



**PUBLIC PROCUREMENT AUTHORITY (PPA)**

**ACCRA, GHANA**

**CONTRACT ADMINISTRATION MANUAL FOR  
TECHNICAL SERVICES**

**MANUAL 4**

*PREPARED BY*

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## FOREWORD

On 31<sup>st</sup> December 2003, the Government of Ghana enacted the Public Procurement Act, 2003 (Act 663) which became operational in August, 2004. The Act provided a framework for the conduct of procurement in the Public Sector to guarantee best value for money in the context of poverty reduction, private sector development, good governance and anti-corruption. The overriding aim of Act 663 is to ensure judicious, economic and efficient use of Public Funds with procurement being carried out in a fair, transparent and non-discriminatory manner. The Public Procurement Authority (PPA) considers sustainable training a critical component of its efforts aimed at strengthening the public procurement systems and achieving value for money.

The Public Procurement Authority, in 2007, developed twenty-five (25) Training Modules and Manuals for training of various categories of Stakeholders on the provisions of the Public Procurement Act, 2003 (Act 663). Over 20,000 Public and Private Operatives have since benefitted from various training programmes on Public Procurement Act, 2003 (Act 663) using these Modules. The Modules, however, were mainly on Procurement and did not cover Contract Administration. To address this shortcoming, the PPA, in January 2015, commissioned the Ghana Institute of Management and Public Administration (GIMPA) with funding from the African Development Bank under the Ghana Institutional Support Project (GISP) to develop detailed Contract Administration Modules and to review the existing Manuals on Goods, Works and Services. These documents are to be used for the PPA's capacity development activities. The Contract Administration Modules and Manuals for Goods, Works, Consulting Services and Technical Services have come at an opportune time, given that in Ghana and other developing countries the procurement regime in the public sector has not been able to address most of the challenges of managing contracts in line with international best practices and standards.

It is in the light of this that the Public Procurement Authority (PPA) of Ghana, with funds from supporting Development Partners, has developed these important Contract Administration Training Modules and Manuals which will go a long way to assist Procurement Entities in the Public Sector to manage contracts after contract award. These Training Modules and Manuals will also be useful for the Oversight Institutions like the Judiciary, Police, EOCO, Media and other Anti-Corruption Agencies to monitor and manage Public Sector Contracts. It will also serve as reference literature for Lecturers and Students teaching and pursuing courses in Public Procurement Management and related courses.

These Modules and Manuals touch essentially on the following areas: Contract Principles; Basics of Contract Administration; Forms of Standard Goods/Works/Technical/Consultancy Contract; Contract Administration Processes Especially Post Award Preliminary Tasks; Monitoring of Contract Performance and Reporting and Contract Modification. The remaining areas are Payment and Cost Control using GIFMIS System; Claims and Settlement of Disputes; Contract Termination; Contract Records Management; Contract Performance Evaluation and Post-Implementation Tasks of Contract Administration.

The Authority, therefore, anticipates that with the proper adherence to the principles espoused in these Manuals, procurement stakeholders will achieve value for money through the avoidance of time and cost over-runs.

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## LIST OF ABBREVIATIONS/ACRONYMS

<b>AAA</b>	American Arbitration Association
<b>ADR</b>	Alternative Dispute Resolution
<b>AISCC</b>	Arbitration Institute of the Stockholm Chamber of Commerce
<b>AR</b>	Authorized Representative
<b>AS</b>	Activity Schedule
<b>AP</b>	Applicable Law
<b>APG</b>	Advance Payment Guarantee
<b>APS</b>	Advance Payment Security
<b>BG</b>	Bank Guarantee
<b>CA</b>	Contract Administrator
<b>CAGD</b>	Controller and Accountant General's Department
<b>CAM</b>	Contract Administration Manual
<b>CAP</b>	Contract Administration Plan
<b>CC</b>	Contract Close-out
<b>CGGL</b>	Central Government General Ledger
<b>CRM</b>	Contract Records Management
<b>CoA</b>	Chart of Accounts
<b>CT</b>	Contract Termination
<b>CP</b>	Contract Price
<b>CPS</b>	Contract Performance Security
<b>DANIDA</b>	Danish International Development Agency
<b>DFID</b>	Department for International Development
<b>DF</b>	Donor Funds
<b>DLP</b>	Defects Liability Period
<b>ERP</b>	Enterprise Resource Planning
<b>ERMS</b>	Electronic Records Management Strategy
<b>ETC</b>	Entity Tender Committee
<b>EU</b>	European Commission
<b>FM</b>	Force Majeure

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<b>FMC</b>	Financial Management and Controls
<b>GCC</b>	General Conditions of Contract
<b>GIFMIS</b>	Ghana Integrated Financial Management Information System
<b>HRMIS</b>	Human Resource Management Information System
<b>HS</b>	Health and Safety
<b>ICC</b>	International Chamber of Commerce
<b>ICT</b>	Information & Communication Technology
<b>IFIs</b>	International Financing Institutions
<b>IPPD2</b>	Integrated Personnel and Payroll Database
<b>ISO</b>	International Organization for Standardization
<b>LCIA</b>	London Court of International Arbitration
<b>LD</b>	Liquidated Damages
<b>LoA</b>	Letter of Acceptance
<b>LSR</b>	Lump-Sum Remuneration
<b>MDAs</b>	Ministries, Department and Agencies
<b>MJAD</b>	Ministry of Justice & Attorney-General’s Department
<b>MoF</b>	Ministry of Finance
<b>NITA</b>	National Information Technology Agency
<b>OAP</b>	Oracle Accounts Payable
<b>OCM</b>	Oracle Cash Management
<b>OPAC</b>	Operational Acceptance Certificate
<b>OPO</b>	Oracle Purchase Ordering
<b>PA</b>	Price Adjustment
<b>PAS</b>	Priced Activity Schedule
<b>PBB</b>	Programme Based Budgeting
<b>PE</b>	Procurement/Procurement entity
<b>PFM</b>	Public Financial Management
<b>PIT</b>	Post Implementation Tasks
<b>PLI</b>	Professional Liability Insurance
<b>PM</b>	Project Manager
<b>PO</b>	Purchase Order

<b>PPA</b>	Public Procurement Authority
<b>PRAAD</b>	Public Records and Archives Administration Department
<b>PS</b>	Performance Security
<b>PSC</b>	Public Services Commission
<b>PUFMARP</b>	Public Financial Management Reform Programme
<b>PU</b>	Procurement Unit
<b>PV</b>	Payment Voucher
<b>RM</b>	Records Management
<b>SCC</b>	Special Conditions of Contract
<b>SFC</b>	Standard Forms of Contract
<b>SRA</b>	Stores Receipt Advice
<b>SP</b>	Service Provider
<b>TBC</b>	Time-Based Contracts
<b>TIN</b>	Tax Payer Identification Numbering
<b>TL</b>	Team Leader
<b>TOR</b>	Terms of Reference
<b>TSC</b>	Technical Service Contract
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>WB</b>	World Bank

## GLOSSARY OF TERMS

TERM	DEFINITION
<b>Acceptance</b>	Refers to the acceptance of goods, works or services by the Purchaser/Employer/Client.
<b>Assignment</b>	The Consultancy Services defined in a consultant's contract.
<b>Back Stopping</b>	Technical and Administrative Support provided by the Consultants Office to field staff.
<b>Bank Guarantee</b>	An undertaking by a ‘Guarantor’ (usually a commercial bank) to pay the employer or purchaser a specified sum in the event of default of a tenderer or supplier or contractor.
<b>Bill of Lading</b>	A document evidencing a contract of carriage, a receipt for the goods and, if in negotiable form, constitute a document of title to the goods; carrier acknowledges on Bill of Lading (B/L) that goods have received on board in apparent good order and condition; a clean bill of lading does not bear any clause declaring a defective condition of the goods and/or packaging and it is on board B/L because it bears an on board notation signed and dated by the carrier.
<b>Consultancy Services</b>	Services which are of intellectual and advisory nature provided by firms or individuals using their professional skills to study, design and organize specific projects, advise clients, conduct training or transfer knowledge.
<b>Contract</b>	An agreement, enforceable by law, between two or more competent parties (legal entities) to perform or not to perform a specific act or acts for a consideration.”
<b>Contract Administrator</b>	An individual appointed by the head of entity to administer a contract on behalf of the entity.
<b>Court</b>	Court of competent jurisdiction
<b>Contract package</b>	The logical assembly of items within a contract that takes into consideration timeliness, economies of scale, geographic distribution, etc.
<b>Contractor’s Equipment</b>	Machinery, equipment and vehicles brought temporarily to the site by the contractor to be used exclusively for the execution of the works.
<b>Economy</b>	Buying only what is needed for the project at the lowest evaluated price.
<b>Efficiency</b>	Buying timely only what is essential to implement a project; e.g., do not buy a luxury automobile if all that is needed is

	transportation.
<b>Evaluation</b>	Procedure used to evaluate tenders or proposals in accordance with pre-disclosed evaluation criteria.
<b>Framework Agreement</b>	A long-term agreement with suppliers, contractors and providers of non-consulting services (technical services) which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. Framework agreements are generally based on prices that are either pre-agreed, or determined at the call-off stage through competition or a process allowing their revision without further competition.
<b>Force Majeure</b>	An event that interferes with the performance of a contract which an experienced supplier or contractor or consultant could not have foreseen nor reasonably made provision for, e.g., war, riot, and earthquake.
<b>Goods</b>	Objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves.
<b>Guidelines</b>	Policies, practices, and procedures that guide the procurement of goods, works consulting services and non-consulting services.
<b>INCOTERMS</b>	International Chamber of Commerce (ICC) definitions of international commercial terms used in trade and universally recognized and accepted.
<b>Indefinite Delivery Contract</b>	Framework Contract for on-call specialized services for which the extent and timing cannot be defined in advance.
<b>Joint Financing</b>	Co-financier to participate in financing the project by providing funds that are pooled with other financiers' funds to finance contracts awarded under a project.
<b>Long List</b>	List of Consulting Firms considered in preparing a short list.
<b>Management Contractor</b>	In construction, a management contractor usually does not perform the work directly but contracts out and manages the work of other contractors, taking full responsibility and risk for price, quality, and timely performance.
<b>Methodology</b>	Work-plan, programme, schedule or method of operation to carry out a particular assignment.
<b>Overhead</b>	Consultant's Administrative and Business cost not directly

	related to carrying out an assignment.
<b>Parallel financing</b>	Co-financier agrees to finance specific contracts in a project and its procurement procedures apply for the items it finances.
<b>Perform</b>	To act on so as to accomplish or bring to completion; execute; carry out (a task, process, etc.); meet the requirements
<b>Performance</b>	The act of performing; execution, accomplishment, fulfillment, etc.
<b>Performance Contract</b>	A contract between the procurement entity and a supplier, contractor or consultant resulting from procurement proceedings.
<b>Plant</b>	Any integral part of the works that have a mechanical, electrical, chemical, or biological function.
<b>Post review</b>	A review by the funding agency of awarded contracts and related procurement documentation below a stated contract threshold.
<b>Procurement plan</b>	The document prepared by each procuring entity annually to plan all procurement requirements necessary to perform the activity plan of the procuring entity. The plan shall indicate: (a) contract packages, (b) estimated cost for each package, (c) the procurement method, and (d) processing steps and times.
<b>Reimbursable</b>	Assignment specific expenses that are reimbursed by the Client on the basis of the services performed.
<b>Responsive tender</b>	A tender that has been determined to be substantially responsive to the tender documents and has the lowest evaluated tender price, provided that the tenderer has been determined to be eligible and qualified.
<b>Services</b>	“Service” means the furnishing of labour, time, or effort not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance; and includes consulting, professional and technical services but does not include employment agreements or collective bargaining agreements;
<b>Technical Services</b>	Services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, aerial photography, surveys, seismic investigations, maintenance of facilities or plant and similar operations.
<b>Tender</b>	An offer to supply goods or works conforming to particular

	specifications.
<b>Tenderer</b>	A person who puts in a bid or offer in a procurement contract.
<b>Works</b>	Work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembly, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

# INTRODUCTION

## Background

Since the establishment of the Public Procurement Authority (PPA) as a result of the promulgation of the Public Procurement Act, 2003 (Act 663) as amended, it has instituted a number of pragmatic and far-reaching initiatives aimed at ensuring maximum returns for the tax-payers' money. Despite these laudable efforts, the annual procurement assessments conducted by the PPA in the procurement entities reveal several challenges relating to the administration of contracts awarded by most entities.

These challenges can be attributed to the absence of credible arrangements for contract administration. The observation has been that contract administration in most public procurement entities usually involve disjointed processes unfortunately resulting in poor supervision of contracts and compliance as well as missed opportunities for achieving value for money. As part of the means to address the above challenges, the PPA commissioned a firm to develop separate contract administration manuals for Goods, Works, Consulting Services and Technical Services.

## Purpose of the Manuals

The purpose of the Contract Administration Manuals is to serve as reference material for Public Entities, Contract Administrators and Procurement Personnel as well as students pursuing courses in contract administration.

There are four Manuals on contract administration. Manual 1 is on Goods, Manual 2 is on Works, Manual 3 is on Consulting Services and Manual 4 is on Technical Services. To have full knowledge of contract administration in Public Procurement, one will need to read all the four Manuals. It is hoped that the manuals will prove to be useful as a handbook or resource material for practitioners, facilitators and students.

## Scope of Manual on Technical Services-4

The Manual covers contract administration for the provision of Technical Services for the post-award phase. The period commences from signing of the contract agreement by both Employer and Technical Service Provider through contract performance up to contract close-out. It has to be noted that pre-award activities like determination of contract type and strategy, contract terms and conditions as well as contract negotiations prior to contract signing are not the focus of this manual. These may be mentioned briefly, where necessary, but will not form part of contract implementation activities.

## Content/Structure of the Manual on Technical Services-4

The Manual consists of an introduction and twelve (12) chapters as follows:

- ❖ Introduction
- ❖ 1.0: Contract Principles
- ❖ 2.0: Basics of Contract Administration
- ❖ 3.0: Forms of Technical Services Contract

- ❖ 4.0: Contract Administration Process: Post-Award Preliminary Tasks
- ❖ 5.0: Monitoring Contract Performance & Reporting
- ❖ 6.0: Managing Contract Modifications/Variations
- ❖ 7.0: Payments
- ❖ 8.0: Claims & Settlement of Disputes
- ❖ 9.0: Termination of Contract
- ❖ 10.0: Contract Records Management
- ❖ 11.0: Evaluation of Contract Performance
- ❖ 12.0: Post Implementation Tasks

### **Exceptions to the Manual**

The contract administration principles and procedures contained in this manual, although cover best practices, do not replace contract administration policies and procedures followed for contracts funded by Donor agencies or International Financing Institutions (IFIs), unless specifically stated.

### **Forms/Templates**

In some of the chapters, templates/formats deemed useful have been presented in **Appendix 1**.

## 1.0 CONTRACT PRINCIPLES

### 1.1 Introduction

The award of a contract is essential to public procurement as it marks the starting point for contract execution and administration. Some basic legal concepts relating to contracts are explained.

### 1.2 Contract –Definition

A Contract has been defined as “*An agreement, enforceable by law, between two or more competent parties (legal entities) to perform or not to perform a specific act or acts for a consideration.*”<sup>1</sup>

A contract may be oral or written. However, contracts financed with public funds are generally made up in writing.

According to Public Procurement Act, 2003 (Act 663) as amended, “a ‘*procurement contract*’ means a contract between the procurement entity and a supplier, contractor or consultant resulting from procurement proceedings.”<sup>2</sup>

### 1.3 Essential Elements of a Valid Contract

For a contract to be valid and legally enforceable, the following must be present:

- a) **Capacity to contract** – The parties to the contract must have legal right and contractual authority to enter into the contract, with respect to age, competency and corporate authority.
- b) **Certainty** – The parties to the contract must be of the same mind about what is being offered and accepted and thus the essential terms must be definite and agreed upon by them.
- c) **Consideration** – The parties to a contract must each give something of legal value to the other or a third party in return for the benefit he/she receives.
- d) **Legality of Purpose/Object** – The object of the contract must not be one of which the law disapproves. The law will not enforce an illegal contract, or when it is against public policy.
- e) **Possibility of Performance** – A contract must be possible to perform.  
With certain exceptions, a contract need not be in writing. However, enforceability will depend on being able to prove the existence and terms of a contract. It is therefore highly recommended that all contracts be put into writing.

<sup>1</sup> Culled from Gosta Westring and George Jadoun (Rev.15th November 1996). Public Procurement Manual.

<sup>2</sup> Refer to Section 98 of Public Procurement Act, 2003 (Act 663) as Amended.

## 1.4 Formation of a Contract

A contract is formed on the basis of offer and acceptance. An offer is not always in international practice the first move in the formation of a contract. In public procurement, the procurement entity usually takes the first step by inviting offers, for an example, a tender notice or invitation to tender. Interested tenderers may submit tenders or offers. There is an agreement when a procurement entity accepts an offer made by a Supplier, Contractor, Consultant or Service Provider. Instructions to tenderers regularly require the tenderer to maintain the validity of his or her offer for a specific number of days after the deadline for tender submission. In addition, many procurement entities demand as an extra precaution that security in the form of a bank guarantee or a tender bond is submitted along with the offer in order to reinforce the tenderer's promise to keep the offer binding for a specific period of time. When offers are submitted before a specific deadline, it is normally permissible for the tenderer to withdraw his or her offer so long as the deadline for tender submission has not arrived.

Acceptance of an offer poses few legal problems so long as it is a “clean” acceptance, meaning that no reservations are attached. Acceptance, thus, **must be positive, unconditional, unequivocal and unambiguous.**

Attaching reservation to an acceptance generally constitutes a counter offer. In most legal systems, a counter offer counts as a rejection of an offer, unless specifically permitted.

## 1.5 The Law Applicable to a Contract

No contract exists in a void. There will always be one national law applicable to the formation, interpretation and application of the contract. Under most legal systems, the parties to international sales contracts are free to choose the law applicable to their relationship. This rule, like so many others, is not without exceptions. The laws of one particular country may be of so-called stringent or mandatory character, meaning that those rules override any provision to the contrary in the contract between the parties.

The importance of the applicable law, then, is first of all to regulate matters which the parties have not addressed in their contract and, secondly, to hold the parties within limits drawn up by the stringent provisions of the law. In addition, the applicable law is used by the judge or arbitrator to interpret the contract and to fill gaps in the contract where no contractual provisions exist.

Under Public Procurement Act, 2003 (Act 663) as amended the **Law Applicable to a Contract** is that of Ghana.

## 1.6 The Nature and Types of Technical Services (Non-consulting Services)

The notion of “services” in projects financed by International Financing Institutions (IFIs) is usually and intuitively linked with consultancy services. However, not all services are consultancy services because there is a multitude of services that are not intellectual or advisory by nature. All these services have one common feature: they produce a measurable

output, which brings them closer to the procurement of goods or works rather than to the selection of Consultants. This is why there exists a clear distinction between consultancy services (which are purely intellectual and have an advisory and non-physical nature) and technical services or non-consulting services (which have a more physical, measurable output).

### ***Definition of a Service***

According to Public Procurement Act, 2003 (Act 663) as amended, a ***‘service includes the furnishing of labour, time, or effort not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance and consultancy, professional and technical services but does not include employment agreement or collective bargaining agreement’***.

### ***Definition of Technical Services***

***‘Technical services mean services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, aerial photography, surveys, seismic investigations, maintenance of facilities or plant and similar operations’*** (culled from Public Procurement Act, 2003 (Act 663) as amended)

Other typical examples of Technical services are:

- Office cleaning or Janitorial
- Catering
- Maintenance of buildings and equipment
- Security
- Landscaping
- Distribution
- Waste collection and disposal
- Equipment installation and commissioning
- Information Technology

## **1.7 Technical Services Specifications**

Clear description of services required (Specification) and timing (Scheduling) are very crucial to the provision of technical/non-consulting services. There is the need therefore to determine unambiguously (i) what is to be achieved, (ii) within which time-frame, and (iii) for what reason. The outcome of the services to be provided should be in measurable outputs as presented in the Table 1 below:

**Table 1: General Examples of Technical Service Specifications**

AREA	EXAMPLE
TRANSPORT	<p><b>Service:</b> deliver...X... quantity of fridges to point... Y...</p> <p><b>Standards:</b> Without damage or loss.</p> <p><b>Service Period:</b> Within a period not exceeding... Z... number of days.</p>
CATERING	<p><b>Service:</b> Provide breakfast and lunch</p> <p><b>Number to be served:</b> To staff of ...50</p> <p><b>Period:</b> 7:30-8:30 AM and 12.30-1.30PM Monday to Friday for 12 months.</p> <p><b>Menu:</b> Details will be agreed in writing at the beginning of each week with the Caterer.</p> <p><b>Standards:</b> Specified hygiene and food quality standards will be maintained.</p>
CLEANING/ JANITORIAL	<p><b>Service:</b> Clean all the scheduled areas of the Head Office complex.</p> <p><b>Period:</b> Twice a day i.e. in the morning and lunch time;</p> <p><b>Standards:</b> Only approved non-fragrant detergents will be used for cleaning. Toilets will be cleaned every three hours.</p>
SECURITY	<p><b>Service:</b> Maintain security at the specified premises on a 24 hour 7 day basis through provision of CCTV cameras and the physical presence of well-trained able-bodied guards.</p> <p><b>Period:</b> 12 months</p> <p><b>Standard:</b> An acceptable and agreed performance monitoring system will be enforced.</p>
WASTE COLLECTION & DISPOSAL	<p>Collection, transportation and disposal of solid waste from house to house and central containers in X, Y and Z Communities to landfill site. Average turnaround distance is 50km</p> <p>Approximate quantity for a 300-day year contract is 10,000kg per day.</p> <p>Preparation and submission of reports on activities undertaken.</p> <ul style="list-style-type: none"> <li>• Inception report-4 weeks after commencement of contract.</li> <li>• Monthly report on activities undertaken.</li> </ul> <p>Final report at the end of the one-year contract period.</p>
CONTINUING SERVICES  e.g. Maintenance	<p><b>Service:</b> Responsiveness of Service Providers</p> <p>Example: Answers to written questions to be provided within 2 days or</p> <p><b>Service:</b> Specifying maintenance and repair to equipment: <i>Example:</i> Repair technician to be on site within 12 hours of notification of breakdown</p> <p><b>Service:</b> Levels of support from the supplier using objective measures Example: Help desk service to be available 24 hours daily</p> <p>For Purchased Machinery: - Example: A number of workdays of technical support supervision during commissioning and start-up of a machine.</p>

### 1.8 Types of Contracts for Technical Services

Technical Services can be procured using two types of contracts:

- **Lump sum contracts**, based on activity schedules similar to those used in civil works contracts. But unlike their civil works counterparts, the Lump sum contracts are the

most commonly used when contracting technical services (for services which are well-defined and are unlikely to change in quantity or specification, where encountering difficult or unforeseen site conditions are unlikely and where the risks of substantial design or performance variations are minimal). The contract is split in milestones or activity schedules and payments are made on the basis of **percentage completion of each activity**, in accordance with the terms and conditions of the contract.

- **Time-based contracts** have also been developed to serve the needs of procuring technical services where certain conditions may lead to variations of the intended output of the contract.

### ***Important Challenges Related to The Management of Technical Services Contracts***

Regardless of the type of contract used, the most important challenges and issues related to the management of technical services contracts are the following:

- Ensure that the Service Provider maintains qualified staff in key positions throughout the implementation of the contract (replacement of staff is governed by an approval procedure similar to the one used in consultancy contracts);
- Ensure that payments are always linked with the actual progress or with the appropriate percentage completion of the activities/milestones;
- Enforce the contractual penalty for lack of performance (for instance liquidated damages) if the Service Provider fails to remedy a defect within the time stipulated in Employer's notice;
- Ensure that any additional services are valued and paid based on the unit rates and prices included in Appendices to the contract or based on the Day works rates quoted by the Service Provider, if applicable.

## **1.9 The Special Nature of Technical Services Contracts**

There are some significant factors which differentiate technical services contracts from other types of contracts, and particularly from goods contracts:

- Defining the requirement (i.e. the services to be performed) can be much more complex.
- It is often less easy to measure delivery against a service contract
- The contract may well extend over a longer period.
- It will generally involve closer contact between the Employer and the Service Provider, possibly to the extent that they will be working alongside one another.
- The service may interfere with other services, provided internally or externally.

## **1.10 General Principles for Contracts**

The following general principles apply to contracts:

- The terms and conditions of contract must be precise, definite and without any ambiguities.
- Standard forms of contracts should be adopted wherever possible, if not, legal and financial advice should be sought in drafting the clauses.

- Price variation clause to be provided only in long-term contracts, where the delivery period extends beyond 18 months.
- The contract should also contain the mode and terms of payment.
- The terms and conditions of a contract, including the scope and specification once entered into, should not be materially (or substantially) varied.
- All contracts shall contain a provision for recovery of liquidated damages for defaults on the part of the service provider.
- A warranty clause should be incorporated in the contract
- Suitable provision for settlement of disputes shall be incorporated into the contract.

## 2.0 BASICS OF CONTRACT ADMINISTRATION

### 2.1 Introduction

*Contract administration is the management of contracts made with suppliers, contractors, consultants or technical service providers to assure that all the parties comply with and fulfil the terms and conditions of the contract.*

It includes all dealings between parties to a contract from the time a contract is awarded until the task has been completed and accepted or the contract terminated, payment has been made, disputes have been resolved and the contract closed.

Contract Administration is the responsibility of the Procurement Entity and is distinguished from physical performance of the contract which is the responsibility of the Supplier, contractor, consultant or technical service provider.

Contract Administration is similar to project management. Each contract is a mini-project. It has a unique goal, consumes resources, has a beginning and end dates, and requires coordination and planning of relevant activities, as well as documentation in a contract file throughout the process.

The stages of Contract Administration are intended to ensure that the parties work together to achieve the objectives of the contract. Contract Administration is based on the idea that the contract is an agreement, a partnership with rights and obligations that must be met by both sides to achieve the goal. Contract Administration is aimed not at finding fault, but rather at identifying problems and finding solutions together with all contracting parties involved.

#### 2.1.1 Nature of Contract Management and Administration

“Contract Management is commonly understood as a broader and more strategic concept that covers the whole procurement cycle including planning, formation, execution, administration and close out of a contract and goes beyond the day to day “administrative” activities in the procurement cycle”<sup>3</sup>.

Although the actual planning begins during the selection process, Contract Administration actually starts upon the signing of the contract, which is the point at which the parties to the contract are bound by its terms and conditions. As with contract management, contract administration ensures that each party adheres to the contract and performs at or above the levels specified in the contract.

If we compare the nature or characteristics of the activities associated with both contract management and contract administration (see below) then we can see that the differences are fundamental, yet without efficient contract administration, then effective contract management becomes very difficult, if not impossible.

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<sup>3</sup> UN Handbook on Procurement, 2006

<b><u>Contract Management</u></b>	<b><u>Contract Administration</u></b>
Relationship focus	Operational focus
Strategic	Tactical
Process development	Process compliance
Longer term time frame	Short-term/transactional
Holist view	Narrow focus
Driven by added value	Driven by key performance indicators

In the light of the above, most organizations/institutions use the two interchangeably. However, in this Module, the Public Procurement Authority (PPA) has decided to use the term ‘Contract Administration’.

## **2.2 Objectives of Contract Administration**

The main objectives of Contract Administration are:

- the successful execution of the contract in a timely and economic manner; and
- to ensure performance by all parties in accordance with the requirement of the contract.

For Contract Administration to be effective, it is necessary to develop control procedures of contract performance, which will enable the Contracting Entity to obtain value for money from the contract within the framework of the applicable law. Effective Contract Administration seeks to obtain the goods, construction works and services of the required quantity and standards of quality within the time frame and cost parameters stipulated in the contract in order to satisfy the needs of the end-user and also minimize disputes.

## **2.3 The Role of Contract Administration**

The need for the Contract Administration function stems from the fact that a contract brings into existence a relationship over a period of time between the parties to the contract shaped by the necessity of mutual compliance with its terms and conditions. Contracts may not be perfect because of the difficulty of foreseeing all possible developments with absolute accuracy, and therefore the role of Contract Administration is to steer this relationship as governed by the contract document.

Contract Administration therefore involves:

- Planning for the relationship;
- Monitoring its development as the contract proceeds;
- Measuring its achievement; and, if necessary,
- Taking corrective action to safeguard the interests of the Contracting Entity to ensure successful execution of the contract.

Contract Administration requires multi-disciplinary skills which, if inadequately coordinated and discharged, can adversely affect the outcome of an otherwise impeccable tendering process. A flawed Contract Administration process will undoubtedly lead to

increased costs and delay in contract completion and may also expose the Procurement Entity to legal complications with unpredictable results.

## 2.4 The Benefits of Good Contract Administration

Effective contract administration will provide the following benefits:

- i) **Effective control**, ensuring that both parties know their obligations and implementing a contract controls system that reflects the performance requirements of the contract and provides mechanisms of the coordination and dissemination of information.
- ii) **Performance to the required standard**: full use should be made of contractor's own management information and performance measurement systems, with the contractor reporting progress through agreed procedures.
- iii) **Compliance with contract terms and conditions**: managing the contract **terms and conditions** will help to ensure that they are met; if they are not, they provide for remedies to be applied properly and promptly
- iv) **Clear and documented records** which are essential in the event of invoking default procedures for seeking correction of failures to perform.
- v) **Management of change**: it is the contract administrator's responsibility to define appropriate change control procedures which enable him/her to anticipate, manage and control changes to requirements and/or costs.
- vi) **Value for Money**: this is a balance of cost, risk, delivery and quality which should be managed to.
  - Record costs;
  - Ensure no change in the balance of risks;
  - Ensure timely delivery;
  - Ensure quality.
- vii) **Performance rating**: the performance of the supplier would be evaluated and rated at the end of the contract by the Contract Administrator. The supplier would be informed of the result and this will help him/her to improve upon future performance.

## 2.5 Summary of Main Tasks of Contract Administration

- Contract Administration Planning (Policies, Systems, Procedures and Plans)
- Monitoring Contract Performance and Reporting
- Management of Contract Modifications/Variations
- Processing Payments
- Resolution of Claims and Settlement of Disputes
- Contract Termination
- Managing Contract Records.
- Evaluation of Contract Performance
- Contract Close-out

## 2.6 Important Parties in a Technical Service Contract

The important parties in a technical service contract are the Employer and the Service Provider:

- **The Employer**

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The Employer is the party or Procurement Entity that employs the Service Provider to perform work in order to fulfill a need.

- ***Service Provider***

The Service Provider is a person or corporate body whose Tender to provide the technical services has been accepted by the Employer;

The two parties and their assigns are bound by the terms and conditions of the contract.

## **2.7 Organization for Contract Administration**

### **2.7.1 Legal and Institutional Arrangements for Contract Administration in Ghana**

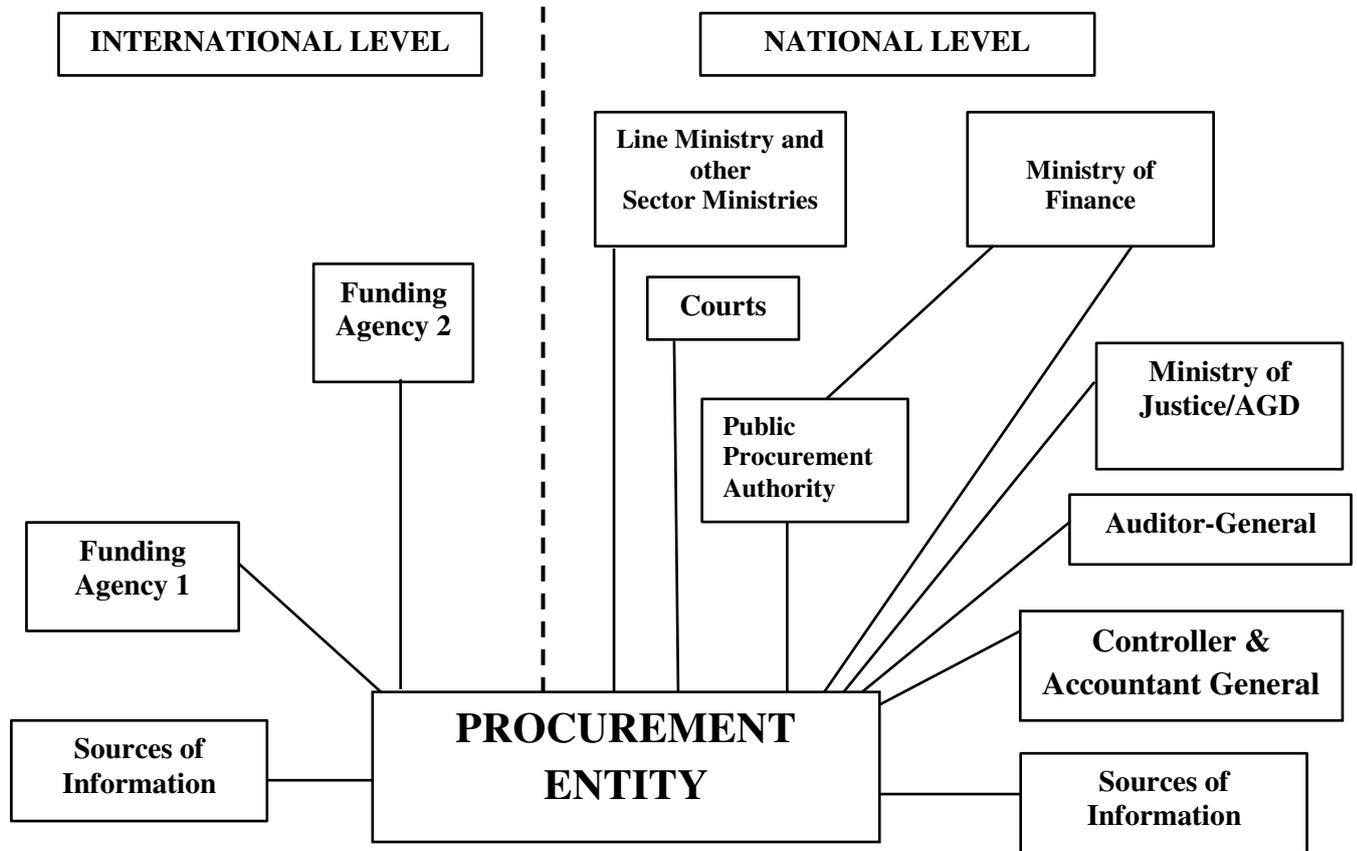
**Figure 1** illustrates the current legal and institutional arrangements for Contract Administration in Ghana. The figure displays the coordination and reporting obligations of the Procurement Entity on the national and international levels (depending on whether foreign financing is involved). The Procurement Entity has to conform to the set procedures of the national and international parties involved in its activities and has to correspondingly develop its reporting and operational procedures to comply with the requirements of the relevant parties.

For Government of Ghana funding, where there is no foreign financing, it is only the right side of the figure that is applicable. The institutions involved in public contract administration include the following:

- The Contracting Entity
- The Line Ministry and other Sector Ministries
- The Ministry of Finance (MoF)
- The Auditor-General's Department
- The Controller & Accountant-General's Department (CAGD)
- The Ministry of Justice & Attorney-General's Department
- The Public Procurement Authority (PPA)
- The Courts

**Figure 1: Institutional Arrangements for Contract Administration in Ghana**

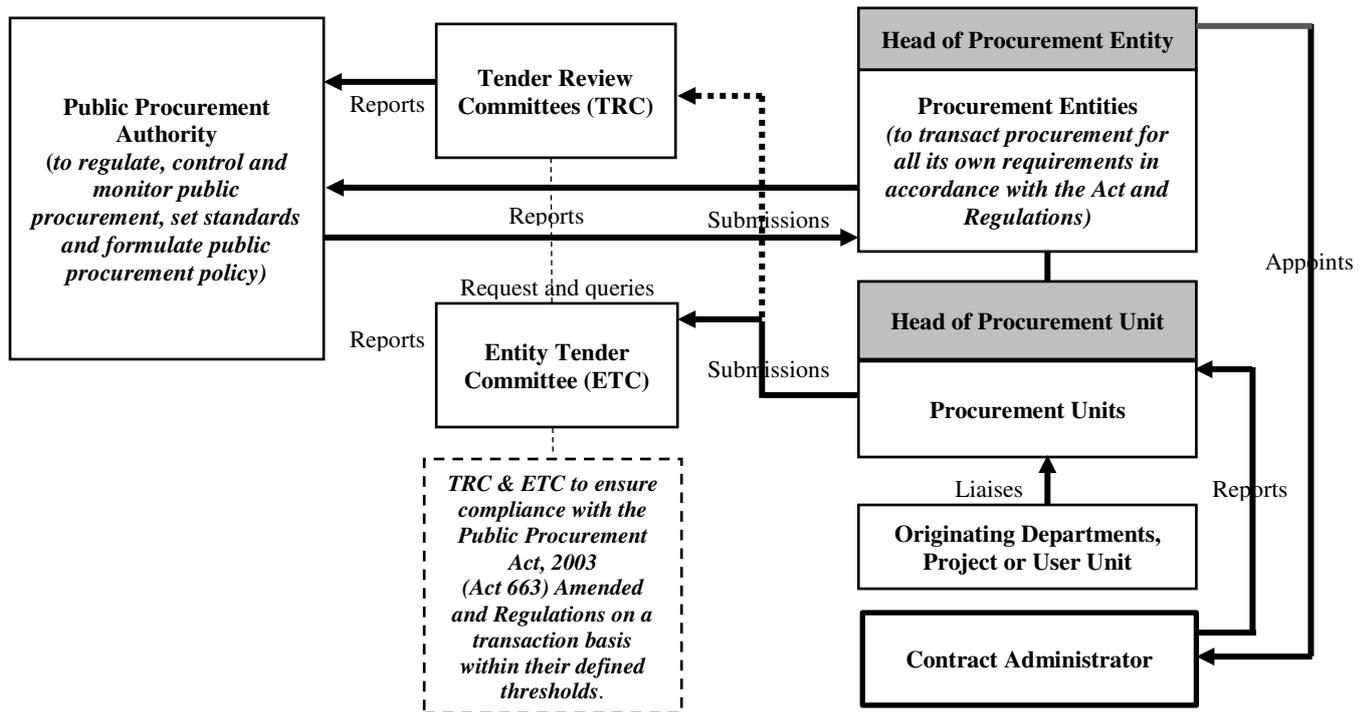
[Reporting & Coordination Obligations of the Procurement Entity]



**2.7.2 Organization of Principal Procurement Bodies/Structures in Contract Administration**

The procurement structures for post contract activities are outlined below in **Figure 2**, although the involvement of the Entity Tender Committees and the Tender Review Committees is minimal.

**Figure 2: Organization of Principal Procurement Bodies/Structures For Contract Administration**



The roles and responsibilities of the bodies that are involved in post contract activities are:

***The Public Procurement Authority***

The primary role of the PPA is to regulate, control and monitor public procurement and set standards and formulate procurement policy.

***The Tender Review Committees and the Entity Tender Committees***

The role of the Tender Review Committees and the Entity Tender Committees is to ensure compliance with the Public Procurement Act, 2003 (Act 663) as amended and Regulations at the transaction level by reviewing and accepting or rejecting submissions received from or via the Procurement Entity’s Procurement Unit. The Tender Review Committees and the Entity Tender Committees are primarily active during the tendering stage but can be required to review matters of a post contract nature where amendments to contract are necessary.

The Entity Tender Committees are responsible for the facilitation of Contract Administration.

***The Procurement Entity***

The Procurement Entity is any entity conducting public procurement and is responsible for carrying out its own procurement in accordance with the Public Procurement Act, 2003 (Act 663) as amended and Regulations.

***The Procurement Unit***

The Procurement Unit is the person or unit within the Procurement Entity that is dedicated to providing technical procurement services for the tender committee.

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***The Originating Departments, Projects or User Departments***

The Originating Departments, Projects or User Departments are the various departments that raise the requirements for procurement that are approved by the Procurement Entity and budgeted for.

***The Contract Administrator***

The role of the Contract Administrator is to manage, coordinate and control each Contract and the Service Provider's performance of that contract in accordance with the terms and conditions of the Contract placed and in accordance with existing legislation. The Contract Administrator is appointed by the Procurement Entity.

***Finance/Accounts Department***

The Department within the Procurement Entity responsible for the financial affairs of the Entity and the control of the Entity's budget.

**2.7.3 Contract Administration Organization for Technical Services**

There must be one person who will serve as the primary contact in the Procurement Entity for administering a technical service contract, and that person is called the Contract Administrator. It is important that the Service Provider gets direction from only one person for day-to-day matters involving plan reviews, deliverables, schedules, etc., to avoid conflicting directions and to establish the authority of that one person. It is equally important that this one person be accountable for and have the authority to administer the day-to-day activities in order to develop a sense of ownership of the work and to make sure that the person closest to the work is able to directly see that the contract requirements are met.

The number of staff in the contract administration process will vary from one to many depending on the size, level of risk and complexity of the contract. Early in the procurement process, there is the need to identify the Contract Administrator and those who are to assist him/her; this will allow for roles and responsibilities to be assigned.

It is worth noting that in many technical service work, except the very large ones, one person acting as the Contract Administrator can handle all responsibilities with the support of an Assistant.

**2.8 Responsibilities of the Contract Administrator**

The Contract Administrator is 'an individual appointed by the Head of Entity to administer a contract on behalf of the Entity'

The primary responsibilities of the Contract Administrator include:

- Participating, as necessary, in developing the solicitation and writing the draft documents. Contract administration must be considered during this process.
- Monitoring the Service Provider's progress and performance to ensure services conform to the contract requirements.
- Authorizing payments consistent with the contract terms.

- Exercising remedies, as appropriate, where a Service Provider’s performance is deficient.
- Facilitating the resolution of disputes in a timely manner.
- Meeting with the Service Provider on a regular basis to review progress, discuss problems and consider necessary changes.
- Establishing control of correspondence, data and reports.
- Identifying potential problems and solutions.
- Managing any public property used in contract performance
- Documenting significant events.
- Maintaining appropriate records.

## 2.9 Skills of the Contract Administrator

Contract administration is not a clerical activity. The Contract Administrator must be proactive both with the control and with his/her own organization and ideally needs to have the following competencies:

- A basic understanding of procurement policies, procedures and practices;
- An understanding of organizational goal;
- An ability to communicate well both internally and with private sector service providers.
- An ability to operate in a team and as a team leader;
- An understanding of the terms and conditions of the contract being managed and of their significance;
- An understanding of project planning methods;
- The ability to organize and manage effective business meetings;
- The ability to motivate Service Providers to meet tough targets/deadlines.

## 2.10 Poor and/or Fraudulent Contract Administration

A badly managed contract occurs when the contract administration team fails to act (proactively or reactively) in order to keep a firm control on the contract implementation. This usually results in at least one of the following:

- Scope of contract is not achieved (the end product is either not delivered, or has a very poor quality);
- Delays;
- Cost overruns.

The worst-case scenario is a situation where all these three situations described above are met (the contract does not achieve its objective and ends up with time and cost overruns).

The most frequent causes of badly managed contracts are often linked to:

- (i) the capacity of the contract administration team;
- (ii) its willingness to act according to its mission and purpose, and/or
- (iii) delays in payment

**Poor capacity**, while dangerous for the contract implementation, can be remedied through continuous and intensive training (both formal and on-the-job); hiring staff with the

appropriate expertise and experience; and through close supervision. Consequently, the negative effect of lack of capacity can be successfully mitigated, especially if the issue of capacity is addressed at an early stage during contract implementation.

***Lack of willingness*** to act in the best interest of the contract can have two major causes, which are radically different from an ethical perspective, but can be equally damaging to the success of contract implementation:

- i. The first cause (which is more benign and thus potentially less harmful) has to do with the lack of motivation of the staff. This can also have many causes: dissatisfaction with the level of remuneration; lack of professional challenges; eroding routine; lack of recognition from the superiors; sense of futility etc. These symptoms must be identified early in the implementation stage and properly addressed through appropriate management decisions (incentives; motivation; correct allocation of tasks and responsibilities; correlation between responsibilities and rewards; increased ownership of the process etc.)
- ii. The second possible cause of staff inactivity has its roots in fraud and corruption and it is therefore the most dangerous risk during contract implementation. Whenever corruption is involved, there is a high degree of certainty that the proper execution of the contract is compromised in one way or another.

***Delays in payment*** most often can be attributed to lack of funds from central government or improper cash flow planning by the procurement entity. It is only in rare instances that it can be due to deliberate unwillingness of the contract administration team to act.

## **2.11 Fraud and Corruption in Contract Implementation**

The contract implementation stage is the most prone to fraudulent and corrupt practices. This is a common sense conclusion, since the implementation phase is when money enters into the equation of relations between the two parties – employer and contractor or Client and Consultant or employer and service provider. It is worthy to note that Fraud and Corruption in Technical Services is very common and most of the practices occur during Contract Administration because the Contract Administrator gets close to the Service Provider as they both have to interact frequently. Fraud and corruption undermine the very foundation of these relations, which should be based on responsibility (in achieving the scope of the contract efficiently) and accountability (for every action).

Section 93 of Public Procurement Act, 2003 (Act 663) as amended on Corrupt Practices, states the following:

- (1) “Entities and participants in a procurement process shall, in undertaking procurement activities, abide by the provisions of article 284 of the Constitution”.
- (2) “An act amounts to a corrupt practice if so construed within the meaning of corruption as defined in the Criminal Offences Act, 1960 (Act 29)”.

As part of international best practices, guidelines and tender documents of international financing institutions as well as national procurement systems have provisions which require

Service Providers and their agents to observe the highest standard of ethics during execution of contracts. The following forms of corrupt and fraudulent practices are defined here for the attention of Service Providers:

- a) **“Coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to influence the actions of a party in connection with the implementation of any contract supported, in whole or in part, including such actions taken in connection with the execution of a contract,
- b) **“Collusive practice”** means a tacit or explicit agreement between two or more parties to perform a coercive, corrupt, fraudulent, obstructive or prohibited practice, including any such agreement designed to establish prices at artificial, noncompetitive levels or to otherwise deprive the Employer of the benefits of free and open competition,
- c) **“Corrupt practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of a public official, Employer staff, consultants or employees of other entities engaged in work supported in whole or in part, including otherwise advancing the contract execution or the making of any payment to any third party in connection with or in furtherance of a contract,
- d) **“Fraudulent practice”** means any act or omission, including any misrepresentation, that misleads or attempts to mislead a party in order to obtain a financial or other benefit in connection with the implementation of any contract supported, in whole or in part, including any act or omission designed to influence or attempt to influence the execution of a contract, or to avoid or attempt to avoid an obligation.
- e) **“Obstructive practice”** means any act taken in connection with the implementation of any contract supported, in whole or in part:
  - i. That results in the destroying, falsifying, altering or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of a coercive, collusive, corrupt, fraudulent or prohibited practice,
  - ii. That threatens, harasses or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation and/or
  - iii. Intended to impede the conduct of an inspection and/or the exercise of audit rights provided under Act 663 as amended and related regulations, manual agreements and standard tender documents, and
- f) **“Prohibited Practice”** means any action that violates Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Trafficking in Persons Statutes and Other Restrictions of the United Nations.

Despite all efforts to prevent and fight these practices by International Financing Institutions (IFIs) and Public Anti-Corruption Agencies, the extent of corruption is staggering.

The most frequent cases of fraud and corruption involve:

- Scope of the contract is not achieved (works not completed, goods and services not delivered), although the money has been spent;
- Unjustified variations and change requests granted by the Employer;
- Products are substituted by inferior, less expensive and lower quality products than specified in the contracts;
- The Client is billed for work done by senior professional personnel or non-existing senior professional personnel, while the actual services are delivered by a limited number of less qualified staff.

***Possible Indicators of Corruption:***

Often these are clues or indicators that something may go wrong in the future and therefore requires attention now. Examples are:

- front-loading – the contractor performs more expensive activities at the beginning of the contract, thus putting the contract at risk of incompleteness as a significant part of the contract amount has already been disbursed;
- frequent change orders / variation requests especially with regard to items with high rates and prices;
- requests for subcontracting, especially to firms that took part in the tendering process and were rejected or offered higher prices;
- deliberate use of unqualified supervisors by the Service Provider;
- failure to report any deviations from the contract;
- substitution of professional staff by less qualified or inexperienced replacements;
- failure to use proper project management tools – Service Providers might avoid using standard project management tools (e.g. GANTT charts, Microsoft Project, etc.) in order to hide cost overruns and make actual progress of work impossible to determine;
- poor filing and records keeping (missing invoices, timesheets, logs, deliverables, failure to maintain a site diary, supporting documents etc.).

***Remedial and pro-active Actions:***

- Maintain close control on the Project Manager / Engineer (permanent contact, spot checks, site visits, issues log, inspection and control logbook etc.);
- Enforce a relevant and comprehensive reporting system (monthly, quarterly, by milestone etc.) to monitor closely all aspects that are important for contract management: actual vs. planned progress (both quantity and quality); timeliness of deliverables; quality of inputs and outputs etc.;
- Enforce internal audit procedures, four eyes principle (particularly with regard to the actual verification of invoices and supporting documents). The person approving the payment should not be involved in the verification of payment documents;

- Penalize promptly any failure to report delays, cost overruns, variation orders, use of substandard materials and workmanship, deviations from the technical specifications and any leniency towards the contractors;
- Enforce all applicable and reasonable contract remedies – liquidated damages for delays or for non-compliance; remedies against the insurance policies and performance securities, etc.;

However, all these precautionary measures should not be interpreted as instigations to abuse the contract mechanisms and remedies against the contractors. Overzealous and abusive contract management is equally dangerous in terms of perceived fraud and corruption because any obvious tendency to abuse the discretionary powers could be interpreted as an attempt to force the Contractor/Supplier/Consultant into agreeing to kickbacks or other kinds of informal payment.

## **2.12 Conflicts of Interest**

The Service Provider of Technical Services shall not have a conflict of interest. All Service Providers found to have a conflict of interest shall be disqualified, unless the conflict of interest has been mitigated and the mitigation is approved by the Public Procurement Authority or the Procurement Entity. The Procurement Entity requires that Service Provider hold its interests paramount at all times, strictly avoid conflicts of interest, including conflicts with other assignments or their own corporate interests and act without any consideration for future work.

Without limitation on the generality of the foregoing, a Service Provider, including all parties constituting the Service Provider and any agents or sub- Service Providers for any part of the Contract, including related services, and their respective personnel and affiliates may be considered to have a conflict of interest in terms of Conflicting activities, Conflicting assignments and Conflicting relationships and in the case of a Service Provider, the Contract may be terminated.

A Service Provider has an obligation to disclose any situation of actual or potential conflict of interest that impacts its capacity to serve the best interest of the Procurement Entity or that may be reasonably perceived as having this effect. Failure to disclose said situations may lead to the termination of the Contract.

## 3.0 FORMS OF TECHNICAL SERVICES CONTRACT

### 3.1 Introduction

This chapter identifies the set of documents that comprise a technical service contract and explains the types of PPA Standard Forms of Contract, including the General Conditions of Contract and the Special Conditions of Contract.

### 3.2 Basic Documentation for Technical Services Contract

This is a set of documents that constitutes the contract between the Procurement entity and the Service Provider in such a way as to minimize misunderstanding. The documents include:

- The Form of Contract- the actual document signed by both parties;
- The Letter of Acceptance;
- Service Provider's Tender
- General conditions of contract;
- Special conditions of contract;
- Performance Specifications and Drawings;
- Priced Activity Schedule
- Work plan
- Breakdown of Contract Price & Schedules of Rates;
- Minutes of any relevant meetings, such as contract negotiations, and/or letters which have been exchanged;
- Curricula vitae of key staff selected to carry out the service;
- Specimen of securities or bonds, if required

### 3.3 Standard Forms of Contract for Technical Services

There are two standard forms of contract for technical services under the Public Procurement Act, 2003 (Act 663) as amended. These are:

- Contract Form Lump Sum Remuneration
- Contract Form Small Assignments (Lump Sum)

The Contract Form represents the agreement between the two parties concerned, i.e. the Procurement Entity and the Service Provider and it is the document signed by both parties. In brief, it summarizes the broad obligations of the Service Provider and the Procurement Entity and defines in broad terms the basis of the agreement. Central to the agreement are the documents forming part of the contract.

A typical Contract Form Lump Sum Remuneration is presented below.

## Contract Form

[on letterhead of the Employer]

### Lump-Sum Remuneration

This CONTRACT (hereinafter called the “Contract”) is made the [day] day of the month of [month], [year], between, on the one hand, [name of Employer] (hereinafter called the “Employer”) and, on the other hand, [name of Service Provider] (hereinafter called the “Service Provider”).

[**Note:** In the text below text in brackets is optional; all notes shall be deleted in final text. If the Service Provider consist of more than one Entity, the above shall be partially amended to read as follows: “]...(hereinafter called the “Employer”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Employer for all the Service Providers’ obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (hereinafter called the “Service Provider”).]

#### WHEREAS

- (a) the Employer has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);
- (b) the Service Provider, having represented to the Employer that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of [insert the figures and words and the currency];
- (c) the Employer has set aside funds towards the cost of the Services and intends to apply a portion of the proceeds of these funds to eligible payments under this Contract, it being understood that such payments will be subject, in all respects, to the terms and conditions of the Contract providing for the funds and that no party other than the Employer shall derive any rights from the Contract providing for the funds or have any claim to the funds proceeds;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - a) The General Conditions of Contract;
  - b) The Special Conditions of Contract;
  - c) The Service Provider’s Tender;
  - d) The Priced Activity Schedule;
  - e) The Specifications (Statement of Requirements)
  - f) Letter of Acceptance
  - g) Notice to Proceed
  - h) The following Appendices: [**Note:** If any of these Appendices are not used, the words “Not Used” shall be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]

- Appendix A: Description of the Services
  - Appendix B: Schedule of Payments
  - Appendix C: Key Personnel and sub-Contractors
  - Appendix D: Breakdown of Contract Price in Foreign Currency
  - Appendix E: Breakdown of Contract Price in Local Currency
  - Appendix F: Services and Facilities Provided by the Employer
- i) Minutes of Negotiation Meeting

2. The mutual rights and obligations of the Employer and the Service Provider shall be as set forth in the Contract, in particular:
- a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
  - b) The Employer shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of Employer]*

\_\_\_\_\_  
*[Authorized Representative]*

For and on behalf of *[name of Service Provider]*

\_\_\_\_\_  
*[Authorized Representative]*

*[Note: If the Service Provider consists of more than one Entity, all these entities shall appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the Service Provider

\_\_\_\_\_  
*[Name of member]*

\_\_\_\_\_  
*[Authorized Representative]*

\_\_\_\_\_  
*[Name of member]*

\_\_\_\_\_  
*[Authorized Representative]*

### **3.4 General Conditions of Contract Technical Services**

These represent the basic conditions of the contract covering in detail standard issues relating to the performance of the contract. The GCC, read in conjunction with the SCC and other documents listed therein, should stand alone as a complete document expressing all the contractual rights, agreements and obligations of the two contracting parties. Broadly, the GCC forms the basis of the contract and have been developed over many years of use and shown over time to provide the basic protection to the Procurement Entity and the Government while providing the Service Provider with reasonable protection also. Modifying the wording or text of any portion of the GCC should only be done following consultations with the Public Procurement Authority.

As there are two different forms of contract that may apply to services contracts there are two different sets of GCCs. The Contract Administrator needs to be aware of this to ensure that each contract is reviewed to ascertain the GCC that apply to the contract in question.

The conditions of contract for each type of contract differ depending on whether they are for:

- Contract Form Lump Sum Remuneration; or
- Contract Form Small Assignments (Lump Sum)

The General Conditions of Contract for Contract Form Lump Sum Remuneration is discussed below.

## **SECTION IV: GENERAL CONDITIONS OF CONTRACT**

### **A. General Provisions**

#### **1. Definitions**

This clause lists the definitions used throughout the GCC and the SCC. The Contract Administrator needs to be familiar with the definitions when reviewing the specific clauses in the GCC and the SCC.

#### **2. Applicable Law and Interpretation**

The Contract shall be interpreted in accordance with the laws of the Republic of Ghana, unless otherwise specified in the SCC. The documents forming the Contract are listed in order of priority.

#### **3. Language**

This Contract has been executed in English, the official language of the Republic of Ghana, which shall be binding and controlling for all matters relating to the meaning or interpretation of this Contract.

#### **4. Communications**

Any notice, request, or consent made pursuant to this Contract shall be in writing or in electronic forms that provide record of the content of communication and shall be deemed to have been made when delivered in person to an authorized representative of the Party to

whom the communication is addressed, or when sent by registered Post mail, electronic mail, or facsimile to such Party at the address specified in the **SCC**.

#### **5. Location**

The Services shall be performed at such locations as are specified in **Appendix A**, in the specifications and, where the location of a particular task is not so specified, at such locations, as the Employer may approve.

#### **6. Authorized Representatives**

“Authorized Representative” means representatives to be appointed by the Service Provider and authorized to act for and on behalf of the Service Provider with respect to this Contract. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Service Provider may be taken or executed by the officials specified in the **SCC**.

#### **7. Subcontracting**

The Service Provider may subcontract with the approval of the Employer’s Representative, but may not assign the Contract without the approval of the Employer in writing or in electronic form that provides record of the content of communication. Subcontracting shall not alter the Service Provider’s obligations.

#### **8. Other Service Providers**

The Service Provider shall cooperate and share the Site with other Service Providers, public authorities, utilities, and the Employer between the dates given in the Schedule of other Service Providers, as referred to in the **SCC**.

#### **9. Taxes and Duties**

The Service Provider, sub-Contractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

#### **10. Assignment**

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

### **B. Contract Commencement, Completion, Modification, and Termination**

#### **11. Contract**

The Parties shall enter into a Contract within 28 days after the Service Provider receives the Letter of Acceptance, unless the parties agree otherwise.

---

***Effectiveness of Contract***

This Contract shall come into effect on the date the Contract is signed by both parties and such other later date as may be stated in the **SCC**.

**12. Commencement of Services**

Before commencement of the Services, the Service Provider shall submit to the Employer for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.

***Starting Date***

The Service Provider shall start carrying out the Services within thirty (30) days after the date the Contract becomes effective, or at such other date as may be specified in the **SCC**.

***Delays by Service Provider***

Any unexcused delay by the service provider in the performance of its delivery obligations shall render the service provider liable for any or all of the following.

- Forfeiture of its Contract Performance Security
- Imposition of Liquidated Damages; and/or
- Termination of Contract for Default

**13. Intended Completion Date**

Unless terminated earlier pursuant to **Clause 15**, the Service Provider shall complete the activities by the Intended Completion Date, as is specified in the **SCC**.

**14. Modification**

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written Contract between the Parties and shall not be effective until the consent of the appropriate Procurement Entity has been obtained.

**15. Force Majeure**

Force Majeure means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances. The clause makes provision for ***No Breach of Contract, Extension of Time and Payments***

**16. Termination by the Employer**

The Employer may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause.

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***Termination by the Service Provider***

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Clause.

***A. Payment upon Termination***

This clause makes provision for payment by the Employer to the Service Provider:

**17. Limitation of Liability**

Except in cases of criminal negligence or willful conduct, and in the case of infringement pursuant to **GCC Clause 18**

The Service Provider shall not be liable to the procurement entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Service Provide to pay liquidated damages to the Employer and;

The aggregate liability of the Service Provider to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment or to any obligation of the Service Provider to indemnify the Employer with respect to patent infringement.

***B. Joint and Several Liability***

if the Service Provider constitutes (under applicable Laws) a joint Liability, venture, consortium or other unincorporated grouping of two or more persons:

these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;

these persons shall notify the Employer of their leader who shall have authority to bind the Service Provider and each of these persons; and

the Service Provider shall not alter its composition or legal status without the prior consent of the Employer

**C. Obligations of the Service Provider**

**18. General**

The Service Providers shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out their obligations with all due diligence, efficiency, and

economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods.

**19. Conflict of Interests: Service Provider not to Benefit from Commissions and Discounts**

The clause specifies various conditions of conflict of interests.

**20. Confidentiality**

The Service Provider, their sub-Contractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.

**21. Insurance to be taken out by the Service Provider**

The Service Provider (a) shall take out and maintain, and shall cause any sub-Contractors to take out and maintain, at their (or the sub-Contractors', as the case may be) own cost but on terms and conditions approved by the Employer, insurance against the risks, and for the coverage, as shall be specified in the SCC; and (b) at the Employer's request, shall provide evidence to the Employer showing that such insurance has been taken out and maintained and that the current premiums have been paid.

**22. Protection of the Environment**

The Service Provider shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Service Provider shall ensure that emissions, surface discharges and effluent from his activities shall not exceed values prescribed in relevant environmental laws.

**23. Labour Laws**

The Service Provider shall comply with all the relevant labour laws applicable in the Republic of Ghana including laws relating to workers employment, working hours, health, safety, welfare, and immigration and shall allow them all their legal rights.

**24. Health and Safety**

The Service Provider shall observe all national laws and regulations pertaining to health and safety in the Republic of Ghana and shall at all times take all reasonable precautions to maintain the health and safety of his personnel.

**25. Service Providers' Actions Requiring Employer's Prior Approval**

The Service Provider shall obtain the Employer's prior approval in writing or in electronic forms that provide record of the content of communication before taking any of the specified actions:

## **26. Reporting Obligations**

The Service Providers shall submit to the Employer the reports and documents specified in **Appendix B** in the form, in the numbers, and within the periods set forth in the said **Appendix B**.

## **27. Documents Prepared by the Service Providers to be the Property of the Employer**

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Providers in accordance with this Clause shall become and remain the property of the Employer, and the Service Providers shall, not later than 14 days upon termination or expiration of this Contract, deliver all such documents and software to the Employer, together with a detailed inventory thereof. The Service Providers may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the **SCC**.

## **28. Liquidated Damages: Payment of Liquidated Damages**

The Service Provider shall pay liquidated damages to the Employer at the rate per day stated in the **SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the **SCC**. The Employer may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities. Further provision is made to cover *Correction for Over-payment and Lack of Performance Penalty*.

## **29. Performance Security**

The Service Provider shall provide the Performance Security to the Employer no later than the date specified in the **SCC**. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable as stated in the **SCC**. The performance Security shall be valid until a date 28 days from the Completion Date of the Contract, unless otherwise specified in the **SCC**.

## **D. Service Provider's Personnel**

### **30. Description of Personnel**

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in **Appendix C**. The Key Personnel and Sub-Contractor listed by title as well as by name in **Appendix C** are hereby approved by the Employer.

### **31. Removal and/or Replacement of Personnel**

Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it

becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.

## **E. Obligations of the Employer**

### **32. Assistance and Exemptions**

The Employer shall use its best efforts to provide the Service Provider such assistance and exemptions as specified in the **SCC**.

The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other Service Providers on the Site co-operate with the Service Provider

### **33. Change in the Applicable Law**

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by Contract between the Parties, and corresponding adjustments shall be made to the amounts referred to in **Clauses 36(a) or (b)**, as the case may be.

### **34. Services and Facilities**

The Employer shall make available to the Service Provider, for the purposes of the Contract and free of any charge, the services and facilities described in **Appendix F** at the times and in the manner specified in the said **Appendix F**.

### **35. Timely Responses by Employer**

The Employer shall provide responses to the reports and documents submitted by the Service Provider as specified by the Contract without undue delay including facilitation of timely stakeholder participation.

#### ***Delays by Employer***

The Service Provider shall be entitled to compensation if the agreed Contract duration is exceeded due to delays by the Employer. The compensation shall be subject to negotiations between the Service Provider and the Employer. If the parties fail to agree, the Service Provider shall be entitled to Price Adjustment as specified in **GCC 50.3**

## **F. Payments to the Service Provider**

### **36. Lump-Sum Remuneration**

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all sub-Contractors' costs, and all other costs incurred by the Service Providers in carrying out the Services described in **Appendix A**. Except as provided in **Clause 34.1**, the Contract Price may only be increased above the amounts stated in **Clause 33** if the Parties have agreed to additional payments in accordance with **Clause 38.1**.

### **37. Contract Price**

- a) The price payable in local currency is set forth in the **SCC**.

b) The price payable in foreign currency is set forth in the **SCC**.

### **38. Payment for Additional Services**

For the purpose of determining the remuneration due for additional Services as may be agreed under **Clause 14**, a breakdown of the lump-sum price is provided in **Appendices D** and **E**.

### **39. Terms and Conditions of Payment**

Payments will be made to the Service Provider and according to the payment schedule stated in the **SCC**. Unless otherwise stated in the **SCC**, advance payment shall be made against the provision by the Service Provider of a bank guarantee or insurance bond for the same amount, and shall be valid for the period stated in the **SCC**. Any other payment shall be made after the conditions listed in the **SCC** for such payment have been met, and the Service Provider has submitted an invoice to the Employer specifying the amount due.

### **40. Interest on Delayed Payments**

If the Employer has delayed payments beyond twenty-eight (28) days after the due date stated in the **SCC**, interest shall be paid to the Service Provider for each day of delay at the rate stated in the **SCC**

### **41. Price Adjustment**

Unless the **SCC** provides for the price adjustment of the remuneration rates, said remuneration shall be fixed for the duration of the Contract.

### **42. Day works**

If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when the Employer has given written instructions in advance for additional services to be paid in that way

## **G. Quality Control**

### **43. Identifying Defects**

The Employer shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Employer may instruct the Service Provider to search for a Defect and to uncover and test any service that the Employer considers may have a Defect.

### **44. Correction of Defects and Lack of Performance Penalty**

The Employer shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected. Every time a notice of Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice.

If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider

will pay this amount, and a Penalty for Lack of Performance calculated as described in **Clause 28.3**

## H. Good Faith

### 45. Good Faith

The Parties undertake to act in fairness and in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

## I. Settlement of Disputes

### 46. Amicable Settlement

The Parties shall seek to resolve any dispute amicably by mutual consultation.

### 47. Dispute Resolution

Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the SCC.

## SECTION V: SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

The corresponding clause number in the General Conditions is indicated in brackets.

- i. Definitions (GCC 1.1(a),1.1(d),1.1(e)),1.1(k),1.1(r),1.1(v),1.1(z))
- ii. Applicable Law and Interpretation (GCC 2.1)
- iii. Communications (GCC 4.1)
- iv. Authorized Representatives (GCC 6.1)
- v. Other Service Providers (GCC 8.1)
- vi. *Contract-Effectiveness of Contract* (GCC 11.2)
- vii. Commencement of Services-*Starting Date* (GCC 12.2)
- viii. Intended Completion Date (GCC 13.1)
- ix. Force Majeure-Payments (15.5)
- x. Termination by the Employer (GCC 16.1(f))
- xi. Conflict of Interest: -Prohibition of Conflicting Activities (GCC 19.3)
- xii. Insurance to be taken out by the Service Provider (GCC 21.1)
- xiii. Health and Safety (GCC 24.4)
- xiv. Service Providers' Actions Requiring Employer's Prior Approval (GCC 25(d))
- xv. Documents Prepared by the Service Providers to be the Property of the Employer (GCC 27.1)
- xvi. Liquidated Damages: Payment of Liquidated Damages (GCC 28.1)
- xvii. Performance Security (GCC 29.1)
- xviii. Assistance and Exemptions (GCC 32.1)
- xix. Contract Price (GCC 37.1(a), (b))
- xx. Terms and Conditions of Payment (GCC 39.1)

- xxi. Interest on Delayed Payments (GCC 40.1)
- xxii. Price Adjustment (GCC 41.1(a))
- xxiii. Dispute Resolution (GCC 47.1)

The Contract Form Small Assignments (Lump Sum) has the following conditions of contract.

- i. Services
- ii. Duration
- iii. Contract Price
- iv. Project Administration
- v. Obligations of the Service Provider
- vi. Confidentiality
- vii. Ownership of Material
- viii. Service Provider Not to be Engaged in Certain Activities
- ix. Insurance
- x. Assignment
- xi. Force Majeure
- xii. Obligations of the Employer
- xiii. Law Governing the Contract and Language
- xiv. Termination by the Employer
- xv. Termination by the Service Provider
- xvi. Payment upon Termination
- xvii. Protection of the Environment
- xviii. Health and Safety
- xix. Performance Security
- xx. Amicable Settlement
- xxi. Dispute Resolution

## 4.0 CONTRACT ADMINISTRATION PROCESS: POST CONTRACT-AWARD PRELIMINARY TASKS

### 4.1 Introduction

Post contract-Award Preliminary Tasks are critical for the eventual success of contract performance monitoring and any follow-up actions. It involves all the preparatory activities necessary to enable commencement of contract implementation. The chapter discusses formation of the contract administration team and assigning roles and responsibilities; setting up administrative, financial/payment, time control and inspection and quality assurance procedures; determining communications and reporting requirements; preparation of contract administration plan, including contract milestones; determining meeting procedures; and devising verification procedures of securities and insurance policies.

### 4.2 Contract Administration Planning (Policies, Systems and Procedures)

The Client must first of all ensure that the proper internal arrangements are made in its own organization. This mainly refers to *people* and *processes*:

- i. Assigning detailed tasks to the individual or the team responsible with the specific duties during the contract administration process. This would be equivalent to creating job descriptions for everyone involved. The tasks assigned to each individual should be precise and realistic (taking into account the specific experience, expertise and workload of each staff). For example, the procurement specialist should know that he/she would be responsible for keeping track of the main contract milestones (effective date; deadlines for deliverables etc.); the technical expert should be conversant with the conditions of contract (particularly with regard to the Terms of Reference and deliverables);
- ii. Establishing internal procedures (hierarchy, communication, level of authority, flow of documents, verification and acceptance procedures, payment procedures, internal audit etc.);
- iii. Evaluation of main risks associated with the implementation of the contract and identification of the main remedies or mitigation measures, as well as the parties responsible with their enforcement;  
Risks to achieving contract objectives must be identified and treatments for addressing them must be developed for implementation. Treatments may be effected through contract provisions and through active management of the contract. A key issue to be considered is the level of risk assumed by each party to a contract;
- iv. Coordination arrangements with third parties (other agencies, end users, beneficiaries etc.), especially when the technical services are contracted on behalf of end users (e.g. training).
- v. Development of procedure for keeping track of the contract's price adjustment mechanism (if any);

vi. Development of contract administration plan and milestones. (See section 4.6 below for full details)

### **4.3 Commencement/Inception Meeting(s)**

A Commencement meeting with the Service Provider is critical at the start of the project. The Contract Administrator and the rest of Employer's staff involved in contract supervision should be present. If the services are contracted for a group of end users, their representatives should also be present.

Critical issues to be established during the Commencement meeting include:

- i. Introducing the parties, their roles and responsibilities - this applies equally to Service Provider's representatives and key staff as well as to Employer's staff in charge with the contract administration;
- ii. Establishing the communication procedures - (mechanisms, frequency etc.).
- iii. Review of contract documents - priority and inter-correlation of contract documents; conditions of contract; Performance Specification/Terms of Reference; Activity Schedules; payment schedules and covenants; implementation milestones (deliverables, reports etc.);
- iv. Review of applicable legislation and any obligations deriving in connection to the execution of the contract in the Employer's country (e.g. contract registration; fiscal registration of Service Provider in the Employer's country; applicable tax regime, reporting obligations to other Government agencies etc.);
- v. Defining escalation procedures to unblock critical situations or bottlenecks (delays in performance or in obtaining permits and approvals; abuses of power from the contract administrator; non-performance of Service provider, etc.);
- vi. Establishing clear reporting procedures (level, frequency, templates, minimum information etc.);
- vii. Ensuring that all parties involved in the contract implementation share the same understanding of their rights, roles and responsibilities derived from the contract documents; of each other's expectations; of the timeframe; of any particular constraints in the implementation.

### **4.4 Verification of Advance Payment Guarantee and Performance Securities**

The Contract Administrator must:

1. Check the securities (performance security, advance payment guarantee) for the correct (i) amount; (ii) validity; and (iii) wording. The text of the security should not contain any significant deviation from the sample forms included in the tender documents. The Employer should reject any additional texts introducing conditions that would render the security invalid or make it harder to forfeit.
2. Submit the securities to the Employer's commercial bank and request verification of the authenticity of the signatures of the issuing bank. This process should not

normally exceed a few business days and the cost of this service is usually negligible, so the Employer should always request this verification. This is especially important in the case of (i) unknown Service providers; and (ii) securities issued in questionable jurisdictions (e.g. offshore fiscal havens).

#### 4.5 Verification of Insurance Policies

The Contract Administrator must verify any insurance policies submitted by the Service Provider for the following:

- Coverage;
- Validity;
- Amounts;
- Text and Format
- Exclusions;
- Deductibles;
- All terms and conditions that may render the policies invalid under certain circumstances or events;
- Any provisions regarding notification requirements;
- Proof of payment of insurance premiums;

For Technical services under the public procurement system, the following insurance policies apply:

- i) Third Party motor vehicle
- (ii) Third Party liability
- (i) Employer’s liability and workers’ compensation
- (iv) Professional liability
- (ii) Loss or damage to equipment and property

The Contract Administrator must ensure safe custody of the insurance policies.

#### 4.6 Contract Administration Plan (CAP)

In contract administration, the focus is on obtaining services of requisite quality, on time, and within budget. While the legal requirements of the contract are determinative of the proper course of action of public officials in administering a contract, the exercise of skill and judgment is often required in order to protect effectively the public interest.

The Contract Administration plan is a compilation of required “action schedules”, implementation supervision procedures and payment procedures that must be followed and coordinated by the Contracting Entity to ensure compliance with contract terms and conditions during contract performance by “both” parties to the contract. In other words, it details “**what**” needs to be done and by “**whom**”, “**how**” and “**when**” it needs to be done for the proper functioning of the contract.

The Contract Administration Plan should aim at identifying the administrative and technical tasks required for the successful performance of the contract and at putting in place “**checks**

**and controls”** to detect non-performance by either the Contracting Entity or the Service Provider at the appropriate time in order to reduce the risks to the delivery of the procurement package caused by possible implementation problems.

#### **4.6.1 Main Elements of a Contract Administration Plan (CAP)**

A Contract Administration Plan can be very simple or very elaborate depending on the nature/type, scope, value and complexity of the assignment or project. Elements of the CAP include the following, among any others:

##### **Deliverables**

- Read your contract thoroughly and create checklists for all contract deliverables.
- When you list the contract deliverables, make note of specific standards for acceptance and allowances for substitutions.

##### **Schedules**

- Contracts cover a specific period. The contract administration plan must include a schedule for startup dates, deadlines for deliverables and the closing date of the contract.
- Take note of milestones that affect the production or submission of any deliverables, and put them into the contract calendar.
- The master schedule with milestones and deadlines is a planning tool that your institution can use to monitor progress and adjust the Contract Administration Plan.

##### **Finances**

- Your institution must have a contract budget that details expenses to be incurred in the performance of the contract. The person responsible for financial administration also needs to reconcile projected expenses against actual expenses.
- The person who manages the contract budget must know what documentation accompanies every invoice and how payment will be made.
- Expenditure on the contract will also be posted in the institution’s books in a manner that lets you track contract accounts receivables and payments.

##### **Work Plan**

- Create a work plan that allocates the personnel and financial resources required to meet the terms of the contract.
- Assign responsibilities for each deliverable to internal personnel or identify temporary help and external experts you need to meet contract schedules.
- Draft a reporting schedule that keeps you informed of resources required, resources allocated and the cost burden of your resources

##### **Risk Management**

- Identify risks that could hinder successful execution of the assignment.
- Loss of key personnel, natural disasters and financial constraints are common risks that service providers face.

- Prepare a strategy for addressing the risks that you identify.
- Build some leeway into the work plan for making possible course corrections or adjusting contract milestones without incurring additional costs or missing deadlines.

#### **4.6.2 Examples of Contract Administration Plan Elements for a Technical/Non-consulting Service Contract**

##### **i. Contract Deliverables (Measurable Outputs and Reports).**

- a) Collection, transportation and disposal of Solid Waste from house to house and central containers in XYZ Community to landfill site.  
Approximate quantity for a 300-day year is 10,000kg per day.
  
- b) Preparation and submission of reports on activities undertaken.
  - Inception Report- 4 weeks after commencement of contract.
  - Monthly Report on activities undertaken.
  - Final Report at the end of the one-year contract period.

**ii a). Schedule**

A schedule of milestones from a waste management contract is presented in Table 1 below.

**Table 2: Milestone Chart**

<b>No.</b>	<b>Milestone/Deliverable</b>	<b>Target Date</b>	<b>Revised Date</b>	<b>Actual Date</b>
<b>1.</b>	Commencement Meeting with Employer	e.g. 4 January, 20...		
<b>2.</b>	Setting up office	18 January, 20...		
<b>3.</b>	Meeting with Stakeholders	25 January, 20...		
<b>4.</b>	Mobilisation of Equipment and Vehicles	1 February, 20...		
<b>5.</b>	Submission of Draft Inception Report	25 January, 20...		
<b>6.</b>	Final Inception Report	1 February, 20...		
<b>7.</b>	Zoning of Operational Area	8 February, 20...		
<b>8.</b>	Deployment of staff	17 February, 20...		
<b>9.</b>	Deployment of Equipment	17 February, 20...		
<b>10.</b>	Distribution of waste bins	22 February, 20...		
<b>11.</b>	Waste collection and disposal	29 February, 20... (Daily up to end of contract)		
<b>12.</b>	Construction of platforms for refuse containers	1 March, 20...		
<b>13.</b>	Construction of container stairs	7 March, 20...		
<b>14.</b>	Monitoring and reporting of performance	Monthly (from February, 20...)		
<b>15.</b>	Final Assignment Report	31 December, 20...		

**ii b) Key Milestones of a Contract for Technical/Non-consulting Services**

There are certain key milestones that need to be monitored during contract administration.

These usually include the following:

- Contract Effectiveness;
- Contract Commencement/Contract Mobilization;
- Receipt of Advance Payment Security;
- Payment of any required Advance payment;
- Schedule of Deliverables;
- Payments made in respect of the services provided;
- Release of all Securities (required under the contract terms); and
- Contract Close-out.

Individual contracts may have additional key milestones and these need to be identified by the Contract Administrator

The monitoring of the key milestones is the primary task of the Contract Administrator.

**Contract Effectiveness**

This is usually stated in the contract and a period is usually defined from the date of contract signature or is otherwise stated in the contract. Whatever definition is used in the contract, this should be used to calculate the effective date of the contract. It should not be assumed that the definition of effectiveness is the same between contracts. The date of effectiveness is usually the date by which all else in the contract is calculated (i.e. receipt of deliverables). Occasionally a Service Provider may require a further period following effectiveness before delivery of other contract variables can be calculated. Such a period may be termed as Contract Commencement (or a Contract Mobilization).

**Contract Commencement (or Contract Mobilization).**

If applicable to a contract for technical services, this will also be stated in the contract as a period following contract effectiveness.

***Receipt of Advance Payment Security***

An advance payment cannot be initiated until an Advance Payment Security is first received and verified as correct. Once the Security is received then actions can be taken to arrange the payment with an invoice from the Service Provider.

**Payment of any required Advance payment**

Once the Advance Payment Security and an invoice for the advance payment are received, payment needs to be made. It is very common for contract effectiveness to be the receipt by the Service Provider of the advance payment. Where this is the case then the Contract Administrator's efforts will be focused on making the payment to achieve early contract effectiveness.

**Schedule of Deliverables**

The contract will specify the Schedule of Deliverables that will apply to the items contracted. Delivery dates will be calculated from the date of contract effectiveness (or contract

commencement). The delivery dates will be included in the Contract Milestone Checklist and be central to the Contract Administrator's activities throughout the contract period.

There is a further need to hold the factual record of deliverable dates achieved by the Service Provider.

### **Payments made in respect of the Services in accordance with the Contract Payment Terms**

The Contract Administrator's task in respect of payments is to initiate the payment by verifying that the payment request is eligible and confirming that payment should be made in respect of each payment request. In doing this the Contract Administrator is guided by the contract terms applicable to each contract and by the total amount of payments already made against the contract. This is monitored by the maintenance of a Payments Records for each contract which compares the total payments made against the contract total value (including any amendments to contract).

### **Release of Securities**

Once the Contract Administrator maps out the events of the contract, provisions must be made for the return of Securities to the Service Provider once these have expired or may be returned as their purposes have been met.

### **Contract Close-out**

Once all obligations by both the Procurement Entity and the Service Provider have been completed, the Contract Administrator must review the contract performance and conclude that all tasks and actions have been completed and the file should be closed.

The Contract Administrator must be familiar with all new contracts as the terms and conditions will be different and require different methodologies.

## **iii. Finances**

### **Typical Payment Schedule**

Payments shall be made according to the following schedule:

- Advance for Mobilization, Materials and Supplies: 10% percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same.
- Progress payments in accordance with the milestones established as follows, subject to certification by the Employer that the services billed have been rendered satisfactorily, pursuant to the performance indicators:
  - ✓ Monthly payment on pro-rata basis plus reimbursing of cost of spares actually used.
  - ✓ The amortization of the Advance mentioned above shall commence when the progress payments have reached 25% of the contract price and be completed when the progress payments have reached 75%.
- The bank guarantee for the advance payment shall be released when the advance payment has been fully amortized.

**iv. Work Plan**

A typical work plan/activity schedule culled from a Service Provider’s Work programme is presented in Table 3 below.

This can be modified by the Employer to include Contract Administration team reporting requirements and contract close-out.

**Table 3: WORK PLAN**

NO.	ACTIVITY	DURATION	TIMEFRAME(MONTHS)												
			1	2	3	4	5	6	7	8	9	10	11	12	
1.	Commencement/Inception Meeting with Employer	1 Week	■												
2.	Setting up office	3 Week	■												
3.	Meeting with Stakeholders	4 Week	■												
4.	Mobilisation of Equipment and Vehicles	4 Week	■												
5.	Recruitment of Staff	8 Week	■	■											
6.	Submission of Inception Report	4 Week	■												
7.	Discussion and acceptance of Inception Report	1 Week		■											
8.	Zoning of Operational Area	2 Week		■											
9.	Deployment of staff	4 Week		■											
10.	Deployment of Equipment	4 Week		■											
11.	Distribution of waste bins	4 Week		■											
12.	Waste collection and disposal	Daily			■	■	■	■	■	■	■	■	■	■	■
13.	Construction of platforms for refuse containers	6 Week	■	■											
14.	Construction of container stairs	4 Week		■											
15.	Organizing training workshop for staff	Quarterly			■			■			■				■
16.	Servicing of vehicles and equipment	Monthly			■	■	■	■	■	■	■	■	■	■	■
17.	Monitoring and reporting of performance	Monthly			■	■	■	■	■	■	■	■	■	■	■
18.	Preparation and submission of performance report to Procurement Entity	1 Week													■

## v. Risk Management

An example of risk assessment and remedial actions are presented in Table 4 below.

**Table 4: Risk Assessment**

NO.	RISK FACTOR	LIKELY CONSEQUENCES	REMEDIAL ACTION
1.	Loss of key personnel/ Key personnel not available	Progress on project disrupted; Less expertise	Promptly arrange with Service Provider for replacement in accordance with contract terms and conditions.
2.	Failure of Service Provider to meet standards of quality.	Rejection of work done; Delay in work progress	<ul style="list-style-type: none"> <li>• Meet with Service Provider and draw his attention. Document proceedings.</li> <li>• Specify/emphasize quality requirements.</li> <li>• Service Provider should address the milestones and reports.</li> </ul>
3.	Delays in assignment execution	Cost overrun; Delay in completion of work	<ul style="list-style-type: none"> <li>• Draw Service Provider's attention.</li> <li>• Serve notice to invoke liquidated damages clause, if any.</li> <li>• Make references to clauses on suspension of work and contract termination</li> </ul>
4.	Natural disasters	Disruption in progress of work;	<ul style="list-style-type: none"> <li>• Apply Force Majeure clause and monitor situation closely.</li> </ul>
5.	Financial insolvency (Service Provider)	Delay in work progress; Damage to Employer's reputation;	<ul style="list-style-type: none"> <li>• Terminate contract in accordance with contract provisions.</li> <li>• Put in place contingency plan for continuation.</li> </ul>
6.	Delays in payments to the Service Provider	Inadequate resources to execute work; Lackadaisical approach to work; Delay in work progress	<ul style="list-style-type: none"> <li>• Expedite process for payment.</li> <li>• Process claims for interest on delayed payment, as may be necessary.</li> </ul>
7.	Unauthorized increase in scope of work	Unanticipated cost increases; Contract disputes;	<ul style="list-style-type: none"> <li>• Ensure all contract amendments are issued in writing and approved by appropriate authority.</li> <li>• Record all discussions and negotiations.</li> <li>• Confirm verbal instructions in writing</li> </ul>
8.	Failure to meet liabilities of third parties (e.g. royalties or third-party property insurance)	Legal action; Damage to the Employer's professional reputation	<ul style="list-style-type: none"> <li>• Check that all obligations are covered in the contract;</li> <li>• Agree on responsibilities;</li> <li>• Implement appropriate safety standards and programs</li> </ul>

NO.	RISK FACTOR	LIKELY CONSEQUENCES	REMEDIAL ACTION
9.	Fraud	Misuse of resources Legal action; Disruption to procurement activities Conflict of interest	<ul style="list-style-type: none"> <li>• Maintain an ethical environment;</li> <li>• Follow and maintain fraud control procedures</li> <li>• Declare interest in any given situation</li> <li>• Conduct relevant due diligence</li> </ul>
10.	Accidents	Casualties; Delay in work progress Damage to the Employer's reputation;	<ul style="list-style-type: none"> <li>• Ensure that health and safety procedures are complied with.</li> <li>• Monitor service provider's quality assurance activities.</li> <li>• Check for appropriate insurance policies and their validity</li> </ul>

## 4.7 Managing the Contract Checklist

This checklist could be used by the Contract Administrator or a senior manager with management responsibility for overseeing a contract or contracts to gain assurance that the necessary governance arrangements are in place at the commencement of the contract. The ongoing management section of the checklist could be used periodically to check that the necessary actions are being taken to manage the contract.

### Contract Commencement

- Does the Contract Administrator have the required level of skills and experience?
- Does the Contract Administrator have a satisfactory level of understanding of the contract and of the relevant subject matter?
- Have risks to the management of the contract been identified and risk treatments identified?
- Is it clear who is responsible for implementing/actioning any necessary risk treatments?
- Has responsibility for all aspects of managing the contract been clearly assigned?
- Do delegations exist for the approval of contracts, contract variations and the approval of expenditure?
- Have all stakeholders been identified and arrangements agreed to obtain feedback/input throughout the life of the contract?
- Have the benefits of flow charting internal processes, e.g. dispute escalation arrangements, been considered?

### Ongoing Management

- Are contract payments linked to satisfactory contract performance?
- Are all invoices, and any supporting documents, checked to ensure they are in accordance with contract requirements and are in order to pay?
- Is timely action taken when contract performance is unsatisfactory?
- Are all variations to the contract agreed on value-for-money grounds?
- Are all amendments to the contracts subjected to formal contract variations? Is a record maintained of all contract variations?
- Where the contract does not meet agreed levels of performance, are any actions taken adequately documented? Where it is decided not to take action, is this decision properly approved and documented?
- For longer term contracts, is the contract subject to periodic review?
- Are any disputes addressed in a timely manner and satisfactory efforts made to resolve them?
- Is the contract being actively managed so that there is reasonable assurance that the contract outcomes are being achieved?

### Contract Extension/Renewal

- Do systems/procedures enable the timely consideration of the need for contracts to be extended or renewed?
- Are all contract extensions justified on value for money grounds?
- Are there arrangements in place designed to ensure that probity issues are identified and addressed during contract extension and re-tender processes?

### Ending the Contract

- Has the Service Provider delivered all the required contract outcomes?
- Has the Service Provider met all their contractual obligations?
- Has the Service Provider returned all Employer’s materials, equipment or other resources used or generated during the life of the contract?
- Have all access arrangements been terminated?
- Has an evaluation of the contract been undertaken and, where appropriate, lessons learned been built into future contracting activities?
- Has the Service Provider’s performance been evaluated, properly documented, and feedback provided to the Service Provider?

## 5.0 MONITORING CONTRACT PERFORMANCE & REPORTING

### 5.1 Introduction

During contract performance, the Contract Administrator and his team must observe performance, collect information, and measure actual contract progress and prepare reports. These activities are essential to effective control. The purpose is to ensure that the Service Provider is performing all duties in accordance with the contract and for the Procurement Entity to be aware of and address any developing problems or issues.

The resources devoted to these tasks and the techniques used to perform them will depend on the nature of the contract work, the size and complexity of the contract, and the resources available.

Monitoring contract performance covers key areas of contract administration, namely: time control, quality and quantity control, communications with stakeholders, resolution of performance problems & contract remedies, processing payments, maintaining contract documentation, contract modifications, scheduling and holding meetings and managing securities and insurance policies,

### 5.2 Time Control

This has to do with compliance with the contract milestones (completion of activities, submission of deliverables, reports etc.) and actions to speed up progress and ensure compliance with contractual time for completion of service provision.

The Activity Schedule, originally provided by the Employer and priced by the Service Provider in its submitted tender and agreed in the contract will serve as a basis for time control of the key activities/tasks to be performed on the contract.

The Contract Administrator must monitor and ensure compliance with both the activity schedule and contract milestones. Session 4.6 provides tools for time control.

### 5.3 Quality and Quantity Control

#### *Deviation of deliverables from the specific requirements of Performance Specifications and Activity Schedule*

The General conditions of Contract Clause 18-General-states that “The Service Providers shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out their obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Employer, and shall at all times support and safeguard the Employer’s legitimate interests in any dealings with sub-contractors or third parties.”

***Identifying Defects***

In accordance with GCC clause 43.1, the Employer shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Employer may instruct the Service Provider to search for a Defect and to uncover and test any service that the Employer considers may have a Defect.

***Correction of Defects and Lack of Performance Penalty (GCC clause 44.1)***

The Employer shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

Every time a notice of Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice.

If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in **Clause 28.3**.

***Removal and/or Replacement of Personnel***

In compliance with GCC clause 31, if the Employer finds (i) that any of the Personnel have committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Employer's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Employer.

The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

**5.4 Communication with Stakeholders**

The effective management of a Procurement Entity's activities requires establishing and maintaining open and constructive lines of communication with internal and external stakeholders. Senior managers are important internal stakeholders who will require periodic assurance that the Procurement Entity's policies are being adhered to and that its reporting and accountability responsibilities are being met. In this regard, better practice entities will have:

- clearly articulated contract reporting and accountability responsibilities, including the individual and/or work areas with primary responsibility for meeting these responsibilities;
- incorporated reporting of its compliance with these requirements into its regular management reporting regime; and

- included the oversight of compliance with contracting responsibilities as part of the broader legislative compliance responsibilities of the Procurement Entity’s Audit function.

Arrangements should be agreed with all relevant external stakeholders aimed at ensuring that their communications/reporting needs are met.

Such arrangements could be expected to include:

- identifying relevant contact points;
- the timing and content of briefings and other communications; and
- the preferred mode of communication, for example, face-to-face meetings, formal correspondence or e-mail.

## **5.5 Resolution of Performance Problems & Contract Remedies**

When problems arise during the implementation of technical services, the Procurement Entity should discuss these with the Service Provider with the intention of reaching an agreement on solutions. When the Procurement Entity identifies a problem with the Service Provider’s performance, it must decide what action is appropriate.

In general, the Contract Administrator must do well to tackle performance problems by taking the following steps:

- Interpret contract clauses related to the problem. Clause 12.3-12.4 of the GCC, for example, addresses delays by the Service Provider.
- Collect evidence from all parties
- Establish facts
- Determine cost/delivery impact related to the problem
- Devise an optimum solution
- Inform parties concerned of decision taken in writing

The Procurement Entity can decide on some specific actions in relation to the terms and conditions of the contract as follows:

### ***Delays by Service Provider***

In accordance with GCC clauses 12.3-12.4, any unexcused delay by the Service Provider in the performance of its delivery obligations shall render the Service Provider liable for any or all of the following.

- a) Forfeiture of its Contract Performance Security
- b) Imposition of Liquidated Damages; and/or
- c) Termination of Contract for Default

If at any time during the performance of the contract, the service provider or its sub-Service Provider(s) shall encounter conditions impeding the timely performance of the services, the Service Provider shall promptly notify the Employer in writing or in electronic form that provides record of the content of communication of the fact of the delay, its cause(s) and likely duration. As soon as practicable after receipt of the Service Provider’s notice, the

Employer shall evaluate the situation and may, at its sole discretion, extend the Service Provider's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

### ***Intended Completion Date***

From GCC clause 13.1, unless terminated earlier pursuant to **Clause 15**, the Service Provider shall complete the activities by the Intended Completion Date, as is specified in the **SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Clause 26. In this case, the Completion Date will be the date of completion of all activities.

## **5.6 Processing Payments**

A sound payment system must:

- a) Detail how to deal with the receipt, verification, certification and authorization of invoices.
- b) Detail how, and by whom, invoices are authorized and then passed for payment.
- c) Ensure that there is a clear audit trail.

The Contract Administrator must ensure that the established procedures are followed and that payments are in compliance with contract provisions. The Contract Administrator must also ensure that over payments are avoided and payment is made for accepted deliverables and outputs only. Delays in processing payment requests may result in a Service Provider raising claims for interests on delayed payments.

## **5.7 Contract Modifications**

During contract implementation modifications or variations of various aspects of the contract may arise. The modification/variation may change an item in the contract or add a new item, related to **scope, time and cost**. A formal modification/variation is an amendment to a contract that changes the original terms or conditions of the contract. The general conditions in each standard form of contract define what constitutes a variation in that particular standard form. It is accepted practice for the variation mechanism to provide for variations to be agreed between the Procurement Entity and the Service Provider in writing through a formal amendment of the contract.

Changes in the scope, the implementation arrangements, the experts, Activity Schedule, Performance Specifications or the completion date may or may not have cost implications. The contract Administrator must ensure that all modifications/variations are formally instructed in writing and are covered by amendment documents in accordance with the terms and conditions of the contract.

## **5.8 Maintaining Documentation**

Maintaining documentation is essential to provide proof of performance, management of changes, justification for claims, and evidence in the unlikely event of litigation. The most important documentation is the official copy of the contract, contract modifications, and conformed working copies of the contract. Other important forms of documentation include:

- **External and internal correspondence:** All appropriate contract correspondence should be saved electronically by the contract administrator, with separate files for external and internal correspondence. Each piece of correspondence should be dated and properly electronically stored.
- **Meeting minutes:** Minutes should be recorded manually and electronically for all meetings between the Procurement Entity and the Service Provider. The minutes should state the date, time, and location of the meeting and identify all attendees by name, company or organization, and title. They should describe all issues discussed, decisions made, questions unresolved, and action items assigned. Copies of the minutes should be provided to each attendee and to others interested in the meeting but unable to attend.
- **Progress reports:** Progress reports should be saved electronically and filed chronologically, by subject.
- **Project diaries:** On large projects, the Contract Administrator should keep a Daily Diary to record significant events of the day. He/she should update the diary at the end of each workday. The entries should describe events in terms of who, what, when, where, and how. Preferably, the diary should have daily entries and kept in electronic form or in a perfect-bound book with pre-numbered pages. A diary supplements memory and aids in recalling events. A diary is also useful as an informal project history when a new contract administrator must take over. It can be of great assistance in preparing, negotiating, and settling claims or in the event of litigation. However, a diary may become evidence in court proceedings, so a diarist should be careful to record only facts, leaving out conclusions, speculations about motives and personal opinions about people or organizations.
- **Telephone logs:** Another useful aid to memory is a telephone log, which is a record of all incoming and outgoing calls. It identifies the date and time of each call, whether it was incoming or outgoing, and if outgoing, the number called. It lists all parties to the call and includes a brief notation about the discussion.

## 5.9 Contract Reporting and Monitoring

The timing, nature, and number of reports that the Service Provider should provide are normally contained in the technical services contract. These may vary considerably, depending on the type of work being undertaken. If the services are of a routine nature over a long period (for example, one year or more), then an inception, monthly, quarterly, and annual progress reports may be required. On the other hand, if the service is to implement a particular task, a more specific type of reporting may be required. These may be provided in a number of media and formats but normally will entail hard and soft copy versions. The production or acceptance of various reports is often used as a milestone for payment under Lump-sum contracts.

Specific individuals should be appointed by the Procurement Entity to review the reports as they are produced, to provide feedback, and to monitor the implementation progress of the service being performed. Shortcomings in the quality of the work produced or deviations from the implementation schedule should be brought to the immediate attention of the Service Provider and the Contract Administrator so that they can be addressed at the earliest opportunity.

### **5.10 Scheduling and Holding Meetings at Project Site**

For most contracts, meetings and particular actions will need to occur at specific times throughout the life of the contract. It is an important element of contract administration that a schedule of meetings for parties to the contract and stakeholders be established in advance, giving the time, place and purpose of the meeting. The schedule should also list any planned reviews or other key actions.

Minutes of meetings should be recorded and circulated as required.

### **5.11 Management of Securities and Insurance**

The Contract Administrator must not only ensure safe custody of securities and insurance policies but must also track dates for release of the securities and insurance policies.

## 6.0 MANAGING CONTRACT MODIFICATIONS/VARIATIONS

### 6.1 Introduction

A modification also called variation is an amendment to a contract that changes the original terms or conditions of the contract. The modification may change an item in the contract or add a new item. The general conditions in each standard form of contract define what constitutes a modification/variation in that particular standard form. The ability to vary the contract should be directed or controlled by the Procurement Entity and should only occur in defined circumstances. It is accepted practice for the modification/variation mechanism to provide for variations to be agreed between the Procurement Entity and the Service Provider in writing through a formal amendment of the contract.

### 6.2 Conditions of Contract

GCC clause 14.1 in the General Conditions of Contract for technical services states that:

*‘Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written Contract between the Parties and shall not be effective until the consent of the appropriate Procurement Entity has been obtained.’*

### 6.3 Areas of Contract Modifications/Variations

The changes that require contract modification/variations in technical services include changes in the:

- Scope or implementation arrangements;
- Experts performing the services;
- Experts’ remuneration;
- Activity Schedule;
- Performance Specifications;
- Expenses, including the addition of new expenses;
- Start or completion dates; and
- Contact details or remittance instructions for payments.

Changes in the scope, the implementation arrangements, the experts, Activity Schedule, Performance Specifications or the completion date may or may not have cost implications. Contract modifications/variations without cost implications include changes in the:

- Payment Schedule
- Service Provider’s contact details or payment remittance instructions

When a Service Provider asks for a change in the payment remittance instructions in its contract, the Procurement Entity must make sure that:

- a new bank account is in the Service Provider’s name; if the Service Provider is an individual, the account may also be in his/her firm’s name; and
- the signature on the request is the same as the signature on the contract.

When a Service Provider firm requests a change of its authorized representative, it should support the request with a board resolution, power of attorney or similar document.

## **6.4 Types of Modification/Variation**

A modification/variation can be categorized as one of the following:

- Unavoidable Variation;
- Variation for the Convenience of the Employer; Or
- Variation for the Convenience of the Service Provider.

### ***Unavoidable variations***

Unavoidable variations are necessary in order to minimize adverse effects due to unexpected events or circumstances. They may be required to avoid health, safety or security problems. They do not result in a change to the scope of the work.

Examples of unavoidable variations are:

- a variation to minimize the increase in cost or other adverse impact of a latent condition (for example, hazardous materials or existing services); or
- a variation to overcome a fault (for example an error, ambiguity or inconsistency other than an omission or lack of completeness which may be the responsibility of the Service Provider) in the Employer's design or documentation.

A failure to give an instruction in the above circumstances may prevent the contract from being completed and may therefore be a breach of contract by the Procurement Entity. The Employer must be made aware of the consequences of failing to respond promptly to situations generating unavoidable variations. If an instruction is not given promptly in response to the circumstances giving rise to the necessity for the variation, additional extra costs will often be incurred, for example for delays or rework.

### ***Variations for the Convenience of the Employer***

Variations for the convenience of the Employer are variations requested due to a change in the Employer's requirements. They are not unavoidable variations in that it is possible to complete the Contract without making the changes requested.

Variations for the convenience of the Employer will change the scope of the work and almost always increase the cost of the work. Even variations that appear to reduce the scope may increase the cost. This is because variations are valued by adding the cost of the extra work, plus a margin, and subtracting the contractual value of the work taken out of the Contract. The actual cost of the added work can often be greater than the contractual value of the work taken out of the Contract. There may also be associated costs for rework, delays and disruption.

Variations for the convenience of the Employer cannot be instructed unless adequate funds are available and have been approved. The funds must be sufficient to cover all costs associated with the variation, including all the Employer's costs and associated fees and charges.

### ***Variations for the Convenience of the Service Provider***

Variations for the convenience of the Service Provider are those that are requested by the Service Provider. They are not unavoidable variations.

There is no obligation on the Employer to agree to a variation for the convenience of the

Service Provider. However, it may be beneficial to the project. When a request is made, it should be considered if only to maintain good contractual relationships. The Service Provider should be required to provide sufficient detail to permit proper evaluation.

Variations for the convenience of the Service Provider are not to be instructed until the full impacts have been agreed and the Service Provider has taken responsibility for ensuring there are no adverse impacts on the rest of the work.

## **6.5 Contract Variations Checklist**

Key issues to consider in managing contract variations include:

- following the procedures required by the contract;
- assessing the reasons for the proposed variation and whether these may indicate an emerging or actual performance problem;
- assessing the impact of the proposed variation on the contract deliverables, particularly whether the variation or the work it represents is actually required and whether it was part of the original contract deliverables;
- determining the effect the proposed amendment will have on the contract price;
- considering the authority for making the variation, and obtaining and documenting the required approvals;
- instructing a variation should only be done by the Procurement Entity;
- properly documenting the details of the variation and its impact; and
- meeting any reporting requirements, such as updating the entity's contract register.

## 7.0 PAYMENTS

### 7.1 Introduction

A Technical Service contract requires the Service Provider to perform specific tasks under the Activity Schedule and Performance Specifications to meet the standards specified in the contract. In return the Employer or Procurement Entity has an obligation to pay the Service Provider for the services provided within a specified period of time.

Payment must be effected promptly in accordance with the terms and conditions of the contract since late payment entitles the Service Provider to claim interest charges.

Two modes of payment are discussed here. The first is the traditional method of reviewing invoices for payment and the second is the new electronic system of payment in the public service called GIFMIS.

### 7.2 Terms and Conditions of Payment

The General Conditions of Contract (GCC) clause 39.1 states the terms and conditions of payment as “Payments will be made to the Service Provider according to the payment schedule stated in the SCC. Unless otherwise stated in the SCC, advance payment shall be made against the provision by the Service Provider of a bank guarantee or insurance bond for the same amount, and shall be valid for the period stated in the SCC. Any other payment shall be made after the conditions listed in the SCC for such payment have been met, and the Service Provider has submitted an invoice to the Employer specifying the amount due.”

Accordingly, the Special Conditions of Contract (SCC) Clause 39.1 specify the following payment schedule:

- Advance for Mobilization, Materials and Supplies:  
\_\_\_\_\_ percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same.
- Progress payments in accordance with the milestones established as follows, subject to certification by the Employer, that the Services have been rendered satisfactorily, pursuant to the performance indicators:

\_\_\_\_\_ (*indicate milestone and/or percentage*) \_\_\_\_\_

\_\_\_\_\_ (*indicate milestone and/or percentage*), and

\_\_\_\_\_ (*indicate milestone and/or percentage*) \_\_\_\_\_

Shall the certification not be provided, or refused in writing by the Employer within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released

at such date.

- The amortization of the Advance mentioned above shall commence when the progress payments have reached twenty-five percent (25%) of the contract price and be completed when the progress payments have reached 75%.
- The Bank Guarantee or Insurance Bond shall be released when the total payments reach seventy-five percent (75%) of the Lump-sum amount.

### **7.3 Review and Approval of Payment Applications**

The following aspects are important in the process of verification of payment applications:

- i. Well established mechanism for the verification and approval of payment documents – internal audit, four eyes principle etc.
- ii. Verification of professional rates, actual time spent (for remuneration and per diems), unit prices and quantities (for reimbursable expenditures);
- iii. Verification of supporting documents (invoices; bills of lading; insurance policies; delivery protocols; operational acceptance certificates; etc.);
- iv. Ensure that the appropriate recovery of the advance payment has been deducted from the payment;
- v. Check if the requested amounts have not been already paid;
- vi. Verification of invoices (correct name, address, identification information and bank account of the payee);
- vii. Check if the payee's information in the invoice is the same as in the contract and previous payments;
- viii. Check if the payment request fits the payment schedule/milestones in the contract;
- ix. Availability of funds and applicable payment method (payment from Special Account, Direct Payment etc.).

#### **7.3.1 Invoices for Services**

Invoices for Services normally contain the following details:

- The name and address of the Invoicing party (the Service Provider);
- The Service Provider's Company registration reference and tax registration reference;
- The name and address of Procurement Entity;
- The Service Provider's and Procurement Entity's contract reference number;
- A unique Invoice number and invoice date;
- A description of the invoice items; and
- The details of the stage payment claimed or the unit costs and quantity relating to the items invoiced for with the extended cost;

The invoice will, depending on the scope of the contract, be for the provision of the contracted services, such as stage payments that are permitted under the contract (usually a Lump Sum Contract);

The invoice should reflect the payment terms of the contract and the totals and cumulative total should not exceed the contract total.

### 7.3.2 Procedure for Invoices-Delivery of Payment Documentation

The contract will stipulate the terms of payment, the unit and total costs agreed and documentation that is required to support the invoice that the Service Provider is required to forward for payment in respect of services received.

### 7.3.3 Receipt of Invoices

All correspondence received by the Procurement Entity should be stamped on arrival with the date and preferably the time of receipt. This is particularly important with invoices as the date of receipt determines the latest date of payment. All invoices and any form of payment requests received by the Procurement Entity should initially be forwarded to the Finance/Accounts Department. The Finance/Accounts Department of the Procurement Entity will record receipt and pass all invoices in respect of procurement to the Contract Administrator to certify to pay the invoices.

### 7.3.4 Interest on Delayed Payment

GCC clause 40.1 states that if the Employer has delayed payments beyond twenty-eight (28) days after the due date stated in the SCC, interest shall be paid to the Service Provider for each day of delay at the rate stated in the SCC.

The period for the application of this provision is from the date that the payment should have been paid to the date of raising the invoice for Delayed Payment.

### 7.3.5 Approval of Invoices

The Contract Administrator will review the Invoice(s) received and verify the accuracy and eligibility of the invoices against the contract and if payment is required to be made to the Service Provider, **certify** the payment of the invoice in whole or in part by the Ministry of Finance.

- The purpose of invoice **certification** is to confirm that:
  - the invoice is correct in accordance with the contract and that there is no contractual reason to prevent timely and prompt payment of the invoice to the Service Provider.
- The scope and method of invoice certification will include the following to ensure:
  - the correct contract milestone has been reached and have been applied to the invoice or the correct fees and reimbursables are correct and permissible according to the contract;
  - the correct contract unit prices have been applied to the invoice for services provided
  - the correct extension of actual quantities supplied and correct contract unit prices have been applied to the invoice;
  - the line item totals have been correctly totalled;
  - the correct percentage has been applied to the value of the invoice. (In cases where stage payment terms of the contract have been agreed (i.e. 10% advance

payment, a 80% against provision of services and 10% against acceptance of the Deliverables), then the correct percentage must be applied to the invoice for the milestone that is claimed for); and

- the invoice is in all other respects correct and accurate and in accordance with the contract.

**Certification** of an invoice by the Contract Administrator means therefore that the invoice is correct, accurate and eligible for payment, and is due for payment in accordance with the terms of the contract.

An invoice that has been certified by the Contract Administrator is passed back to the Finance and Accounts Department to process payment to the Service Provider by the due date annotated by the Contract Administrator. The Contract Administrator will normally pass the certified invoice to the Finance/Accounts Department through the Procurement Unit.

### **7.3.6 Errors in Invoices**

During the process of certifying an invoice, errors may be revealed and these may be due to:

- the incorrect amounts/sums or quantities being invoiced for,
- the incorrect application of unit prices;
- calculation errors in the invoice;
- incorrect payment term percentage applied to the value of the services supplied.
- payment claimed for a contract milestone not reached or verified.

The Contract Administrator will need to contact the Service Provider in writing to clarify the errors. It is important that this be done in writing by the Contract Administrator so that there is an evidence for an audit trail.

### **7.3.7 Deductions from Invoices**

#### **7.3.7.1 Types of Deductions**

Deductions can be made from the costs charged by Service Provider in their invoices provided that the Contract Administrator thinks that there is justification and there is confidence that this is the correct course of action. Clearly deductions can only be made from invoices where payment is being made directly to the Service Provider and the Contract Administrator is initiating the payments. Deductions can range from:

- costs being charged in the invoice which were not agreed in the contract;
- costs being charged in the invoice at rates not agreed in the contract;
- arithmetic errors in the extension or summation of prices in the Invoice;
- the incorrect percentage applied to the invoice (if applicable to the contract).

### **7.3.8 Assessment of Deduction Amounts**

The assessment of the amounts to be deducted need to be accurately and clearly assessed and above all else in accordance with the contract. The amounts should be calculated by the Contract Administrator and should have the agreement of the Finance/Accounts Department and the Service Provider's views sought.

Once the Invoice is confirmed as being within the total contract value the Invoice can be certified for payment.

- Upon satisfactory verification of the invoice and upon confirmation that it is in all other respects in accordance with the contract, the Contract Administrator shall certify the invoice for payment.
- Upon certification of the invoice by the Contract Administrator the certified invoice should be passed to the Finance/Accounts Department of the Procurement Entity to process for payment to the Consultant by the payment due date annotated in the invoice by the Contract Administrator.
- Where an invoice has needed correction, the corrections shall be made to the invoice and certify specifically on the basis of the revised and corrected amount and passed to the Finance/Accounts Department accompanied by copies of the correspondence with the Service Provider agreeing the corrections and amendments made to the invoice.
- Where an invoice is in dispute and both the Procurement Entity and the Service Provider are unable to agree on a correction or resolution to the dispute, the Contract Administrator should proceed to certify the invoice less the value of the disputed items. Only disputed amounts should be withheld and the remainder of the invoice paid in accordance with the contract. It would be unreasonable to withhold payment on any invoice where only a portion is in dispute.

### **7.3.9 Processing of Invoices to payment**

Upon receipt of an invoice and supporting documentation that has been certified for payment by the Contract Administrator, the Finance/Accounts Department will process payment in accordance with the prescribed payment procedures. The Contract Administrator should follow up to ensure that payment is not delayed beyond the payment period prescribed in the contract.

## **7.4 Price Adjustment**

Unless the SCC (**Clause 41.1**) provides for the price adjustment of the remuneration rates, said remuneration shall be fixed for the duration of the Contract.

If the Contract has duration of more than 12 months, a price adjustment provision on the remuneration for foreign and/or local inflation shall, normally, be included in the contract.

## **7.5 The GIFMIS Payment System**

### **7.5.1 Introduction**

It is Government decision to deploy GIFMIS for the management of all public funds (Consolidated Funds(CF), Internally-Generated Funds(IGF), Statutory Funds(SF)and Donor Funds(DF)) across MDAs and MMDAs in the country, as part of the broader PFM reforms programme. The use of GIFMIS for processing financial transactions at MDAs and MMDAs started in 2012. It is a legal requirement to use GIFMIS for processing public financial transactions under section 25(6) of the new PFM Act, 2016 (Act 921). The objective is to

improve efficiency, comprehensiveness and transparency in Public Financial Management through the GIFMIS platform (Objective II of the PFM Strategy, 2015- 2018).

GIFMIS is jointly funded by four development partners- the (i). World Bank (ii). DFID of UK (iii). European Commission-EU (iv). Danish International Development Agency-DANIDA.

### **Implementation of GIFMIS and Government Directive**

As of April, 2014, the GIFMIS System of budgeting and payment was been piloted in 33 MDAs and 10 Regional Treasuries. The implementation would be extended to cover all MDAs. In December, 2013, the Government of Ghana issued a Public Announcement on the GIFMIS System, which read as follows:

*“The Ministry of Finance has observed with concern the indiscriminate award of contract by Ministries, Departments and Agencies without due regard to their budgetary allocation.*

*With effect from 1<sup>st</sup> January, 2014, the Ministry is determined to safeguard the integrity of the budget by ensuring that all contract awards are informed by the budgetary allocation and cash ceiling.*

*Thus, beginning from January, 2014, the general public is being informed that this Ministry will recognize contracts as valid if only they are duly authorized by PURCHASE ORDER(PO)generated from the GIFMIS SYSTEM. (Please refer to paragraph 937 of 2014 Budget Statement and Economic Policy.)*

*By this announcement the general public especially contractors and suppliers should take note and ensure their contracts follow the due process to be assured of prompt payment”.*

From the above announcement, it can be concluded that procurement planning, budget approval, purchase order/contract award and contract administration (in terms of payments and reporting) must all be linked to the GIFMIS platform.

It means that if the particulars of a Contractor, Supplier, Consultant or any other identified procurement service provider are not linked to the GIFMIS Platform from the time of contract award and subsequent approval on GIFMIS, the service provider will not be recognized for payment during contract administration.

### **What is PFM System?**

Public Financial Management (PFM) System refers to a framework of three Ps...

- Policies (including rules, regulations, procedures),
- Processes & technology
- People

...put together in a coordinated fashion to ensure effective and efficient use of public funds to meet the needs of a Nation (M.K. Adadey, 2014)

## What Is GIFMIS?

The Ghana Integrated Financial Management Information System (GIFMIS) is an **integrated computerized financial management system** used in:

- Budget preparation
- Budget Execution
- Accounting and Financial Reporting
- Cash Management.
- Assets management
- Human resource and payroll management
- Among others

## PFM Definition of GIFMIS (PFM Act 2016, (Act921) Section102)

“Ghana Integrated Financial Management Information System” means the electronic platform used by the Government to

- a. **manage commitments made against appropriation,**
- b. **process payment**
- c. **record revenue and expenditure transactions**
- d. **produce monthly, quarterly and annual financial reports**

## Aims of GIFMIS

To establish an **INTEGRATED ICT-based PFM Information Systems** in Ghana at the MDAs located at National, Regional and District levels and MMDAs to improve efficiency in public financial management including Consolidated Fund, IGF, Statutory Funds and Donor Funds.

## Why GIFMIS?

- Lack of timely, accurate and current information on budgetary allocations, commitments and actual revenue and expenditures
- Publish Annual Financial Reporting and reduce delays in the payment processing
- Poor feedback mechanism for assessing Budgetary Performance
- Lack of uniform chart of accounts (COA) which make the comparison of the performance of various budgets difficult.
- Strengthen Internal Controls and Auditing Capabilities.
- Modernize the Technical Infrastructure
- Interface Data from Existing Data Stores
- Empower Local Government Units
- Enhance and Modernize Revenue Collection Processes
- Performance
- Lack of uniform chart of accounts (COA) which make the comparison of the performance of various budgets difficult.
- Strengthen Internal Controls and Auditing Capabilities

## Expected Outcome of GIFMIS

With the introduction of GIFMIS we expect to achieve the following:

- Improved budgetary, financial management and reporting processes
- Provide accurate, timely and reliable financial information to Central Government and Decentralized Institutions and Organizations
- Uniformity in accounting and reporting with the introduction of a common Chart of Account and Database.
- Improvement in accountability, control, monitoring and auditing of Governmental finances.
- Ensure that, Ministries, Department and Agencies (MDA's/MMDA's) spend within their budgetary allocations

### **GIFMIS Financial Modules**

- 1) **Purchasing** - for Purchase Requisition, PO, SRA
- 2) **Accounts Payable** - for preparing PVs, accounting (i.e Dr & Cr ) and tracking liabilities.
- 3) **Cash Management**- for making Payments, Bank Reconciliation, cash forecasting, etc.
- 4) **Accounts Receivable**- for recording & tracking of revenues
- 5) **Fixed Assets Module**- for managing fixed assets register through recording, tracking and accounting for fixed assets
- 6) **General Ledger**- repository of all accounts which holds the budget and facilitates financial reporting.

### **Key PFM Problems Being Addressed By GIFMIS**

1. Lack of interface/integration of various PFM Systems
2. Inadequate budgetary controls over public expenditure
3. Lack of transparency in budget execution
4. Poor record keeping on public financial transactions
5. Undue delays in processing transactions due to cumbersome manual processes
6. Lack of reliable data for effective fiscal planning due to weak accounting and fiscal reporting system
7. Delays in financial reporting, especially at the National level

### **Key Users of GIFMIS**

1. Vote controllers
2. Spending Officers
3. Budget Officers
4. Accountants
5. Procurement officers
6. Store officers
7. Treasury officers
8. Administrators and HR Managers
9. Internal Auditors
10. External auditors

### **7.5.2 GIFMIS Budget Reforms At Ministry of Finance (MOF)**

The key budget reform initiatives under the GIFMIS include:

1. Switch from Activity Based Budgeting (ABB) to Program- Based- Budgeting (PBB)
  - To directly link planned expenditures to clearly determined results
2. Installation of a new budget software
  - To seamlessly integrate the Budget Preparation software with the Financial Accounting System

#### **Budget Preparation**

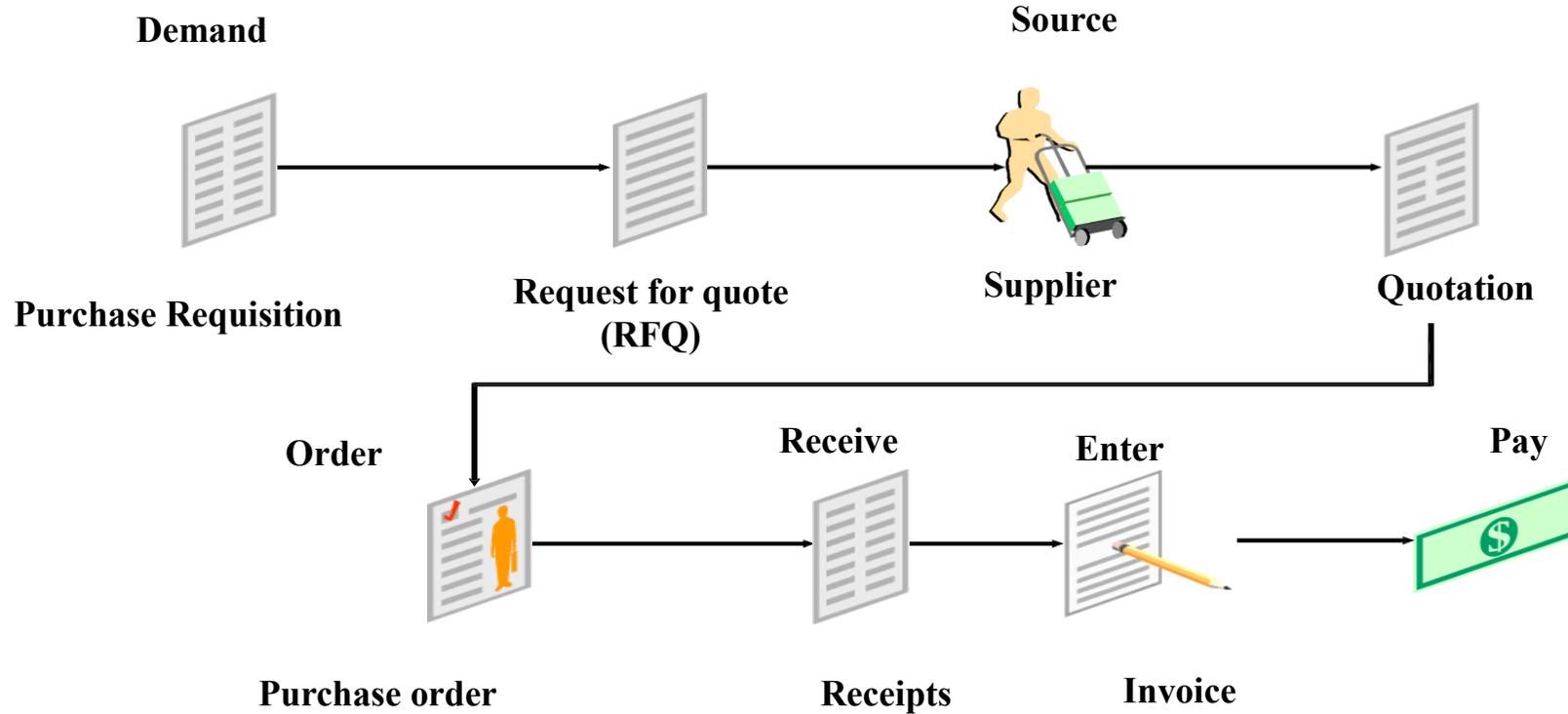
The budget preparation steps include:

1. Budget circular and instructions issued by MoF to all MDAs/MMDAs (FAR 152 & 153)
2. MDAs/MMDAs prepare and submit their budget proposals/estimates to MoF (FAR 156)
3. MoF holds budget hearing with MDAs/MMDAs (FAR 161)
4. MoF consolidates MDAs/MMDAs budgets into a National Budget Estimates and submits/presents it to Parliament for approval
5. Parliament debates the Budget and approves it for execution

### **7.5.3 GIFMIS Procure To Pay Process (P2P)**

The flow process of the GIFMIS Procure To Pay Process (P2P) is illustrated in a graphical form **FIG 3** below:

Figure 3: Procure To Pay Process



## Summary of GIFMIS Business Processes (P2P)

The Standard Processes are:

1. The approved Budget (by Parliament or local Assembly) for the year is first loaded and activated on the GIFMIS at the beginning of each year.
2. Requests are made on GIFMIS by end-users for release of Budget.
3. Budgets are released through Warrants that are issued on the GIFMIS
  - NB: The Budget is controlled by the issuance of warrants. Expenditure cannot be processed on GIFMIS without budget.
4. When warrants are issued on the GIFMIS, users (at MDA/MMDAs) are then able to process expenditure on the system.

The expenditure processes include:

- Purchase Requisition (for expenditure initiation)
  - Purchase Order (when supplier is selected)
  - Stores Receive Advice (when goods/services are taken on charge)
  - Payment Voucher/Invoice (to pay for the transaction)
5. Run Cash requirement report to establish total bills due for payment
  6. Run cash pooling report to establish total cash available on the bank accounts, as set-up on the GIFMIS.

This is not used at the moment due to some few issues like ABR that needs to be resolved.
  7. Effect payments on the system
    - Electronic Funds Transfer for 3rd party's transactions
    - System Cheques for moneys required for internal payments

### 7.5.4 GIFMIS Detailed Business Processes

#### Step-by-Step Business Processes (P2P)-For Procurable Items (T &T etc.)

1. User Department **Submit a Memo** through their head **to the Chief Director (CD)** for approval (Manual)
2. Upon approval of the Memo, **Warrant is prepared and approved on the GIFMIS**. For Goods and Services warrants will now be done in bulk. No more specific warrants per Memo. The release for May was done on GIFMIS successfully.
3. Once the Warrant is approved a **Requisition is then booked on GIFMIS** by the User Department.
4. **Route the Requisition through an approval hierarchy for approval** by the Spending Officer based on the limit for approval

5. **Select Supplier** (manual) – Tendering Process.
6. Once a supplier is selected, the Procurement Department **prepare PO**
7. The **PO is routed for Approval on GIFMIS** once its approved budget is encumbered.
8. **Print PO on GIFMIS**
9. **Give a copy of printed PO to the supplier** (manual)
10. **Supplier delivery** (manual)
11. **Goods inspected and taken on charge** (manual) by Internal Auditors and Stores.
12. **Enter results/details on the system** (i.e. create SRA). Stores will enter the results to be delivered by Internal Auditor
13. **Collect and book invoice on the system**
14. **Match invoice to SRA/PO**
15. **Invoice Approval**
16. **Payment for the transaction**

### **Expenditure Process (P2P)**

#### Type of Purchase Orders on GIFMIS

- a. Standard Purchase Order
- b. Contract Purchase Order
- c. Planned Purchase Order
- d. Blanket Agreement

**1. Standard Purchase Orders:** You generally create standard purchase orders for one-time purchase of various items. You create standard purchase orders when you know the details of the goods or services you require, estimated costs, quantities, delivery schedules, and accounting distributions. If you use encumbrance accounting, the purchase order may be encumbered since the required information is known.

**2. Contract Purchase Orders:** You create contract purchase agreements with your suppliers to agree on specific terms and conditions without indicating the goods and services that you will be purchasing. You can later issue standard purchase orders referencing your contracts, and you can encumber these purchase orders if you use encumbrance accounting.

### **3. Planned Purchase Order**

- a) A planned purchase order is a long-term agreement committing to buy items or services from a single source. You must specify tentative delivery schedules and all details for goods or services that you want to buy, including charge account, quantities, and estimated cost.
- b) You can issue scheduled releases against a planned purchase order to place the actual orders. **If you use encumbrance accounting, you can use the planned purchase order to reserve funds for long term agreements.**  
You can also change the accounting distributions on each release and the system will reverse the encumbrance for the planned purchase order and create a new encumbrance for the release.

#### **4. Blanket Purchase Agreements**

- a. You create blanket purchase agreements when you know the detail of the goods or services you plan to buy from a specific supplier in a period, but you do not yet know the detail of your delivery schedules. You can use blanket purchase agreements to specify negotiated prices for your items before actually purchasing them.  
Blanket purchase agreements can be created for a single organization or to be shared by different business units of your organization.
- b. You can issue a blanket release against a blanket purchase agreement to place the actual order as long as the release is within the blanket agreement effectivity dates). If you use encumbrance accounting, you can encumber each release.

#### **Preparation of Store Receipt Advice (SRA) on GIFMIS**

- Receive: -Stores Keeper Receives.
- Inspection: - Goods and Services are inspected physically by stores and internal auditors and recorded on GIFMIS by storekeeper
- Delivery: -This is done by Internal Auditors to acknowledge the inspection results captured.

#### **Setting up of Suppliers**

Supplier details to be submitted on Company Letter Head to the MDAs/MMDAs to be forwarded to the GIFMIS Secretariat for setup, are as follows:

##### **Company details**

1. Supplier Name (Company Name)
2. Tax Identification Number (TIN) – Attach Certificate of Registration
3. VAT Registration Number ( for VAT registered companies)
4. Complete Address (Including P.O. Box, City/Town, Country)
5. Telephone Numbers
6. E-mail Address

**Supplier Bank Details:**

1. Bank Name
2. Branch Number
3. Account Number
4. Account Name

**NB.**

1. Without Certificate of Registration suppliers will not be registered.
2. Going forward TIN numbers will be verified via a portal from GRA before setting them up.

**Definition and Scope of Fixed Assets for MDAs/MMDAs**

Fixed assets are those assets with a long life (a life that generally extends beyond the fiscal year of acquisition) held by an MDA/MMDA for either generating revenue or providing services and are not primarily held for resale or for conversion into cash. Any expenditure on an asset with these qualities therefore qualifies as a fixed asset

**The GIFMIS Fixed Assets Module**

- This module is useful for managing and tracking MDAs and GoG Fixed Assets.
- It provides a comprehensive database on the location, condition, movement and value of Fixed Assets belonging to respective MDAs.
- It will also help in assigning responsibilities for protection and care and in addition serve as a Fixed Assets Register to determine the Ownership, Cost, Value, Existence and Condition of Fixed Assets in the MDAs.

**Implementation Strategy**

- Categorization of Fixed Assets in 3 Categories
  - Main (Transport Equipment)

- Major (Motor Vehicles)
- Minor (Salon Cars)
- Mapping of Fixed Assets Categories to Natural Accounts which are used to prepare Appropriation Budget.
  
- FA has been deployed to the following MDAs  
**CAGD, MOF, MOH, MWRWH, MTR**

### **7.5.5 GIFMIS Implementation Status**

#### **1. Systems Set-ups**

Hardware and software have been procured, installed and operational for:

- Budget component
- Financial Accounting(FA) component
- HR Management component
- Payroll component

Additional hardware and software are being installed for enhancement

#### **2. System Rollout**

The Financial Accounting Modules (Oracle EBS) have been rolled-out as follows:

- All MDAs subsisting on consolidated fund resources since 2012
- 250 national Spending Units (SUs) covered • 350 Regional SUs covered
- 7 MMDAs out 216
- 49 IGF Institutions out of 59 are live as at end of April, 2016
- Fixed Assets module at 5 headquarters MDAs
- The Budget Modules was rolled-out to all MDAs since 2014
- HRMIS Modules rolled-out to 3 MDAs (PSC, GSS, GFS) as at Feb. 2016.
- Payroll module has been operational since the 1990s

#### **3. System Maintenance**

- Business Continuity strategy was developed
- Disaster recovery site operational and being upgraded
- Tools have been installed for system security monitoring, service desk, messaging and collaboration
- Capacity building for GoG staff is on-going for enhanced system and user support

### **Next Steps**

1. Bringing on board other public funds
  - IGFs
  - Donor funds
  - Statutory funds
2. Extend financial modules to the remaining 209 MMDAs
3. Extend PBB and budget module to all MMDAs
4. Extend HRMIS module to all MDAs.
5. Complete interface with all key PFM Systems under the new PFM Strategy
6. Complete implementation of fixed assets module.

### **Some Challenges**

- Inadequate ICT infrastructure in the public sector of Ghana, especially Network connectivity. NITA must be supported for this.
- Relatively low computer literacy in the public sector
- Change management- expectation by end-users that the system should support old ways instead of current best practices.
- People having the Mentality that the system has failed before and will still fail when enough progress has been made.

## 8.0 CLAIMS & SETTLEMENT OF DISPUTES

### 8.1 Introduction

Claims and disputes are issues that often happen in contract administration. Although the two are different, claims, when unresolved can escalate into disputes. Both of them have to be resolved without undue delay. Different methods and techniques of dispute settlement are presented.

### 8.2 Claims

A ‘Claim’ is a request from either party for entitlement under the contract that is not being fulfilled. Claims might result from:

- unforeseen costs
- disputes over the interpretation of contract clauses
- disputes over what is included within the contract price
- breaches of contract.
- adjustment of contract performance duration.

Any claim should include:

- full explanation of the problem as well as the causes of the problem
- the contract clause under which the claim is being submitted.

Claims may be genuine and will have to be assessed for their merits. However, disputes are to be avoided since these interfere with the workings of a proper contractual relationship. Protracted disagreements over settlements of claims usually lead to disputes. In handling situations of claims or disputes, the Contract Administrator is well advised not to inject into the process any judgmental considerations related to the character of personnel whether those of the Service Provider or of his/her own team.

Contracts cannot be closed out until all claims are resolved.

### Lessons learned

It is good practice for the Procurement Entity, through the Contract Administrator, to complete lessons learned report. This allows the procurement entity to gather and use information to improve chances of success of future procurement actions

### 8.3 Disputes

A ‘dispute’ is formed under a contract when there is a disagreement about:

- Money due to either party;
- Time for performance;
- Performance standards;
- Interpretation of contract terms and conditions.

As a general rule, a disagreement becomes a dispute when it is not possible for the parties to resolve it without resort to a formal resolution mechanism. Generally, what a dispute is and when it is deemed to have occurred is defined in the contract, often in a dispute resolution clause.

A dispute is to be avoided if possible as any dispute arising either during the life of a contract or at its termination can be expensive and time consuming. It can add substantially to the cost of a contract as well as nullifying some or all of its perceived benefits or advantages. If there is dispute, a fast, efficiently and cost-effective dispute resolution procedure is essential.

Where a dispute arises, the Contract Administrator is to protect the Procurement Entity's interest and hence public interest in all cases.

## **8.4 Contract Provisions**

There are two clauses in the contract on the settlement of disputes. These are GCC Clause 46 and GCC Clause 47.

### ***GCC Clause 46.1- 46.2 Amicable Settlement***

This clause states: “The Parties shall seek to resolve any dispute amicably by mutual consultation. If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, **GCC Clause 47** shall apply”.

### ***GCC Clause 47-Dispute Resolution***

This clause provides that: “Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the **SCC**.”

## **8.5 Dispute Avoidance**

Given the expenses and disruption caused to any contract when a dispute arises, it is important to follow dispute avoidance techniques which are an aspect of good contract administration. All contract administration techniques should include monitoring for the early detection of such problems. In any contract, the Service Provider should be required to give early warning of the possibility of any dispute, and regular discussions between the Procurement Entity and the Service Provider should include a review of possible areas of conflict.

## **8.6 Contract Condition**

As early as possible (preferably at the Invitation to Tender stage) a clause should be included in the contract requiring both parties to adopt a suitable dispute resolution procedure which should include a reference to an appropriate appointing body if arbitrations are to be used or to an ADR procedure, or both. For many industries and professions, there are trade bodies or organizations

that are appropriate in the case of a specialized contract. It is advisable to take advice from legal counsel on the suitability of such clauses for a particular contract.

## **8.7 Dispute Management**

If a dispute arises, it is important to manage it actively and positively to encourage early and effective settlement. Unnecessary delay and inefficiency can lead to rapid escalation of costs and may impede or prevent the successful resolution of the dispute. Moreover, there are statutory, and often contractual, limitation periods for the issue of proceedings.

## **8.8 Dispute Resolution Procedures**

The four main categories of dispute resolution are:

- Negotiation;
- Alternative Dispute Resolution (ADR);
- Arbitration; and
- Litigation.

### **8.8.1 Negotiation**

Negotiating between the Procurement Entity and the Service Provider is the most common approach to resolving disagreements and disputes. Direct negotiation should always be used and all possible efforts made to reach an agreement before progressing to other dispute resolution procedures. At this stage of the procurement cycle, the intention of the negotiations is to reach a mutually acceptable solution, where both sides consider they have gained the best possible result in the circumstances. It is important that one party does not consider they have been unduly pressured to agree to a particular solution as a result of the negotiation, as this can lead to an escalation or reappearance of the dispute at a later stage.

At the early stages of a potential dispute it is generally preferable to attempt to resolve the matter by first discussing the issues with the Service Provider. These discussions may take place in the course of regular meetings between the parties or as separate discussions. Such an approach may mean that it is possible to resolve any disagreements and prevent a formal dispute arising.

When these informal arrangements do not result in a resolution of the issue, invoking the dispute resolution provisions of the contract will need to be considered. When this step is taken, careful preparation and planning needs to be taken, including determining the need to obtain specialist advice and assistance.

Irrespective of the approach adopted, negotiations should be undertaken by a person(s) who has the appropriate authority and skills and care needs to be exercised to ensure the outcome does not contravene any legal or policy requirements. It is also important that the details of all discussions and negotiations are recorded and a record maintained of all the agreements reached.

Techniques for initiating negotiated techniques to a dispute include:

- Discussing and negotiating the various elements of the disagreement, on a “without prejudice” basis

- Dividing the problems into separate elements, i.e. technical and financial to enable discussion of technical differences in isolation of financial implication;
- Seeking the assistance of independent experts to identify possible solutions that may be mutually satisfactory.

### **Advantages of Negotiation**

- It is free from any procedural formalities
- The costs of any third-party involvement are usually avoided (except in the case of an independent advisor)
- A solution acceptable to all parties may be achieved on an amicable basis

### **Disadvantages** may be that:

- it may not result in a settlement;
- the process of resolving a problem may continue over a long period, which
- may lead to acrimony between the parties, preventing effective communication.

## **8.8.2 Alternative Dispute Resolution (ADR) Procedures**

ADR procedures are an important approach to contract administration and should be specified in the contract terms and conditions. ADR clauses normally ensure the use of ADR before arbitration or litigation. However, ADR procedures can be used at any time by agreement of the parties. The various ADR procedures are:

- Mediation/conciliation;
- Adjudication; and
- Dispute Review Board/Dispute Advisor

### ***i). Mediation***

- It is a private voluntary dispute resolution mechanism in which a neutral mediator (an impartial third party) assists the parties in reaching a mutually acceptable solution to the dispute.
- It is a private voluntary dispute resolution in which a neutral mediator assists the parties in reaching a mutually acceptable solution to the dispute.
- Mediators have no authority to impose a judgment. They work with the parties jointly and in private sessions, assessing strengths and weaknesses of the parties' positions, areas of common ground, and the possibility of creative forward-looking solutions
- Mediations are conducted on a 'without prejudice' basis.
- Private meeting between the mediator and each party are confidential to that party, unless authority is given to the mediator for disclosure.
- If there is a settlement as a result of the mediation, it is normal practice for the parties to record the terms in writing. Parties may elect to have legal representation during mediation.

- About 90 per cent of cases that go to mediation/conciliation are settled. There are insignificant technical differences between mediation and conciliation-in practice, the name of the process is irrelevant provided all parties agree and understand the procedure they wish to use.

Mediation is usually regarded as a faster, less formal and less costly process than court proceedings or arbitration. There are a number of commercial organizations who maintain registers of mediators, and who can be approached to appoint a mediator for a dispute. The outcome, however, is not binding on the parties.

### *ii). Adjudication*

The Adjudicator is an expert in the subject matter of the contract proposed by the Procurement Entity and accepted by the Service Provider. If both parties cannot agree on the Adjudicator, then an appointing authority, which is usually a professional body perceived by both parties as an impartial mediator will select the Adjudicator. The Adjudicator will look into the matter of the dispute as the first mandatory step towards its resolution. His or her decision, although **not binding**, is usually respected since he or she is appointed and trusted by both contracting parties. However, should any of the parties disagree with the decision of the Adjudicator, then that party may take the matter to arbitration. The Adjudicator's expenses are usually shared equally by the contracting parties. The advantages are that it is an expedient and cost effective method of dispute resolution of the first resort.

### *Dispute Review Board/Dispute Advisor*

This is a more formalized version of mediation.

- A dispute Review Board is a group of experts appointed at the beginning of contract-before disputes arise-to develop cooperation between customer and contractor and to advise informally or adjudicate on controversial matters as they arise.
- It is intended for large complex contracts and is not suitable for small ones
- Dispute Advisors are independent experts appointed soon after award of contract to assist the parties to resolve disputes, claims and other differences promptly and equitably by early, non-binding procedures.

### *Advantages of ADR*

The advantages of using an ADR procedure include:

- Keeping costs down;
- A speedy resolution;
- Confidentiality, avoiding the publicity of a court hearing;
- The parties retaining control over the procedure and the outcome;
- The possibility of continuing satisfactory business relationships;
- Maintaining and improving communication between the parties
- Providing the possibility of a creative, forward-looking solution.

### **8.8.3 Arbitration**

Arbitration is a formal dispute resolution process governed by legislation in which two or more parties refer their dispute to an independent third person (the arbitrator) for determination. The aim of arbitration is to obtain a final and enforceable result without the costs, delays and formalities of litigation (i.e. court proceedings). Arbitration proceedings are private and can be held at a mutually convenient time. The actual proceedings are less complex than litigation and the arbitrator can be a person who is able to provide technical expertise relevant to the contract.

It is, nevertheless, an adversarial procedure with the possibility that neither party will be satisfied with the outcome nor it may be costly. Other possible drawbacks that should be considered before entering into arbitration include: the difficulty in selecting an agreed arbitrator; the expertise of the arbitrator for the particular case; uncertain appeal rights; and the lack of legal precedence.

#### ***Using Arbitration Procedures***

At the Invitation to Tender stage a decision is necessary on whether to put an arbitration agreement clause into the contract and, if so, what form it will take. The clause should contain a clear intention, binding the parties to refer any dispute to arbitration. Some standard forms of contract contain arbitration rules.

#### ***Appointment of Arbitrator***

When a dispute goes to arbitration, the arbitrator (or arbitrators) is appointed by agreement between the parties or, in the absence of agreement, by the appointing authority specified in the arbitration clause. If there is no agreement and no appointing authority able and willing to act, the appointment can be made by application to a court.

#### ***Rules of Arbitration***

After appointment, arbitrators are subject to any rules contained in the arbitration agreement and to statutory provisions. Within these restrictions, they can determine their own procedures and give any reasonable directions for the further conduct of the dispute resolution. Most major arbitrations eventually come to a hearing that is similar to a court hearing before a judge but which takes place in private. The arbitrator is bound by the same rules of evidence as a judge, unless the parties agree to relax them. An interim award may be made concerning any part of the disputes, with the final award being made at a later stage.

#### ***Jurisdiction of Arbitrator(s)***

The arbitration agreement and the authority and jurisdiction of the arbitrator(s) that derive from it are irrevocable by either party individually. Arbitration can only be terminated by agreement between the parties or by order of a court. The arbitrator or arbitrators can only withdraw by consent of both parties or with the permission of the court.

### ***Arbitrators' Fees and Awards***

Arbitrators can charge an agreed fee or, if no fee is agreed, a reasonable fee for their decision (called an "award"). They can order that their fees and expenses ("costs of the award") and the costs incurred by the parties ("cost of the reference") are payable by either or both of the parties in any proportion. When arbitrators have considered all the submissions and evidence, the award is prepared and published. Arbitrators are entitled to (and usually do) retain the award, and refuse to pass it to the parties until the appropriate fees and expenses have been paid. The final award must deal with the question of costs, even if only to say "no order as to costs"; and arbitrators have the power to assess their level. If arbitrators do not exercise this power, a court will assess the costs.

### ***Rights of Appeal***

Rights of appeal against arbitrator's decisions are very limited and can only be made on a question of law. Parties can, and often do, exclude the right of appeal from the arbitration agreement

### ***Arbitration in International Contract***

***Arbitration Bodies:*** The need to ensure that arbitration proceedings are quick and effective has led many countries and international organizations to sponsor institutions capable of administering arbitration proceedings. These include:

- The International Chamber of Commerce, Paris
- The London Court of International Arbitration;
- The American Arbitration Association;
- The Arbitration Institute of the Stockholm Chamber of Commerce.

Such bodies publish rules of arbitration and arbitration clauses for contracts, copies of which are available from the relevant body.

Recognizing the need for harmonization, the United Nations Commission on International Trade Law (UNCITRAL) has issued arbitration rules that are a set of generally accepted principles for conducting international arbitration. The rules constitute an ad hoc procedure, i.e. one that does not refer to any one institution for its administration

***Place of Arbitration:*** In international commercial disputes the parties should specify in the arbitration agreement the place where the proceedings are to take place and where the arbitration award is to be issued. When selecting a place, it must be one that guarantees that arbitration awards are enforceable in the countries where the parties have their normal place of business. The place of arbitration can also be an important factor in the costs of arbitration.

### ***Merits and Demerits of Arbitration***

#### **Merits**

- Carried out by experts
- Specifically organized
- Shorter time for decision

**Demerits**

- Selection of experts
- Expensive
- Enforceability of the decision

**8.8.4 Litigation**

Litigation is the act or process of contesting a lawsuit or seeking redress through the law courts. It can be an expensive and time-consuming procedure and is generally taken when other avenues of dispute resolution have not been successful or are not available. Other approaches to resolving disputes or Service Provider's defaults should therefore be considered prior to litigation. Appropriate legal and other professional advice should be obtained prior to considering and commencing litigation.

***Merits and Demerits of Court Action***

**Merits**

- Available to every body
- Free process

**Demerits**

- Slow and long process
- Judges lack technical expertise
- Possible bias in local court

## 9.0 TERMINATION OF CONTRACT

### 9.1 Introduction

At times, a decision is taken to terminate a contract prior to its conclusion and the completion of the provision of technical services. When a contract is terminated, the parties are relieved from further unperformed obligations in accordance with the agreed terms and conditions. This may be for various reasons, some (for example, political disturbances or natural disasters) of which are beyond the control of the Service Provider, the Procurement Entity, and others because of the failings of one party or the other. In some cases, termination is the optimal choice; in others, it is detrimental to the overall intent of the service provision, which is generally to support the implementation of an investment project. This implies a missed opportunity and a waste of the funds already expended on the technical services. For these reasons, termination should be avoided, if possible.

Termination may be initiated by any party. A contract may be terminated under distinct processes. GCC Clause 16 specifies conditions under which contract termination can be effected.

### 9.2 Contract conditions

The parties to the contract are bound by the terms and conditions of contract, namely GCC sub-clauses 16.1, 16.2 and 16.3

#### 9.2.1 Termination by the Employer (GCC clause 16.1)

This clause states that: “The Employer may terminate this Contract, by not less than thirty (30) days’ written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause:

- a) if the Service Providers do not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in writing or in electronic form that provides record of the content of communication;
- b) if the Service Provider become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Service Provider(s) are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Service Provider, in the judgment of the Employer, has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices in competing for or in executing the Contract.
- e) if the Service Provider does not maintain a Performance Security in accordance with Clause 27
- f) if the Service Provider has delayed the completion of the Services by the number of days for which the maximum amount of liquidated damages can be paid in accordance with **Clause 26.1** and the **SCC**”.

### **9.2.2 Termination by the Service Provider (GCC Clause 16.2)**

**This clause stipulates that:** “The Service Provider may terminate this Contract, by not less than thirty (30) days’ written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Clause:

- a) if the Employer fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 43 within forty- five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- b) if, as the result of Force Majeure, the Service Providers are unable to perform a material portion of the Services for a period of not less than sixty (60) days.”

### **9.2.3 Payment upon Termination (GCC clause 16.3)**

This clause provides that: “Upon termination of this Contract pursuant to sub-Clauses 16.1 or 16.2, the Employer shall make the following payments to the Service Provider:

- (a) remuneration pursuant to **Clause 35** for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d), (e), (f) of **Clause 16.1**, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.”

## **9.3 Critical Factors to Consider Prior To Contract Termination**

Critical factors to consider include the following:

- i. Has the Procurement Entity done everything within reason to assist the Service Provider remedying any default?
- ii. The provisions of the contract and applicable regulations.
- iii. The specific contractual failure(s) and the explanation provided for the failures.
- iv. The urgency of the need for the contracted services. The Procurement Entity may need to weigh the respective benefits and/or disadvantages of allowing a delinquent Service Provider to continue performance or re-engaging a new Service Provider. The availability of the services from other sources and the time required to obtain them (compared to the additional time the current Service Provider needs to complete the assignment).
- v. Availability of funds and/or resources to re-engage in the event such costs cannot be recovered from the delinquent Service Provider.

It is to be noted that in cases of termination, the Procurement Entity shall return to the Service Provider any securities, including insurance and unpaid claims.

## 10.0 CONTRACT RECORDS MANAGEMENT

### 10.1 Introduction

The Public Procurement Act, 2003(Act 663) as amended in Section 28, statutorily requires all procurement entities to keep records of procurement proceedings in a structured and systematic manner and in accordance with national and international standards. The annual procurement assessment conducted in the Procurement entities by the Public Procurement Authority (PPA) reveal challenges relating to the management of procurement and contract management documentation by most entities thus contravening the Public Procurement Act, 2003(Act 663) as amended. The observation has been that procurement and contract records management in most procurement entities usually involve disjointed processes which result in loss of vital procurement and contract information, thus undermining accountability, transparency and good corporate governance. Good records management is therefore essential for any corporate body to function effectively.

#### 10.1.1 What Is Records Management?

Records management involves designing and directing a programme for achieving economy and efficiency in the creation, use, maintenance, and disposal of records. This promotes efficiency through improved access to information.

#### 10.1.2 Importance of Records

An organization's ability to function effectively and give account of its actions will be undermined if sound records management principles are not applied. Procurement records play a significant role as evidence of purchases of goods and services. Unorganized or otherwise poorly managed records mean that an organization does not have ready access to authoritative information, to support sound decision making or delivery of programmes and services. This factor contributes to difficulties in retrieval and use of procurement records efficiently and therefore inability to carry out the audit process.

#### 10.1.3 Procurement and Contract Records

Procurement and contract records include all documents relevant to the pre-tendering, tendering and contract administration phases. Every event in the procurement process must be recorded and all records filed in such a manner that, if necessary the entire procurement and contract administration process can be reconstructed from these records. Procurement and contract records are also important for maintaining an audit trail of the requirement from the initial receipt of the procurement requisition up to the closing out of the contract.

The procurement entity is responsible for maintaining the procurement and contract records of each requirement. Although all records are maintained by the procurement entity, the entity department or unit responsible for contract administration should also retain working copies of relevant documents, while sending pertinent documents to the procurement entity and other entities (such as finance) as determined in the contract administration plan.

Depending on national and organizational policies, the public should have controlled access to these files. However, the confidentiality of proprietary information of suppliers, contractors, consultants and other service providers must be safeguarded.

A Procurement and Contract Records system promotes the efficient and systematic control of the creation, receipt, maintenance, use and disposal of public procurement records.

#### **10.1.4 Benefits of Good Records Management**

Sound records management is a critical component for good governance, effective and efficient administration, transparency, accountability and delivery of quality services to the citizens. Good recordkeeping practices contribute, in general, to the following:

- Creation and maintenance of accurate and reliable information
- Easy accessibility to information
- Transparency and accountability
- Procurement Units and Procuring Entities performing their functions efficiently
- Availability of authentic, reliable and tangible records to fight corruption; and
- Resources being matched to objectives.

#### **10.1.5 Principles of Good Records Management**

The guiding principle of records management is to ensure that information is available when and where it is needed, in an organized and efficient manner, and in a well-maintained environment. Organizations must ensure that their records are:

- **Authentic**  
It must be possible to prove that records are what they purport to be and who created them, by keeping a record of their management through time. Where information is later added to an existing document within a record, the added information must be signed and dated. With electronic records, changes and additions must be identifiable through audit trail.
- **Accurate**  
Records must accurately reflect the transactions that they document.
- **Accessible**  
Records must be readily available when needed.
- **Complete**  
Records must be sufficient in content, context and structure to reconstruct the relevant activities and transactions that they document.
- **Comprehensive**  
Records must document the complete range of an organization's business.

- **Compliant**  
Records must comply with any record keeping requirements resulting from legislation, audit rules and other relevant regulations.
- **Effective**  
Records must be maintained for specific purposes and the information contained in them must meet those purposes. Records will be identified and linked to the business process to which they are related.
- **Secure**  
Records must be securely maintained to prevent unauthorized access, alteration, damage or removal. They must be stored in a secure environment, the degree of security reflecting the sensitivity and importance of the contents. Where records are migrated across changes in technology, the evidence preserved must remain authentic and accurate.

### 10.1.6 Consequences of Failure to Maintain Adequate Procurement Records

Failure to effectively manage procurement records means:

- Decisions are taken on ad hoc basis without the benefit of records;
- Fraud cannot be proven and meaningful reporting and audits cannot be carried out;
- Government actions are not transparent;
- Citizens cannot protect or claim their rights;
- Citizens cannot make an informed contribution to the governance process; and
- A Procurement Entity's (PE's) or even a country's memory is impaired.

### 10.1.7 The Records Life Cycle

Records should be managed throughout their life. A record goes through a life cycle consisting of three phases: **active or current, semi-current and inactive or non-current phases.**

**Current or active records** are the open files that are in use for conducting the current business of the organization. Current records and documents are constantly in use and should therefore be maintained close to the users. They should be maintained and managed within a logical filing system that facilitates their access. Current records are usually maintained in records offices (or registries)

**Semi-current records** consist of the recently closed files. They are only infrequently used. They should be entered in a closed record register and systematically transferred and organized in a departmental records centre. The register acts as a retrieval tool.

#### **Non-current or inactive records**

These are documents that are hardly ever referred to for the conduct of business operations. Non-current records should be reviewed and appraised in order to make judgment on their further

retention. Those that are selected as valuable records should be preserved in a departmental records centre or with prior arrangements transferred to the National Archives for long term preservation as archival records. Note that procurement records must be kept for at least six (6) years from the date the contract started.

### **10.1.8 Opening a New File**

A file is a folder containing papers relating to a specific subject or activity. The following information must appear on the file cover:

- Name of the entity;
- File reference number;
- File title;
- A specific subject or activity
- Date on which the file was opened;
- Related files;
- Security classification - open or confidential.
- Disposal information.

The disposal information indicates what is to be done with the file when it is closed. On the “related files” space are indicated the titles and reference numbers of other files that are closely related with the file.

A file is opened when an existing one matures for closing and the next volume is opened, when a new subject or activity arises which cannot be accommodated in the existing files, or when an existing file subdivides into new subjects. A file should be opened after adequate consultation with the unit or officer responsible for records management. Consultation and care in file opening is necessary to avoid opening files when similar or the same files are in existence, and which leads to needless duplication of files.

This leads to uncertainty in filing of papers. The papers in the file should be neatly arranged in chronological order, and on a specific subject.

### **10.1.9 Filing of Papers**

Papers in the file should be filed in date order with the earliest ones at bottom and the latest documents at the top. The papers in the file will be folio numbered, that is serially numbered. This helps to maintain the order of the papers and facilitates early detection if the papers are removed or tampered with.

### **10.1.10 File Movement Controls**

The records office controls and monitors the movement and use of a file or a document within the department. The purpose of controlling and monitoring of file movement is:

- To monitor access to records by users

- 
- To ensure a particular matter is dealt with by the responsible officer
  - To ensure that the location of a file is known at all times
  - Files are returned promptly to the registry once they have been seen by the indicated officers
  - Files do not go missing; and
  - Officers do not overstay with files issued to them.

The principal file movement control tool is the file movement register, where the file name, reference number, name of the officer to whom the file is issued, and date of issue and return are recorded.

A file movement register should have the following format:

- Date out;
- File title;
- File reference number;
- To whom issued and signature;
- Date in; and
- Signature of officer receiving file in registry.

The file's return to the records office will be marked on the "date in" column. By regularly checking the column the registry officers will be able to tell cases where files are overdue for return and therefore to take necessary steps to have the files returned.

There should be an administrative guideline stipulating how long an officer should hold a file - usually no officer should possess a file for more than four days. Borrowed files should be promptly returned to the records office once an officer has completed consulting it.

The records staff must ensure that a requested file is promptly provided. Speedy provision of requested documents and files is one way of cultivating and maintaining confidence in the users of the registry services.

#### **10.1.11 Closing a File**

A file should be closed when it gets full, or when the fastener cannot take any more papers. The next volume will then be opened. A case file such as procurement action file can be closed once the procurement activity is concluded. A file should not be permitted to become too thick and unwieldy. The file closure date should be clearly indicated on the cover. Closed files should be entered in the closed files register and removed from among the current files for storage in the closed records room or centre.

Closed files should be reviewed after every six (6) years to determine whether they warrant further retention.

#### **10.1.12 Records Accommodation/Space**

Adequate accommodation or space is essential for the proper functioning of the records service.

### **10.1.13 Equipment**

The right equipment and materials for the maintenance and storage of records need to be provided. These will include

- File folders of the right quality;
- Good quality shelving including both secure file cabinets and mobile bulk filing units;
- Computers and related equipment;
- Relevant software programmes;
- Office furniture; and
- Boxes-archival boxes.

### **10.1.14 Records Personnel**

Deployment of the right people to be in charge of records is a key step in the management of records. Officers in charge of records should be people of integrity. Qualified and competent people should be deployed to manage the records of a Procurement Entity. They should be clearly assigned their duties in writing. Additionally, they should be given professional training.

## **10.2 Contract Administration File and Documentation**

In the execution of a contract, record keeping is a key function particularly with regard to documenting the progress and performance of the contract including contract variations. This is to ensure that the contract is implemented in accordance with the terms and conditions of the contract agreement.

A contract file or folder should be opened by the Contract Administrator and the contract should be carefully analyzed, taking note of the rights and obligations of each party. Any issues requiring clarification or change of the contract should be fully documented in this file.

Although practice may vary among organizations, the following documents normally are part of the contract administration file/folder:

#### ***Contract Management File/Folder***

- Bid Evaluation Report and Recommendation for Contract Award
- Notification of Contract Award
- Copy of Advance Payment Guarantee, if required.
- Copy of Performance Security or Performance Bond
- Copy of Signed Contract
- Contract Administration Plan,
- Minutes of Kick-off/Commencement Meeting
- Copies of Guarantees
- Payment Certificates and supporting documents

- Claims and Disputes
- Inspection certificates-*Goods only*
- Delivery Certificates- *Goods only*
- Copies of all Correspondence between Purchaser and Supplier- *Goods only*
- Minutes of all Site Meetings-*Works only*
- Contract Supervision Reports-*Works only*
- Copies of all Correspondence between Employer and Contractor- *Works only*
- Change Orders- *Works only*
- Completion certificates (“provisional” and “final” acceptance)- *Works only*
- Minutes of Inception Meeting and any other meetings- *Consultancy & Technical Services only*
- Copies of all Correspondence between Client and Consultant- *Consultancy only*
- Consultant Reports-Inception Report, Draft Report/Draft Final Report, Final Report, Overall Assignment Report, if requested-*Consultancy only*
- Copies of all correspondence between Employer and Service Provider-*Technical Services only*
- Copies of all Service Provider’s Reports - *Technical Services only*
- Pictures, Video Films
- Contract Performance Evaluation Report
- Contract Close out Report
- Electronic copies of all the above documents

### **10.2.1 Contracts Register**

A contracts register should be maintained that contains the following details:

- Contract name;
- Date of contract award;
- Contractor’s name;
- Account charged;
- Total cost; and
- Payment dates and completion dates.

### **10.2.2 Separate Contract Files**

It is good practice to maintain separate contract files for each assignment, where there are multiple assignments for a project or programme.

### **10.2.3 Contract Sub-files**

It is also recommended that for each assignment, separate sub-files can be opened, so that payment documents can be separated from correspondences as well as bulky deliverables. The contract identification numbers will remain the same but the sub-files will have their separate titles and volume numbers.

### **10.3 Automation of Records Management (Electronic Records Management)**

The records management principles and policies applied to paper records must also govern the management of electronic records. The paper-based records management system must be fully functional before attempting automation. It will defeat the objectives of automation if a dysfunctional and inefficient paper-based records keeping system is automated. Planning and proper analysis of the manual system must be done before computerization.

It has to be noted that electronic records management is the modern method of managing contract records. Every effort must therefore be made to go electronic because of the immense benefits to be gained.

#### **10.3.1 Benefits of Automation**

There is widespread reliance on computer and information technology for most activities in the public and private sector because of the demand for speedy access to information. There are immense benefits that arise as a result of computerization. These include:

- Speedy access and retrieval of information;
- Ability to manipulate data;
- Greater accuracy and consistency in performance of routine tasks;
- Great capacity for storage of information, which translates to huge space and equipment savings;
- Sharing and simultaneous access to information;
- Automatic updating of file classification scheme and indexes; and
- Controlling the movement of files.

#### **10.3.2 Records Management Functions That Can Be Automated**

The following areas of records management can be automated:

- Classification and listing of files;
- Correspondence;
- Preparation of file labels;
- Identification of records that are due for transfer to the Archives or disposal;
- Location and tracking file movements;
- Information about authorized users of records; and
- Production of management information reports.

#### **10.3.3 E-mail**

E-mails that are evidence of business transactions are official records and should be managed and kept for as long as is required for functional purposes.

E-mails that approve or authorize an action, contain guidance, advice or direction, relate to project activities or contain policy decisions should be managed as records and should be filed in a file plan.

### **10.3.4 Digitization (Imaging/Scanning)**

After the acquisition and installation of the records management software and hardware, it may be

necessary to migrate some or all the existing paper files and documents into the automated system. This can be achieved through the process of digitization. The two main objectives of digitizing paper records are access and preservation.

Digitization means conversion of information from analogue to digital media to facilitate preservation, and sharing by use of IT. A digital image can be edited, manipulated, emailed across the world, deleted, copied and inserted into other files including the **www** pages.

The other benefits of digitization include:

- Wide access and sharing of information;
- Preservation of the original while the digital surrogate is made available for consultation, and therefore reducing the possibility of further deterioration;
- Digital forms a backup;
- Ease of access and sharing of digital information; and
- Minimized storage requirements - digitized information takes much less storage space than information on paper.

The documents to be digitized must be analyzed to determine their suitability for scanning. The documents must be well organized and indexed. Priority for digitization should be accorded to documents or files that are heavily consulted and whose digitization will facilitate multiple and simultaneous access. Important documents and files in poor physical form and whose frequent use may lead to their further physical deterioration can also be a priority for digitization.

It is important to select the right scanner, and this will depend on the volume of materials to be scanned and the compatibility of the scanner with the existing hardware and software. The digitized images should be stored in an appropriate and secure media such as hard drives, optical disks and magnetic tapes.

A functional network will be necessary for staff to access the digitized images. The software used should be able to handle multiple simultaneous access and permit only authorized staff to access the digital images.

### **10.3.5 Challenges in the Management of Electronic Records**

Some of the challenges of managing electronic records include:

- Impermanence of the storage media and technological obsolescence. Electronic storage media is fragile and changes with time;
- Changes in technology means that records that were generated in computer seven years ago may not be accessible today. This calls for regular migrating of the records to new computer systems to ensure they remain accessible;
- Security and integrity of the information can be compromised through inadvertent or

- intentional alterations and unauthorized deletions. An electronic file can easily be altered without leaving any evidence that alteration has been done;
- High risk of wholesale loss or destruction of business records, and
  - Evidential status of electronic records is unreliable and legal admissibility of electronic records in Ghana has to be ascertained.

In spite of the challenges highlighted here automated records management and information has immense benefits as observed elsewhere in this document. What is recommended is a hybrid or dual system, meaning maintenance of paper records system parallel to the automated system.

## 11.0 EVALUATION OF CONTRACT PERFORMANCE

### 11.1 Introduction

Contract performance evaluation encompasses the overall performance of the contract and of the Procurement Entity's administration of the contract. The evaluation of the operation of the contract and of contract outcomes can be very useful in understanding and improving overall contract administration, improving Service Provider's performance and can assist in future stakeholder decision-making.

An evaluation should be undertaken at the end of all contracts and should be planned for in advance. When a transition from one contract to another is to occur, it is better practice for an evaluation to be undertaken before the contract ends so that any problems that have occurred with aspects of the contractual arrangement are identified and, where appropriate, improvements made in future contractual arrangements.

### 11.2 Evaluation of Service Provider's Performance

A Service Provider's performance evaluation is important for two reasons. First, it provides a means of monitoring the quality of work done on a specific assignment or project. Second, the cumulative record of performance on previous projects is a key element in evaluation of the Service Provider's qualifications for future work.

Performance evaluation of Service Providers can be done in two ways:

- in stages as the service provision progresses
- at the end of service provision.

If done in stages as the project progresses, performance evaluations can result in a better **outcome** than if the evaluation is done only at the end of the project.

Factors or criteria to evaluate a Service Provider's performance will, among others, include time management, management and suitability of key personnel, standard of service and co-operative relationships.

#### *Time management*

In assessing the Service Provider's time management performance, the following should be considered:

- ability to meet programmed milestones;
- timely allocation of appropriate resources to critical activities;
- updating of the work programme to account for delays;
- overall progress of the work;
- timely submission of progress reports; and
- delays by the Procurement Entity or other parties, outside the Service Provider's control.

***Management and suitability of project personnel***

The Service Provider's ability to assign appropriate staff to the project and then to ensure cooperative and effective performance including:

- appropriateness of skills and experience of personnel assigned to the work;
- adequacy of the number of personnel assigned to the work;
- comparability of skills and experience of the staff assigned to the project with those nominated in the tender for the work; and
- suitability of staff

***Standard of service***

Standard of service will generally be measured against the technical, financial and reporting requirements set out in the conditions of contract. In particular:

- compliance with scope of work;
- quality of work including conformance with specified performance criteria, if applicable;
- adherence to budget;
- achievement of expected value for money;
- reviews and reports delivered in accordance with the brief;
- amount of rework required from the Service Provider;
- need to engage another Service Provider to undertake additional or remedial work; and
- extent of involvement required from the Procurement Entity to achieve the desired standard of work.

***Co-operative relationships***

Assessment items include:

- commitment and implementation of management approach that fosters continuous improvement, self-assessment and general industry monitoring;
- adoption and commitment to a cooperative contracting approach with Employer; and
- commitment to resolving issues through open and effective communication with a non-adversarial approach.

**11.3 Evaluation of Management/Supervision of Contract**

Evaluation of management performance will involve assessment of professional conduct and timely discharge of the tasks allocated to delegated officer(s) of the Procurement Entity.

Ineffective management/supervision of a contract by the Procurement Entity or Contract Administrator can obviously result in poor performance of the Service Provider. Therefore, it is important for the Contract Administrator to put in place measures to monitor the performance of the Service Provider as the work progresses. This should then be complemented by interviews with representatives of the beneficiary institution(s) and other key stakeholders at the end of the work.

Factors for evaluating management/supervision of a contract will include the following:

- 
- Discharging Employer’s obligations in accordance with the terms and conditions of the contract.
  - Collaborative relationship.
  - Providing Employer’s inputs, for instance data, as and when required.
  - Reviewing Service Provider’s deliverables/outputs and providing feedback on time.
  - Maintaining regular contacts with Service Provider to keep track of progress and any challenges in executing the work.
  - Facilitating payments when due.

## 11.4 Evaluation Processes

Evaluations can be conducted in-house by the Procurement Entity or a third party can be contracted to undertake the evaluation. This latter approach has advantages in providing an independent view of the contracting arrangement. Whatever the approach used, there are some principles that can assist to make the evaluation relevant and useful. These include having:

- an evaluation plan that sets out clear terms of reference, methods and sources of data collection and analysis, budget, clear timeframes and reporting arrangements;
- relevant skills to manage and conduct the evaluation (either in-house or through contracted personnel);
- senior management support;
- an evaluation report in which conclusions are supported by the data; and
- recommendations that provide an indication of their likely benefits.

For high value contracts, the evaluation should be a thorough and independent review that is informed by those involved in establishing and managing the contract.

The evaluation will need to be tailored to the particular circumstances but should consider both the effectiveness and efficiency of the arrangement. To get the best out of the evaluation, entities should:

- review all aspects of contract performance and its management;
- provide feedback to the Service Provider; this should not be done as part of another procurement process;
- report to stakeholders; and
- identify lessons learned.

Potential sources of information that can be used to inform the evaluation include: notes from meetings; performance data; interviews with management and the Service Provider; Employer and end-user feedback; quality assurance reports; complaints data; and reports of any disputes.

### ***Feedback to the Service Provider***

Where a Service Provider may have a continuing or future relationship with the Procurement Entity, relevant findings from the evaluation should be discussed with the Service Provider. This can assist the parties to better understand what is required and give the Service Provider an opportunity to comment on the findings.

***Lessons learned***

It is better practice that the findings of any evaluation be analyzed to provide lessons learned to underpin both continuing and future contracting activity. Lessons learned should be documented and provided to the appropriate parties. Any manuals, plans or policies should be reviewed and updated as necessary.

***Report to stakeholders***

An evaluation report should be provided to relevant stakeholders, for example, senior management of the Procurement Entity. The approach used to inform stakeholders about the evaluation findings should be tailored to suit their particular role in the contract and may include both written and oral briefings. This enables particular attention to be given to significant matters that need to be considered by decision-makers.

**11.5 Evaluation checklist**

The checklist listed below provides a basis for conducting an evaluation of the contract.

- ***Has the contract facilitated the performance of the tasks under the scope of work and achievement of the objectives of the assignment?***

Review the requirements set out in the original business case and tender. Assess how these requirements have developed during the life of the contract, then analyze the effectiveness of the contract in achieving the stated requirements. This should involve a comparison of planned and actual milestones and activities carried out under the contract.

- ***Did the contract achieve its objectives?***
- ***Were stakeholders' requirements met?***
- ***Did the contract deliver quality outcomes?***
- ***How well did the performance regime work?***

Review performance against all the standards and indicators set in the contract. Assess whether the Service Provider provided all the required services in line with agreed timeframes. Examine the monitoring and assessment arrangements, including the performance regime established in the contract to ensure that they assisted with achieving contract outcomes.

- ***Did the management arrangements established by the Procurement Entity facilitate achievement of contract outcomes?***

Examine how the relationship was managed and whether the level of resources and/or skills was sufficient to achieve the contract outcomes.

**11.6 Contract Review**

Evaluation of contract performance is sometimes referred to as contract review and is conducted just before the contract is closed. The process is the same as explained above.

In large procurement contracts it is good practice after the contract is completed to conduct a contract close-out review. This should be done by the contract management team. The review should consider the following:

- a) The timeliness of contract performance.
- b) Cost and quality performance.
- c) Risks analysis.
- d) Organizational and operational effectiveness.
- e) Appropriateness of the procedures.
- f) Service Provider's performance.

After the review a report should be prepared and distributed as necessary. The report shall provide good lessons for management of future contracts. Where there is need for action resulting from the report the management of the Procurement Entity shall decide. Where the team has performed well it should be commended and where it has not done very well it shall note for future improvement.

## 12.0 POST IMPLEMENTATION TASKS

### 12.1 Introduction

Post implementation tasks in technical service contracts involve mainly contract Close-out.

**Contract Close-out** is a formal process for bringing a contract to a close after completion of the technical service.

### 12.2 Conditions of Contract

The General and Special Conditions of Contract have no provisions for warranty or defects liability period. There is, however, Professional Liability Insurance as spelt out in SCC Clause 21.1.

*It has to be noted that in a technical service contract for Installation and Commissioning of plant and equipment, some form of Operational Acceptance Certificate may be required.*

### 13.3 Contract Close-out

The contract close-out process is usually a simple but detailed administrative procedure. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining. In addition, contract close-out is the time to assess the success of the contract and determine if there are any lessons learned for future contracting.

A technical service contract is completed when all services in the Activity Schedule, Description of Services and Performance Specifications in terms of outputs and reports have been delivered and accepted; all administrative actions have been accomplished; all Procurement Entity furnished equipment and materials have been returned; and final payment has been made to the Service Provider.

To initiate the close-out process, the Procurement Entity should first determine that the Service Provider has satisfactorily performed all required contractual obligations. A contract is ready for close out when:

- All deliverables, including outputs and reports have been delivered and accepted by the Procurement Entity. The Contract Administrator should compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed;
- Final payment has been made;
- All monitoring issues have been resolved;
- All property inventory and ownership issues are resolved, including disposition of any equipment or licenses purchased under the contract;
- Final acceptance from the Procurement Entity has been received (if applicable); and
- Service Provider is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance.

- Any deficiencies found as part of the closeout process are documented and communicated to all appropriate parties.
- Preparation of evaluation report as to the performance of the Service Provider to be used as a future reference.
- Findings and lessons learned from the particular contract to be used as guidance to avoid pitfalls or shortcomings of the current contract in the future.

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## APPENDIX 1 - TEMPLATES





