a. The contract manager/contract management team is aware of the roles and responsibilities and has clear visibility of well-structured roles and responsibilities on the supplier/vendor/contractor side;
- b. The respective responsibilities of the contract manager/contract management team and the supplier are clear, and potentially defined in a ‘statement of intent’ or similar document;
- c. Continuity of key supplier staff is desirable (ideally through involvement during the acquisition process); where this cannot be achieved, there is a handover from the staff responsible for the tendering process;
- d. Both regular structured and informal communication routes between the contract manager and supplier are open and used; customer and supplier staff are co-located where appropriate;
- e. Users are given clear expectations and an understanding of the contract and the services/performance to be delivered;
- f. Communications between the contract manager, supplier and other stakeholders (users of the contract and others such as technical experts) are effective, and stakeholders are involved in contract management processes where appropriate;
- g. Problem resolution processes are well defined and used, and are designed to ensure minor problems do not escalate and cause relationship issues; a ‘blame culture’ is avoided (for example, through the use of a ‘relationship charter’ or similar document).

Managing Performance – Ensuring the service is provided in line with the contract:

- a. Service management is well structured; baselines are understood by both parties, and suppliers understand the service they are required to deliver. The contract

- manager/contract management team ensures that the customer organization provides the supplier with the information and contracts needed to deliver the service;
- b. A performance management framework is in place when the contract is signed. The framework is comprehensive, objective and provides incentives for the supplier to meet or exceed agreed performance standards;
 - c. Service level agreements are in place, are linked to business needs, understood by the supplier, and monitored by the contract manager/contract management team and/or end users;
 - d. Supplier/Contractor/Vendor performance is assessed using clear, objective and meaningful metrics, linked where appropriate to the PPPD's Assessment Framework, if any;
 - e. Reporting is as far as possible on a focused, 'by exception' basis, with supplier self-measurement and reporting where appropriate but with independent checking mechanisms to alert the contractor/vendor/supplier on performance issues;
 - f. Clear processes are in place to handle operational problem resolution and resolve issues as quickly as possible;
 - g. Where appropriate, user compliance with the contract is monitored and managed to ensure maximum operational effectiveness and value for money;
 - h. Regular and routine feedback is given to suppliers on their performance;
 - i. There are clear contact points for service users both within the supplier organization and with the contract manager/contract management team. Users understand what the contract is intended to deliver, and are involved in the assessment of supplier performance where relevant. Users understand escalation routes where issues arise;
 - j. Changes in user requirements are captured and considered as part of formal change and contract management processes;
 - k. There are formal performance reviews with suppliers/contractors, with documented improvement plans agreed where necessary, covering both operational issues and adherence to key contractual requirements, for example, on data security.

Payment and Incentives – Ensuring payments are made to the supplier/contractor/vendor in line with the contract and that appropriate incentive mechanisms are in place and well managed:

- a. Payment mechanisms are documented and are clear and well understood by all parties (including incentives, penalties, and non-standard charges);
- b. Payment processes are well defined and efficient; appropriate checks and authorization processes are in place for paying invoices;
- c. The costs of the services delivered and contract management costs are mapped against budgets and allocated appropriately;
- d. Payment changes after the contract is let, for example from contract variations or benchmarking/market testing, are made using contractual provisions and demonstrated to provide value for money;
- e. Incentive structures (financial or non-financial) relate clearly to desired outcomes, and are well managed and governed, with appropriate checks and approval mechanisms;
- f. Service credits or equivalent mechanisms are well managed and governed, and proportionate to suppliers/contractors/vendor profitability;

- g. Where open-book or similar financial/pricing mechanism are used, the process is managed professionally and fairly;
- h. The contract manager/contract management team takes action where necessary to avoid the organization being 'locked in' to onerous commercial terms throughout the contract period, such as price escalation or 'compulsory' maintenance payment.

Risk – Understanding and managing contractual and supplier/Vendor/Contractor risk

- a. Contractual risk management is in place with clear responsibilities and processes, identification of who is best placed to manage risk, and supplier involvement where appropriate;
- b. Risks are formally identified and monitored regularly, with mitigating actions developed and implemented where possible, and 'obsolete' risks removed from consideration where appropriate;
- c. Escalation and reporting routes are in place for risk governance;
- d. Contingency plans are developed to handle supplier/vendor failure (temporary or long-term failure/default); exist strategies are developed and updated through the life of the contract;
- e. Contractual terms around termination are understood and monitored by the contract manager/contract management team;
- f. Contract terms around security and confidentiality are understood and monitored by the contract manager/contract management team, particularly issues relating to the security/confidentiality of personal data;
- g. Dispute resolution processes are in place, including agreed adjudication procedures, mediation, and arbitration;
- h. The contract manager/contract management team monitors the supplier's financial health and business performance (including through the use of credit rating agencies);
- i. The contract manager/contract management team monitors the supplier's compliance with contractual 'non-performance' issues (for example, on tax and sustainability targets).

6.1.3. Development

Contract Development – Effective handling of changes to the contract:

- a. The contract is regularly reviewed (with a view to updating where necessary) to ensure it meets evolving business needs;
- b. Processes are in place that clearly lay out the governance of contractual change – who needs to approve what and how it will happen – with a focus on effective and prompt change implementation;
- c. There are clear processes for the management of minor changes and contract variations, with a focus on the cost/effort being proportionate to the importance and value of the change;
- d. There are more rigorous processes to handle major contractual changes, including clear approval mechanisms and accountabilities, and controls to demonstrate that changes offer value for money;

- e. Where appropriate, value for money testing of existing services takes place through benchmarking or other processes;
- f. There are processes to cover the introduction of new services under the contract, including market testing where necessary;
- g. Dispute handling processes are in place to handle change related issues;
- h. Both parties have a clear understanding of the arrangements for any extension of the contract (both scope and time) and related issues;
- i. Processes are in place to handle commercial (financial) changes to the contract in a fair and structured manner;
- j. Price changes are managed fairly and effectively with the use of mechanism such as benchmarking, competitive tendering (for example, for major additional works), or other techniques such as open book pricing as appropriate, to test value for money;
- k. The rationalization of specification and demand management are considered as options to achieve better value for money.

Supplier/Vendor/Contractor Development – Improving supplier/vendor/contractor performance and capability:

- a. Processes are in place that clearly set out how supplier/vendor/contractor development activities will be planned managed and governed;
- b. Clear processes for benefits measurement and capture are in place to ensure that supplier/vendor/contractor development is focused on continuous improvement and achieving value for Thromde;
- c. Thromde understands what motivates and drives the supplier/vendor/contractor and how supplier/vendor/contractor development fits with the supplier/vendor/contractor's goals;
- d. Supplier/vendor/contractor operational performance improvement activities, with potential input or assistance provided by the Thromde;
- e. Joint working or shared activities between the two parties for the benefits of both supplier/vendor/contractor and Thromde are conducted;
- f. Shared risk reduction programmes or activities are executed.

6.1.4.Strategy

Supplier/Vendor/Contractor relationship management – Having a programme for managing and developing relationships with suppliers

- a. A supplier/vendor/contractor relationship management programme is planned and structured with appropriate governance and senior ownership;
- b. A benefits realization plan is in place for supplier/vendor/contractor relationship management; there is a clear sense of value to be generated for both parties;
- c. There is a focus on capturing innovation from the supplier where necessary or valuable;
- d. Knowledge management issues are addressed, including knowledge capture from supplier/vendor/contractor.

Market Management – Managing the wider market issues that impact on the contract, but lie beyond individual supplier/vendor/contractor:

- a. Processes are in place to evaluation and review options around delivering services in-house or outsourcing;
- b. Market intelligence is used to maintain an understanding of the market and of alternative suppliers/vendors/contractors (for benchmarking, contingency planning and re-competition strategies);
- c. The capacity and capability of potential suppliers/vendors/contractors is analyzed, and linked to wider level;
- d. There is ongoing evaluation of emerging technologies and practices, and identification of opportunities from both immediate and parallel market sectors;
- e. Market making is undertaken where appropriate it stimulate competition and ensure the requirement can be delivered by the market; there is an understanding of issues such as switching and bidding cost;
- f. A re-competition strategy and plan is put in place in a timely manner; the contract manager feeds into strategy development for the ‘new’ procurement process.

6.2. General Principles

Parties involved in executing contracts should:

- a. Ensure that a recognized quality assurance process is used for all aspects of contract management;
- b. Cooperate with other parties in the administration of contracts to enable them to fulfil their contractual obligations;
- c. Employ quality management principles without excessive use of audits and with a focus on avoiding waste, rework and duplication;
- d. Protect ‘commercial-in-confidence’ information;
- e. Appoint employees or staff with an appropriate level of competence and authority to administer contracts;
- f. Respond promptly to reasonable request for advice and information;
- g. Submit accurate and fair progress claims;
- h. Deal with contractual claims strictly in accordance with the terms of the contract;
- i. Process and pay contractual entitlements in a timely manner and strictly in accordance with the timeliness set out in the contract;
- j. Cooperate to minimize problems, claims or disputes;
- k. Adopt a cooperative approach to dispute resolution so that adversarial action is minimized and legal proceedings initiated only as a last resort;
- l. Execute the contract in a timely manner in accordance with the specified timelines; and
- m. Provide full and open detail costing of any variations to the contract.

6.3. Contract Management Plan

Thromde should develop a contract management plan with KPIs and milestone events which shall be used for monitoring the performance and progress of contracts. A contract management plan typically contains:

- a. Identified potential risks (such as delays in the contractor's right of access to site, payment delays, and other defaults from either party that could potentially lead to contractual disputes), and their mitigations;
- b. Key contacts and role and responsibilities of the parties;
- c. The name and contact details of the key contacts for each party;
- d. Details of necessary authorizations and delegations by each party for its personnel established at the beginning of the contract to ensure all contracting decisions are valid and enforceable;
- e. Communication and reporting procedures;
- f. Key contractual terms and conditions;
- g. Contractual milestones, including critical path (identified to ensure early detection and mitigation of issues), and payment procedures consistent with contractual provisions;
- h. Key contract deliverables, identified and properly described, and updated to account for change orders during execution of the contract;
- i. KPIs and a description of the measurement process (if required);
- j. Contract variation/change control mechanisms; and
- k. Record-keeping requirements.

The contract management plan should be initiated during the period when the contract is being formulated, and be fully complete at the time the contract is signed. This is important so that all parties fully understand and are clear on how measurements will be applied (in particular KPIs and any linkages made to the payment decisions).

6.4. Ongoing Management

To ensure that complete information on contract is captured and understood by relevant people performing the contract obligations, it is recommended that each division and section maintain their own contract register, recording the contracts for which they are responsible with sufficient details to enable monitoring of key dates, tracking of Thromde actions required to be completed, and management of the relationship with the other contracting party.

Contract registers may be in the form of a simple Excel spreadsheet or maintained through specific contract management software. Typical content to be recorded in the contract register are:

- a. Commencement and expiry dates
- b. Milestones and milestone dates
- c. Cut-off dates or contract review dates
- d. Any requirements that must be fulfilled by certain dates – e.g. obtain license or approval from a regulatory body, provide progress or final reports.
- e. Significant obligations – not only those Thromde must meet, but also any that the other party must meet which would cause the Thromde problems if they were not met

- f. Financial arrangements under the contract
- g. Names and contact details of the other party's contract representatives
- h. Notes as to whether the contract has been extended or varied.

During the course of developing and finalizing the contract, thought should be given towards appointing an ongoing contract manager/contract management team responsible for managing the Thromde's obligations and rights under the agreement.

Depending on the kind of contract, the contract manager/contract management team may not be the same person (s) who was responsible for negotiation and formalization of the contract. The contract manager/contract management team should have at least an oversight of the arrangement under the contract, if not day-to-day involvement.

In any damage control situation, spotting and addressing issues early will always minimize the damage and make controlling it less onerous. In the case of contracting, providing the other party with early warning may make it easier to address the issues at low cost and with minimal disruption, and will draw out any misunderstanding over the requirements or expectations.

At the early stages of under-performance, agreeing information remedial actions will often be the best approach. Depending on the seriousness of the under-performance, more formal action may be required and could include:

- a. Withholding payments until performance returns to an acceptable level;
- b. Developing strategies to address the problem and formally documenting them (therefore creating an evidence trail to show the steps taken, just in case of dispute ends up in legal proceedings); or
- c. Invoking other rights or processes under the contract – the contract document should set out a procedure for dealing with non-performance which may include provisions for formal dispute resolution process.

However, care should always be taken to not erode the Thromde's rights by inadvertently amending the contract by oral agreement or conduct. It is good practice to always address under-performance issues in writing (even if it is a written follow-up to an information conversation). Before taking any significant action aimed at remedying under-performance, it is recommended to have discussion of the situation with a legal officer.

6.5. Variations

The contractor/vendor/service provider should not vary the scope under the Contract, except as directed by the Thromde or approved in writing by the Thromde. The contractor is bound to execute a variation which is within the general scope of the Contract.

The contractor should not be required to execute a variation directed after practical completion unless the variation is in respect of rectification work for any defect or omission identified by the Thromde.

However, sometimes it is necessary or desirable to change the terms of a contract mid-way through its completion. These could be changes to timeframes, description of deliverables, or even substantive clauses. Minor variations (e.g. changes to dates and prices) may be formalized simply by exchange of letter or emails – and making it very clear in that document that this is intended to vary the terms of the contract. If the proposed variations are more significant, and have the potential to affect the scope and effect of the contract, then similar steps in regard to planning, consultation, drafting and approvals are required. These major variations should be enacted in a formal amendment to the contract.

The variations should be adequately updated in the contract register.

Appendix I – Contract Register

Date	Contract Number	Procurement Mode	Description of Services/Goods	Contractor	Duration	Penalties	Review Date	Amendments	Remarks / Comments