



UNITED REPUBLIC OF TANZANIA

PUBLIC PROCUREMENT REGULATORY AUTHORITY

PARTICIPANT'S HANDBOOK

TRAINING MODULE N° FOUR

**CONTRACT ADMINISTRATION AND MANAGEMENT FOR
LOCAL GOVERNMENT AUTHORITIES**

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FOREWORD

Decentralization has been one of the major policy initiatives of the Government of the United Republic of Tanzania. The most recent policy reform commenced two decades ago and was formulated in 1998 as Decentralisation-by-Devolution (D-by-D). The policy has the main objective to empower citizens, devolve fiscal resources, democratize state power and facilitate effective service delivery in our communities to improving people's welfare. It is also intended to improve transparency and accountability in Local governments, promote good governance and participatory democracy.

Under the decentralization policy, a range of powers, responsibilities and functions are transferred to Local Government Authorities at Council and sub-Council levels. Besides the responsibility of planning, mobilising, allocating and managing fiscal resources, the function of procurement and contracts management was fully transferred to Local Governments as entrenched in the Public Procurement Act (PPA) of 2004 and subsequent revisions made under PPA 2011 and amended in 2016.

In the course of implementing public procurement reform, we have realized that many Local Government Authorities - which constitute around one-third of all Procuring Entities in Tanzania- do not have adequate capacity in several core areas of Procurement and Contract Management. This is partly related to the complex, multi-sectoral organisation and the wide range of services provided by the LGAs at various levels (Council, Ward, Village and Service Delivery Unit). Experience also shows that procurement capacity development is yet to receive the required priority and resources at operational and strategic levels of the LGAs. Hence, there is need to guide LGA staff and officials (i.e. job families) in the use and application of procurement law, regulations, procedures, processes, roles, responsibilities, tools and systems by addressing required hard and soft competences at the individual level to improve their job performance. The aim is to improve compliance and performance of Departments, Units and the Council in the main procurement functions and processes, and ultimately attain Value-for-Money of LGA procurement.

Against this background, the Authority has developed five training modules to enhance the availability of quality, procurement training materials specifically targeting Local Government Authorities, to mention:

Module	Title
Nº 1	Use and Application of Public Procurement Act and its Regulations for Local Government Authorities (available in both English and Swahili)

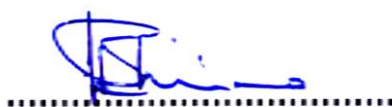
Module	Title
Nº 2	Procurement Planning for Local Government Authorities
Nº 3	Procurement Record Management and Reporting for Local Government Authorities
Nº 4	Contract Administration and Management for Local Government Authorities
Nº 5	Contract Closure, Review and Evaluation of Performance and Outputs

The modules were developed and introduced as part of Procurement Skills Development Planning in 28 selected LGAs in four regions (Dodoma, Kigoma, Pwani and Tanga) to guide and support LGA procurement capacity development. This training module No 4 provides detailed guidance on **Contract Administration and Management for Local Government Authorities**. All Local Governments, stakeholders and training providers are enjoined to use this and other modules whenever they are conducting procurement training for LGAs.

The modules comprise Participants Handbook, Trainer’s Guide and additional training materials, which are available in printed version and on-line. The PPRA intends to make the modules available through its e-learning platform in the near future. The modules should, however, be used together with the Constitution, the Public Procurement Act and its Regulations, Local Government Finance Act, and any legislation relevant to a particular subject or topic.

Finally, we wish to express our deep appreciations and gratitude to our partners and collaborators in the invaluable assistance they gave the Authority in developing, roll-out and final production of the training modules. The modules are one of the main outputs of the Enhancement of Procurement Capacity of Local Government Authorities project (EPC-LGAP), which was jointly implemented from 2013 to 2017 by the PPRA and the Belgian Development Agency (BTC) in partnership with the President’s Office - Regional Government and Local Government (PO-RALG).

The Authority invites stakeholders to provide feedback on the use of this and other training module and undertakes to provide any clarification where required to support capacity building and improvement of procurement and contract management in the Local Governments.



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ABBREVIATIONS

AO:	Accounting Officer
BTC:	Belgian Development Agency
CAG:	Controller and Auditor General
GCG:	General Conditions of Contract
CIPS:	Chartered Institute of Purchasing and Supply
CMT:	Council Management Team
CTB:	Council Tender Board
EC:	Evaluation Committee
EPC-LGAP:	Enhancement of Procurement Capacity of Local Government Authorities Project
EPICOR:	Integrated Financial Management System software used Local Government Authorities
FPC:	Fixed Price Contract
FPCPA:	Fixed Price Contract with Price Adjustment
GN:	Government Notice
HLG:	Higher Local Government
IAC:	Inspection and Acceptance Committee
ISO:	International Standards Organisation
LGA:	Local Government Authority
LGFM:	Local Government Financial Memorandum
LLG:	Lower Local Government
LPO:	Local Purchase Order
MEO:	Mtaa Executive Officer
PMU:	Procurement Management Unit
PO-RALG:	President's Office Regional Administration and Local Government
PPA:	Public Procurement Act
PPR:	Public Procurement Regulations
PPRA:	Public Procurement Regulatory Authority
Reg.:	Regulation
SCG:	Special Conditions of Contract
ToR:	Terms of Reference
UD:	User Department
URT:	United Republic of Tanzania
VEO:	Village Executive Officer

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SESSION 1: INTRODUCTION

Session one provides a general introduction to contract management and administration. The session is divided in four units as follows:

Unit 1.1: Background to the Module;

Unit 1.2: Introduction to Contract Administration and Management;

Unit 1.3: Contract Management Cycle in Local Government Authorities; and

Unit 1.4: Contract Types, Terms and Conditions.

By the end of this Session the participants will be able to:

1. Understand the implication of decentralisation on the procurement functioning in Local Government Authorities (LGAs); and
2. Understand the common contract types applicable to LGAs and how they can be effectively managed.

Unit 1.1: Background to the Module

1.1.1 Unit Objectives

This unit is intended to provide participants with general understanding on the link between decentralisation and the Local Government system in Tanzania and the importance of good procurement and contract management practices. The unit also provides an overview of the Module on Contract Administration and Management.

1.1.2 Decentralisation and Local Government System in Tanzania

Decentralisation refers to the transfer of national responsibilities or functions from central government to sub-national levels of government or from central agencies/offices to regional bodies or branch offices, or to non-governmental organisations or private concerns (Miller 2002). This transfer includes the authority to plan, make decisions and manage public affairs including financial resources by agencies other than the central government.

According to (Schneider 2003), decentralisation can take on any of the following forms:

- i) **Deconcentration**: the central government transfers responsibility for policy to its offices. At sub-national level. Under this arrangement, the central government retains authority over the field office and exercises that authority

through the hierarchical channels of the central government bureaucracy. Deconcentration allows only moderately more autonomy than centralized systems.

- ii) **Delegation:** the central government transfers policy responsibility to local governments or semi-autonomous organisations that are not controlled by the central government, but remain accountable to it. Under this arrangement, the central government exercises its control through a contractual relation that enforces accountability of local government. Delegation represents a slightly higher level of administrative autonomy for local entities than under deconcentration.
- iii) **Devolution:** the central government allows quasi-autonomous local units of government to exercise power and control over the transferred policy. Compared to the other two types of decentralisation, devolution provides the greatest degree of autonomy for the local unit in terms of administrative powers and fiscal resources. The local unit is only accountable to the central government insofar as the central government can impose its will by threatening to withhold resources or responsibilities from the local unit.
- iv) **Privatisation:** refers to the cases in which decentralisation occurs to organisations outside the government sector.

The Tanzanian local government system is based on political devolution and decentralisation of functions and finances within the framework of a unitary state. The Local Government Reform Policy Paper (URT 1998) puts forward the overall objective of the Decentralisation by Devolution as to making local governments effective centres of self-governance, participation, local decision-making, planning and development. The Policy Paper sets out the policy on decentralisation by devolution (D-by-D), which is expected to contribute to the national drive to reduce poverty by improving service delivery in key areas such as health and education.

1.1.3 Advantages of Decentralisation

There are many potential benefits of decentralisation. The majority of these advantages can be broadly captured as improved efficiency, governance, equality, development and poverty reduction (Smoke 2003).

- i) **Improved efficiency:** sub-national governments are said to be closer to the people, have good access to local information and understand the local context well. If so, they can better identify the mix and level of services that their constituents need than the higher-levels, thus improving allocative efficiency.

- ii) **Improved governance:** decentralised government are able to influence public affairs in ways that directly affect them and empowers people, giving them a sense of control and autonomy.
- iii) **Improved equity:** local governments are familiar with local circumstances, they are thus in a better position to more equitably distribute public resources and target poverty within their own jurisdictions.
- iv) **Improved development and poverty reduction:** local governments are expected to contribute to local economic development in a number of ways. First, they can provide services that serve as production and distribution inputs for local firms and entrepreneurs. Second, they can contribute to a legal and institutional environment that is conducive for development. Third, they can help to coordinate key local public, private and community actors in creating partnerships that promote development.

1.1.4 Disadvantages of Decentralisation

The following arguments may also be put forward against decentralization (Vries 2000):

- i) **Equality problems:** Threatens the principle of equality before the law in equal circumstances. For example, citizens in one community may be required to conform to different environmental standards or tax levels in the local community while not similarly restricted in a neighbouring community.
- ii) **Competition problems:** Puts cities, departments and regions against each other as they attempt to attract profitable business and affluent tax payers to their areas.
- iii) **Management capacity problems:** Small communities are unable and unequipped to handle such inherently complex problems associated with decentralisation and may not attract qualified and skilled staff.
- iv) **Challenge of coordination** between local governments and central government (sector) ministries, departments and agencies.

1.1.5 Importance of Procurement and Contract Administration

Local Government Authorities (LGA) in Tanzania have been established as key public service delivery centres. The reform under the Public Procurement Act of 2004 (URT 2004) restructured procurement to decentralised Procuring Entities (PE) including the LGAs. Procurement enables LGAs to acquire the required goods, services and works needed to fulfil their objectives.

In executing their procurement functions, officials in Local Government Authorities (LGA) need to be skilled in many areas, which are not specifically related to their core specialisation, one of them is Contract Administration and Management. Lack of adequate skills in this area has been undermining the performance of local government in Tanzania.

1.1.6 Aim of the Training Module

This Training Module is aimed at enhancing participants' knowledge and skills on how to effectively administer and manage procurement contracts in LGAs in accordance with the requirements of Public Procurement Act No. 07 of 2011 as amended in 2016 (URT 2016), Public Procurement Regulation GN 446 of 2013 (URT 2013), Local Government Finance Act (Cap 290) of 1982 (URT 1982), LGAs Tender Board Establishment and Proceedings GN 330 of 2014 (URT 2014b) as well as other relevant guidelines.

Upon successful completion of this Module, the participants will be able to manage LGA procurement contracts in line with the requirements of relevant legal provisions and best practices.

Procedures for contract administration and management at sub-Council level (i.e. Lower Local Government Authorities and Service Delivery Unit) will be addressed in a guideline, which is being developed.

1.1.7 Target Participants

The Module is intended for use by selected staff of User Departments, Procurement Officers, Internal Auditors and Legal Officers in Local Government Authorities.

1.1.8 Outline of the Training Module

The Module is divided into three sessions as follows: Session one provides a general introduction to contract management and administration; session two deals with procedures and tools for administration of procurement contracts; and session three deals with quality and value for money issues. Table 1 provides the outline of the Training Module.

Table 1: Outline of the Training Module

Session	Unit	Sub-Unit
<i>Session 1: Introduction</i>	1.1 Background to the Module	1.1.1 Unit Objectives
		1.1.2 Decentralisation and Local Government System in Tanzania
		1.1.3 Advantages of Decentralisation
		1.1.4 Disadvantages of Decentralisation
		1.1.5 Importance of Procurement and Contract Administration in LGAs
		1.1.6 Aim of the Training Module
		1.1.7 Target Participants
		1.1.8 Outline of the Training Module
		1.1.9 Module learning outcomes
	1.2 Introduction to Contract Administration and Management	1.2.1 Unit Objectives
		1.2.2 Common definitions
		1.2.3 Importance of Contract Management
		1.2.4 Contract administration
		1.2.5 Contract Management: The Legal Framework
	1.3 Contract Management Cycle in the LGA	1.3.1 Unit Objectives
		1.3.2 Introduction to Contract Management
		1.3.3 Contract Life Cycle Applicable in LGA Procurement
		1.3.4 Roles and Responsibilities of LGA Job Families in the Contract Management Cycle
		1.3.5 The Role of Oversight Bodies
	1.4 Contracts Types, Terms and Conditions	1.4.1 Unit Objectives
		1.4.2 Common Types of Contracts and their Condition for Use
		1.4.3 Choice of Contract Type
		1.4.4 Conditions of Contract
		1.4.5 Standard Contract Forms
		1.4.6 Procurement under Public Private Partnership

Session	Unit	Sub-Unit
Session 2: Administration of Contracts	2.1 Contract Execution, Changes, Disputes and Risk Management	2.1.1 Unit Objectives 2.1.2 Managing Contract Execution 2.1.3 Administration of Goods Contracts 2.1.4 Administration of Works Contracts and Non-Consultancy Contracts 2.1.5 Administration of Consultancy Services Contracts 2.1.6 Managing Costs 2.1.7 Managing Contract Variations 2.1.8 Managing Contract Risks 2.1.9 Termination of Contracts and Settlement of Disputes 2.1.10 Dispute Management and Conflict Resolutions 2.1.11 Acceptance of Goods, Services and Works and Contract Settlement 2.1.12 Subcontract Management
	2.2 Contract records, documents and communication	2.2.1 Unit Objectives 2.2.2 Contract Records 2.2.3 Procurement Contract documents and Checklist
Session 3: Ensuring Quality and Value for Money	3.1 Quality assurance: Plans, tools and performance monitoring	3.2.1 Unit Objectives 3.2.2 Introduction 3.2.3 Content of the Quality Assurance Plan 3.2.4 Inspection and Testing 3.2.5 Contract Closure 3.2.6 Performance Management 3.2.7 Actions to correct under-performance
	3.2 Value for Money and its Importance in Procurement Contracts	3.2.1 Unit objectives 3.2.2 Introduction 3.2.3 Value for money criteria and tests in managing procurement contracts
Course Evaluation		<ul style="list-style-type: none"> ▪ Training evaluation ▪ Qualitative evaluation exercise

1.1.9 Module Learning Outcomes

By engaging successfully with this module, participants will be able to:

1. Demonstrate a good understanding of the procurement contract management cycle in LGAs;
2. Determine the appropriate terms and conditions for common types of LGA procurement contracts;
3. Demonstrate good skills and understanding in managing procurement contract risks;
4. Demonstrate good skills in managing procurement contract records;
5. Demonstrate good skills on the use appropriate procurement contract quality management tools; and
6. Implement changes at the work place and sharing of learning with colleagues to enhance contract administration and management.

Exercises

Excercise 1.

Explain the link between decentralisation and Local Government system in your LGA.

Excercise 2.

Explain the challenges of decentralisation in your LGA.

Excercise 3.

Discuss the extent to which your LGA is an effective centre of self-governance, participation, local decision-making, planning and development.

Unit 1.2: Introduction to Contract Administration and Management

1.2.1 Unit Objectives

By the end of the Unit the participants will be able to:

1. Extract common definition from the legal framework and explain its application;
2. Explain the importance of contract management; and
3. Explain the legal and regulatory considerations in managing procurement contracts.

1.2.2 Common Definitions

This section provides common definitions of key terms used in procurement contract administration and management.

a) Contract Administration and Management

Contract administration and management includes all administrative, financial, managerial and technical tasks to be performed by the Procuring Entity from contract award until the contract is successfully concluded (or terminated), payments are made and disputes and/or claims under it resolved.

b) Procurement

Procurement refers to buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a Procuring Entity and includes all functions that pertain to the obtaining of any goods, works or services, including description of requirements, selection and invitation of tenderers, preparation, award and management of contracts (URT 2016).

c) Procurement Contract

The Public Procurement Regulations (URT 2013) define a contract as an agreement made between a Procuring Entity and a tenderer as a result of procuring proceedings. Procurement contract refers to any licence, permit, or other concession or authority issued by a public body or entered into between a public body and a supplier, contractor or consultant, resulting from procurement proceedings for carrying out construction or other related works or for the supply of any goods or services (URT 2011).

The essential elements of a contract are:

- i) **Offer:** Entails the communication of the offeror's willingness to enter into a contract that shall be binding if accepted by the party to which the offer was made;
- ii) **Acceptance:** The communication of the final unqualified assent to an offer;
- iii) **Consideration:** Each party must be bound by its promises that constitute a bargain for exchange;
- iv) Parties to the contract must be *competent - mentally competent*; and
- v) Parties to contract must be of a *legal age* and the contract therefore *enforceable*.

d) Contract management

Refers to the activities of a buyer during a contract period to ensure that all parties to the contract fulfil their contractual obligations (Baily et al. 2008). It cuts across the entire contracting process from planning the contract (pre-award) through contract administration and closure.

Contract management activities can be grouped into different areas, which include but are not limited to delivery management, relationship management, dispute resolutions, contract administration and contract closure.

e) Contract administration

Covers the formal governance of the contract and any permitted changes to documentation during the life of the contract; it involves change control, charges and cost monitoring, ordering procedures, receipt, payment, etc.

f) Contract closeout

Contract closeout refers to the verification that all administrative matters are concluded on a contract that is otherwise physically complete (Bethmann 1990). It includes, but is not limited to, final reporting, file close-out (including in electronic systems), evaluation of the Contractor's performance, and evaluation of the government staff involved. Contract closeout may also be referred to as Contract Discharge.¹

g) Valid, void and voidable contracts

Procurement contracts, like all contracts, can be classified in various ways. Contracts are valid, voidable, or void.

¹ Note that contract close-out phase is covered in detail in Training Module No 5.

A *valid contract* fulfils all the legal requirements imposed by the body of law known as contract law and is therefore binding on all parties. For example, a valid contract must involve lawful objects or actions. A *void contract* is one that is lacking one or more of the legal requirements for a binding agreement and is, therefore, binding on neither party.

A *voidable contract* is an agreement that is otherwise binding and enforceable, but because of the circumstances surrounding its execution or the lack of capacity of one of the parties, it may be rejected at the option of one of the parties. For example, a person who has been forced to sign an agreement that that person would not have voluntarily signed may, in some instances, avoid the contract (Twomey, David P.; Jennings, 2013).

h) Indemnity

The concept of indemnity is based on a contractual agreement made between two parties, in which one party agrees to pay for potential losses or damages caused by the other party.

1.2.3 Importance of Contract Management

The aim of contract management is to ensure that services are provided to the required standard, within the agreed timeframe while achieving value for money. It is important that procurement contracts are actively managed throughout their life to help ensure that contract performance is satisfactory, stakeholders are well informed and all contract requirements are met.

The effective management of contracts with suppliers and contractors is critical to LGA's maximising benefits from procurement including: obtaining value for money; managing risks; and maximising end-user outcomes.

Inadequate monitoring of contractor performance can result in losses being sustained by a Council due to substandard and/or negligent performance; loss of reputation and political attention as a consequence of poor service delivery; damage to the Council's credibility through inadequate monitoring; and poor service delivery to the community.

1.2.4 Contract Administration Activities

Contract administration is an integral and important element of contract management and overlaps to a certain extent with monitoring and performance assessment. It

encompasses various activities that need to be completed on a regular (weekly, daily) basis including payment to suppliers, monitoring of progress, inspection and acceptance, quality assurance, modifications and negotiations.

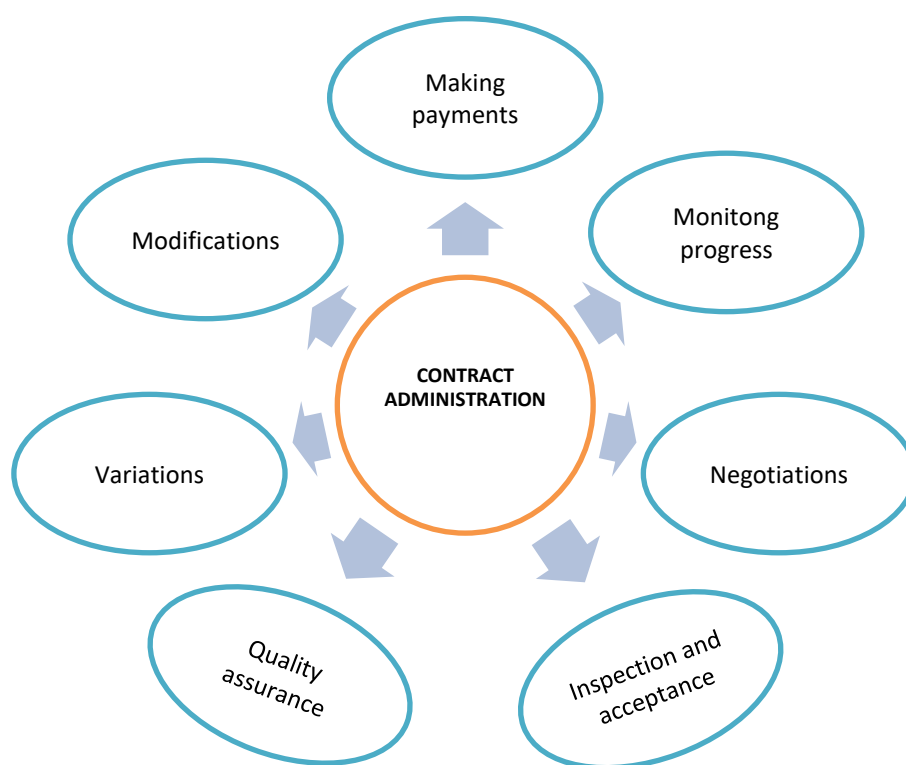


Figure 1: Contract Administration Activities

1.2.5 Contract Management: The Legal Framework

The legal framework governing procurement contracts in Tanzania comprises a number of Acts of Parliament, Regulations and guidelines including the Law of Contract Act (URT 2002a), the Sale of Goods Act (URT 2002b), the Public Procurement Act (URT 2011) as amended in 2016, the Public Procurement Regulations (URT 2013) and the Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations (URT 2014b).

a) The Law of Contract Act, Cap 345 (2002)

Procurement contract management and administration is based on the Law of Contract Act 2002 (URT 2002a). The law of contract provides sections on communication, acceptance and revocation of proposals, voidable contracts and void agreements, performance of contracts, agency, indemnity and guarantee.

b) The Sale of Goods Act, Cap 214 (2002)

The Sale of Goods Act, Cap 214 (URT 2002b) provides law relating to the sale of goods in Tanzania. The Sale of Goods Act provides requirements on the formation of contract for sale of goods, transfer of property and title, performance of contract and rights of unpaid seller and actions for breach of contract.

c) Public Procurement Act (PPA, 2011) as Amended in 2016

The Public Procurement Act (URT 2011) does not spell out directly on how to manage procurement contracts. However, it sets out the regulatory authority responsible for public procurement, institutions for managing public procurement contracts, public procurement principles and standards, methods of procurement, issues related to public-private partnerships, managing disputes and general prohibitions.

d) Public Procurement Regulations (PPR, 2013)

The PPR (URT 2013) provide that Procuring Entities (PE) are responsible for the effective management of any procurement of goods, services or works which it is undertaking. In line with Regulation 114, PEs are required to:

- Monitor the costs and timely delivery of goods and services in the correct quantities and to the quality specified in each contract;
- Monitor progress and timely completion of works in accordance with the terms of each contract;
- Take or initiate steps to correct or discipline deviations from observance of contract conditions; and
- Ensure that the responsibilities imposed on it by the contract are fully discharged.

PPR, 2013 stipulates the management requirements of goods, services and works contracts as follows:

Management of goods contracts (Regulation 242):

- Formation of Inspection and Acceptance Committee (IAC);
- Obtain reports on the receipt of goods which are delivered against contracts and shall promptly authorize payment to the supplier; and
- Institute liquidated damages for delays as may be provided for in the contract.

Management of non-consultancy services and works contracts (Regulation 243):

- Formation of Inspection and Acceptance Committee (IAC);
- Monitor the service provider or contractor's performance against the statement of requirements or schedule of works stated in the contract by means of daily, weekly or monthly reports from the Procuring Entity's supervisors for the services or works;
- Authorize payment by measurement and certification at the intervals or stages stated in the contract provided further that percentage of each such payment may be retained as retention money, as indicated in the contract;
- Where the performance of a service provider or contractor is not in conformity to the requirements prescribed in the contract, notify the service provider or contractor on any short coming, and refuse to authorise further payments until the requirements are met;
- Where agreement to remedy the irregularity in the performance of a service provider or contractor cannot be reached, notify the service provider or contractor of the breach of the terms of the contract, and invoke the procedure for instituting disputes prescribed in the contract;
- In the event that the service provider or contractor fails to provide services at the required standard, to remedy faults or to complete the works to the satisfaction of the Procuring Entity, through withholding payment of any money retained or call any performance security if such has been furnished by the service provider or contractor;
- Funds that have been committed under any contingency in the total contract value may be used to cover variations in costs according to any formula stated in the contract, or for additional services or works that are considered to be necessary; and
- When the services have been provided or works have been completed to the satisfaction of the Procuring Entity, and after any period provided by the contract has elapsed, promptly authorize final payment to be made to the service provider or contractor on his application, and release the service provider or contractor from any performance guarantee provided the service provider or contractor has made good all the defects identified.

Management of Consultancy Services (Regulation 319 (1) – (6)):

- Monitor the performance of the consultant against the terms of reference stated in the contract, by means of daily, weekly or monthly reports from the Procuring Entity's supervisor responsible for the services;
- Where the performance of the consultant:

- (a) is satisfactory, authorise payments by measurement and certification, at the intervals or stages stated in the contract provided further that percentage of each such payment may be retained as retention money, if so stated in the contract;
- (b) does not meet the requirements stated in the contract, draw the consultant attention to any short-coming, and may refuse to authorize further payments until these are remedied;
- Where the agreement cannot be reached with the consultant so as to remedy the situation, the Procuring Entity shall notify the consultant formally that he is in breach of the terms of the contract, and may invoke the procedure for disputes further to the provisions of the contract;
- In the event of the consultant fails to provide services at the required standard, to remedy faults, the Procuring Entity may with-hold payment of any moneys retained, or call any performance security, if such has been furnished by the consultant;
- The funds which are committed under any contingency included in the total contract value may be used to cover variations in cost according to any formula stated in the contract; or for additional services that are considered to be necessary by the Procuring Entity; and
- When the services have been provided to the satisfaction of the Procuring Entity, and after any period provided by the contract has elapsed, the Procuring Entity shall promptly authorize final payment to be made to the consultant on his application, and release the consultant from any performance guarantee provided the consultants has made good all the defects identified.

e) Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations (2014)

The Local Government Authorities' Tender Boards (Establishment and Proceedings) Regulations 2014 (URT 2014b) provides for regulations on the composition of Local Government Authority Tender Board, the method of appointment of members, and the procedures to be followed by such a Tender Board.

f) Local Government Financial Memorandum (2009)

The Local Government Financial Memorandum (URT 2009) provides guidelines to various actors in financial management processes as well as on roles and responsibilities or actors in the Local Government Authorities for budget preparation, financial management processes, budget execution, ordering of goods and services, receipt of goods, payments, etc.

Exercises

Excercise 4. Group Assignment

What are the institutional and legal challenges involved when managing procurement contracts in your LGA?

Unit 1.3: Contract Management Cycle in Local Government Authorities

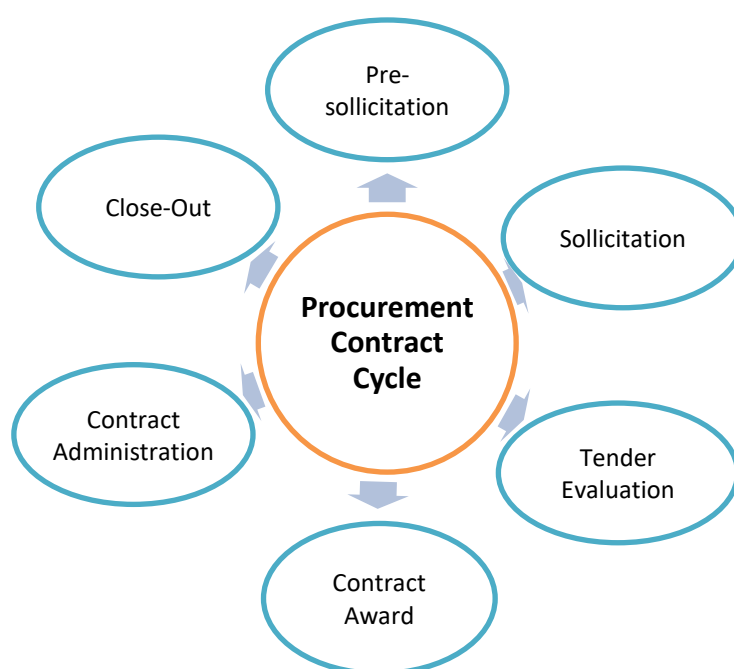
1.3.1 Unit Objectives

By the end of the Unit the participants will be able to:

1. Demonstrate knowledge and understanding of contract life cycle applicable in Local Government Authorities procurement;
2. Describe roles and responsibilities of LGA Job Families in different states of the contract management cycle;
3. Apply best practices in all stages of contract management cycle.

1.3.2 Procurement Contract Life Cycle Applicable in LGAs

Effective management of contracts is essential to ensure that the objectives of the procurement process are achieved and that all contractual obligations and activities are completed efficiently by all parties to the contract. The specific topics presented in this unit include the contract life cycle applicable in LGA, roles and responsibilities of LGA job families in contract administration and management at all levels i.e. Higher Local Government and Lower Local Government Authorities. Six phases can be distinguished in the LGA procurement contract life cycle, i.e., pre-solicitation phase, solicitation phase, proposal evaluation, contract award, contract administration and contract closeout.



Procurement Contract Cycle

a) *Pre-solicitation*

The pre-solicitation phase of the procurement contracting cycle begins immediately following the Procuring Entity's decision to send a solicitation to prospective contractors that appear to be qualified to provide the needed services to the entity on a contract basis. There are numerous decisions that must be made prior to release of a solicitation to the private sector. According to PPA (2011)/PPR (2013), Procuring Entities are required to prepare procurement plans in line with their annual budgets.

b) *Solicitation*

The solicitation phase commences when the Invitation to Tender or Request for Proposals is released to the prospective contractors and terminates when the proposals are received by the Procuring Entity.

c) *Tender Evaluation*

The tender evaluation phase begins upon receipt of bids from the prospective tenderers and ends when the tender evaluation committees recommend a tenderer for award of contract. In evaluating tenders, strict adherence to the evaluation criteria contained in the Invitation to tender is required. Failure to evaluate the tenders according to the evaluation criteria can result in unnecessary complaints from aggrieved bidders.

d) *Contract Award*

The contract award phase begins when the tender evaluation committee completes the evaluation of bids and recommends a tenderer for award of a contract. However, complications can occur during the contract award phase. For example, complaints can be submitted by aggrieved tenderers following contract award.

e) *Contract Administration*

Managing a contract after its award (which is called "*formation*") and signing (which is called "*entry into force*") is important to ensure that a Procuring Entity gets value it expects from the money it spends and enhances supplier relationship management that guarantees contractual undertakings are performed and disputes avoided. The contract administration phase begins upon award of the contract and continues until the contractor has fulfilled all its contractual responsibilities. During this phase, the Procuring Entity's staff are generally involved in monitoring the contractor's performance, evaluating contractor invoices and making progress payments, evaluating proposed changes to the contract provisions, negotiating contract changes, and preparing modifications to

the contract. Significant involvement on the part of personnel of the Procuring Entity is necessitated to deal with problem solving when a contractor's performance degrades to a sub-standard state.

f) Contract Closeout

Contract Closeout commences when all contract deliverables have been received, all contract services delivered and all work performed. Contract closeout requires effective coordination by the Contract Supervisor with the supplier as well as Council's Finance and Procurement offices. The process involves the final invoice review, to ensure that all costs were incurred, allowable, and adequately supported. Final payment should not be rendered until the contract closeout review is completed.

- Training Modules No 1 and No 2 provide detailed guidance on the procurement cycle including the (pre)solicitation and tender evaluation stages which are not covered in this module
- In order to ensure fairness to bidders and achieving Value for Money in procurement contracts, the findings of procurement audits show that due attention is required by the Accounting Officer and HPMU in the *evaluation stage* to:
 - Adequate selection and appointment of the Evaluation Committee (EC) to ensure the required number of members with adequate skills and competences to evaluate the tender
 - Provision of adequate guidance to EC members including requirements like 1) correct application of evaluation criteria as stated in the tender dossier; 2) not to add or alter the evaluation criteria during the evaluation; 3) how to apply reasons for disqualification of bids; 4) importance of confidentiality; 5) sanctions on manipulation of bids; 6) post-qualification requirements (if applicable)
 - Importance of due, impartial review of evaluation reports by HPMU on the same before submission to the Tender Board
- Due attention is required by the Tender Board to check the recommendation of award by the EC on:
 - Correct application of evaluation criteria used as per approved bidding documents
 - Disqualification and rejection of bids and reasons why
 - Any alterations and corrections made in submitted tenders, especially price/cost

1.3.3 Roles and Responsibilities of Job Families in Contract Management Cycle

The PPA 2011 and PPR 2013 define the responsibilities of key players in the procurement process for each and every Procuring Entity implementing the Act. The PPA 2011 provides the responsibilities and functions of the Budget Approving Authority (BAA) i.e. Full Council, Accounting Officer (AO) i.e. Council Director, Council Tender Board (CTB), Procurement Management Unit (PMU), User Departments (UD), Evaluation Committee (EC), Inspection and Acceptance Committee, Legal Officer and contract supervisor. The Council Internal Auditor provides ongoing quality assurance of the procurement processes in the Council including contract administration.

Table 2: Roles and Responsibilities of LGA Job Families at Different Stages of the Contract Management Cycle (After Evaluation)

Stage	Key Player	Role and Responsibilities
1. Contract Award	Budget Approving Authority (Full Council)	<ul style="list-style-type: none"> ▪ The Mayor or Chairperson of the Council signs the contracts ▪ Non-appearance or refusal of Mayor or Chairperson to sign the contract shall not affect a contract-signing Ceremony
	Finance Committee	<ul style="list-style-type: none"> ▪ Scrutinises award decisions
	Council Director (Accounting Officer)	<ul style="list-style-type: none"> ▪ Having satisfied him/herself that proper procedures have been followed, communicating award decisions ▪ Signing contracts for the procurement activities on behalf of the Procuring Entity ▪ Submission of copies of contract documents to PPRA, AG, Office of the Government Asset Management Division (of Ministry of Finance and Planning), Regional Officer of CAG and TRA within 30 days of signing
	Council Tender Board	<ul style="list-style-type: none"> ▪ Approval of contract documents ▪ Approval of award of contracts
	Procurement Management Unit	<ul style="list-style-type: none"> ▪ Administration of communications ▪ Maintain and archive records ▪ Prepare contract documents (including LPOs, Call-off orders, etc.) ▪ Maintain register of all contracts awarded (including LPOs through EPICOR) ▪ Maintain the contracts through PMIS ▪ Maintain contract securities and guarantees in safe place

Stage	Key Player	Role and Responsibilities
	User Departments	<ul style="list-style-type: none"> ▪ Kept informed
	Legal Officer	<ul style="list-style-type: none"> ▪ Providing legal advice on contract formation process ▪ Vetting of contract
	Evaluation Committee	<ul style="list-style-type: none"> ▪ NA
	Inspection and Acceptance Committee	<ul style="list-style-type: none"> ▪ NA
	Council Treasurer	<ul style="list-style-type: none"> ▪ Advising the Council on all financial matters related to the contract.
	Stores	<ul style="list-style-type: none"> ▪ NA
	Internal Auditor	<ul style="list-style-type: none"> ▪ Carryout ex-post review on Council compliance with legal and regulatory framework and procedures laid down in any written instructions and best practices
2. Contract Administration and Management	Budget Approving Authority (Full Council)	<ul style="list-style-type: none"> ▪ Approves submitted Progress Reports
	Finance Committee	<ul style="list-style-type: none"> ▪ Oversees contract implementation through inspection of project works and goods received (GN 330) ▪ Reviewing of quarterly procurement report submitted by the Accounting Officer for consideration and approval by Full Council ▪ Instructing the Accounting Officer to carry out procurement or value for money audits where necessary
	Council Director (Accounting Officer)	<ul style="list-style-type: none"> ▪ Investigating/handling complaints by suppliers, contractors or consultants ▪ Ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award ▪ Appoint an inspection and acceptance committee ▪ Appoint contract (works) supervisor ▪ Submitting to the Authority details of contracts awarded, annual procurement plan and proposes firms for blacklisting/debarment ▪ Approves inspection reports ▪ Approves payment

Stage	Key Player	Role and Responsibilities
	Council Tender Board	<ul style="list-style-type: none"> ▪ Review all applications for variations, addenda or amendments, if any, to ongoing contracts ▪ Review implementation reports
	Procurement Management Unit	<ul style="list-style-type: none"> ▪ Maintain and archive records of the procurement and disposal process ▪ Prepare monthly, quarterly and annual reports for the Tender Board, CMT, PPRA and other stakeholders ▪ Participate in inspection/ site meetings ▪ Maintain PMIS
	User Departments	<ul style="list-style-type: none"> ▪ Oversee contract implementation including reviewing and approving technical reports, design or any outputs as per contract ▪ Report any departure from the terms and conditions of an awarded contract to the Procurement Management Unit ▪ Forward details of any required contract amendments to the Procurement Management Unit for action ▪ Maintain and archive records of contracts management ▪ Certify payment to suppliers, contractors and consultants ▪ Endeavouring to ensure at all times that they secure the best value for money ▪ Prepare progress reports and submit to PMU
	Legal Officer	<ul style="list-style-type: none"> ▪ Providing legal advice on contracts and in cases of disputes claims; assisting in negotiations.
	Evaluation Committee (EC)	<ul style="list-style-type: none"> ▪ NA
	Inspection and Acceptance Committee (IAC)	<ul style="list-style-type: none"> ▪ Inspect the goods at the office of the Procuring Entity or, user, or at the site specified in the contract ▪ Verify that suppliers have delivered, completed or rendered the correct goods or services without deficiencies in number, quality or incorrectness
	Contract Supervisor	<ul style="list-style-type: none"> ▪ Manage the works of inspection committee ▪ Measure and ensure that

Stage	Key Player	Role and Responsibilities
		<p>contractors/consultants have delivered, completed or rendered the correct works or services without deficiencies in number, quality or correctness.</p> <ul style="list-style-type: none"> ▪ Prepare and submit to the Accounting Officer performance report on monthly basis or within the period prescribed by the Accounting Officer ▪ Monitor the performance of the contractor/consultant against the terms of reference stated in the contract, by means of daily, weekly or monthly reports from the Procuring Entity's supervisor responsible for the services ▪ Maintain records of contract implementation ▪ Communicate with PMU on contract variations or addenda
	Council Treasurer	<ul style="list-style-type: none"> ▪ Advising the Council on all financial matters ▪ Ensure all payments to the contractors are properly supported by relevant documents. ▪ Ensure all expenditures are lawful and properly authorised ▪ Timely payment of supplier/contractor invoices ▪ Maintaining accurate records of actual payments committed, expenditure, cash and sundry debtor through vote books
	Stores	<ul style="list-style-type: none"> ▪ Maintain record of receipts, issues Goods Received Note (GRN) and physical balances of each item of stores in relevant ledger
	Internal Auditor	<ul style="list-style-type: none"> ▪ Carryout out ex-post review on Council compliance with PPA, PPR, GN 330; LAFM of 2009 and procedures laid down in any written laws, instructions and best practices.
3. Contract Closeout	Budget Approving Authority (Full Council)	<ul style="list-style-type: none"> ▪ Approval of completion reports
	Finance Committee	<ul style="list-style-type: none"> ▪ Review completion reports and submit to Full Council for approval

Stage	Key Player	Role and Responsibilities
		<ul style="list-style-type: none"> ▪ Instructing the Accounting Officer to carry out procurement or value for money audits where necessary
	Council Director (Accounting Officer)	<ul style="list-style-type: none"> ▪ Authorise final payments ▪ Notify stakeholders that the contract is completed and arrange for handover, if applicable ▪ Provide contractor with good performance certificate
	Council Tender Board (CTB)	<ul style="list-style-type: none"> ▪ Review implementation reports
	Procurement Management Unit (PMU)	<ul style="list-style-type: none"> ▪ Preparation of monthly, quarterly and annual procurement progress report to be submitted to the CMT, Council, PPRA, etc. ▪ Maintain and archive records ▪ Maintain register of all completed contracts as per legal framework ▪ Ensure performance guarantee has been returned to the contractor ▪ Ensure contractor has been paid
	User Departments (UD)	<ul style="list-style-type: none"> ▪ Verify that all works, goods, services have been delivered satisfactorily ▪ Certify for final payments to suppliers, contractors or consultants
	Legal Officer	<ul style="list-style-type: none"> ▪ Providing legal advice on contracts and in cases of disputes and/or claims assisting in negotiations.
	Evaluation Committee (EC)	<ul style="list-style-type: none"> ▪ NA
	Inspection and Acceptance Committee (IAC)	<ul style="list-style-type: none"> ▪ NA
	Contract Supervisor	<ul style="list-style-type: none"> ▪ Review and advise on contractor claims ▪ Prepare project closure reports ▪ Ensure all data, drawings, etc. have been returned to Council ▪ Complete the filing of the material related to the execution of contracts
	Finance Department	<ul style="list-style-type: none"> ▪ Invoice review ▪ Payment of supplier/contractor invoices
	Stores	<ul style="list-style-type: none"> ▪ NA

Stage	Key Player	Role and Responsibilities
	Internal Auditor	<ul style="list-style-type: none"> Review and report on Council compliance with PPA, PPR, GN 30; LAFM of 2009 and procedures laid down in any written laws, instructions and best practices.

1.3.4 The Role of External Oversight Bodies

The Public Procurement Regulatory Authority, the Public Procurement Appeals Authority, the Attorney General and the Contractors Registration Bureau are some of the key regulatory bodies involved in LGA contract administration.

a) Public Procurement Regulatory Authority (PPRA)

PPRA provides support and advice on the procurement process to the Procuring Entities (PE). Generally PPRA is responsible for:

- Issuing Circulars regarding public procurement matters;
- Providing training to PEs;
- Monitoring performance and compliance of PEs; and
- Collect, maintain, publish and disseminate information on public procurement to stakeholders.

b) Public Procurement Appeals Authority (PPAA)

PPAA reviews and makes decision on complaints by tenderers aggrieved by the decision of the Accounting Officer where:

- The Accounting Officer does not make a decision within the period specified under the Public Procurement Act; or
- The tenderer is not satisfied with the decision of the Accounting Officer.

c) Attorney General (AG)

- Vet contracts above the thresholds specified in the Regulations arising out of the acceptance of a tender, offer or proposal under the PPA (Re. 59-1);
- Provide advice to legal officer who seeks for an advice of the Attorney General in respect of the contract required to be vetted by that legal officer (Reg. 60-1);
- Approve contract amendments (Reg. 61 – 2(c));
- Receive copies of award letters and all contracts are entered into by PEs (Reg. 109, 232); and
- Receive information on termination of contract for abandoning works or services and take appropriate action (Reg. 113).

d) Contractors Registration Board (CRB)

- Register Local and Foreign contractors working in the construction industry;

- Regulate the activities and conduct of contractors in the construction industry;
- Set criteria for registration of contractors in different classes and review these criteria from time to time;
- Verify and ensure that all works are undertaken by registered contractors;
- Ensure that all construction works comply with the governing laws and regulation;
- Review the performance of registered contractors from time to time;
- Develop the skills and capacity of Local contractors;
- Liaise and interact with Local and Foreign professional Boards and Associations related to the construction industry; and
- Publish and disseminate information related to the construction industry.

e) Regional Secretariat (RS)

Under the Policy Paper on Local Government Reform (URT 1998) the office of the Regional Commissioner is given legal powers in respect of accountability on the part of the district Councils in the respective region. The Regional Commissioner can:

- Act as an appellate body for complaints within a local authority;
- Intervene in cases where unlawful decisions are made by a Council or by a local administration;
- Report to the President's Office Regional Administration and Local Government on illegal behaviour by an actor within a local government;
- Receive complaints from citizens, organisations and private contractors or businessmen dealing with the local government or affected by decisions made by the Council; and
- Call-in by-laws and development plans as required for legal inspection.

Exercises

Excercise 5. Roles and Responsibilities in LGA Contract Administration and Management

The Evaluation Committee appointed by the District Executive Director of the ABC District Council to evaluate Tender for Construction of Wards for the District Hospital has completed the tasks.

Required: Identify the roles of key actors in LGA contract administration for the following roles:

<i>Role and Responsibilities</i>	<i>Who Authorises?</i>	<i>Who Approves?</i>	<i>Who Consults?</i>	<i>Who to Inform?</i>
Contract award				
Contract administration				
Contract closeout				

Excercise 6. Roles and Responsibilities in LGA Contract Administration and Management

Explain the implication of the various roles in contract administration on maximising Value for Money in LGA procurement.

Unit 1.4: Contract Types, Terms and Conditions

1.4.1 Unit Objectives

By the end of the Unit the participants will be able to:

1. Describe the common types of contracts in LGA procurement as per legal framework;
2. Demonstrate skills and understanding on the general and special conditions of contracts; and
3. Describe the procedures for conducting procurement under Public Private Partnership.

1.4.2 Common Types of Contracts and their Conditions for Use

A contract is a written, legally binding agreement between the Procuring Entity and a supplier, which establishes the terms and conditions, including the rights and obligations of the organization and the supplier. The term “types of contracts” refers to the basis for compensating the contractor by the Procuring Entity.

a) Fixed price (lump sum) contracts (Regulation 313)

Fixed price contracts are contracts for a fixed amount for the works or services as specified and tendered for. Such contracts may or may not be accompanied by a priced schedule. The purpose of the schedule (if provided) is to assist in the evaluation of progress payments and for the pricing of variations as provided in the conditions of contract. With a fixed price contract, the works shall not, except in respect of variations, be measured for the purpose of payment.

b) Schedule of rates contracts

A schedule of rates contract is a type of contract in which the contractor agrees to do the work for the cost per schedule of rates, or bill of quantities or bill of material. Under schedule of rates contract, tenderers submit rates for the estimated quantities as set out in a bill of quantities which forms part of the tendering documents. From this the lump sum price is derived from the aggregation of sums tendered based on these quantities and rates. Payment under a schedule of rates contract is determined by measurement of the actual quantities completed and at the rates as tendered.

c) Cost plus contracts (Contracts with special features)

Cost plus Contracts provide for reimbursement of the contractor for allowable and allocable costs plus a fee that is determined at the inception of the contract. This fee may be a fixed sum, a percentage of the costs or a fluctuating fee. Where cost

plus contracts are used, the contract is to be arranged whenever possible on the basis of “cost plus fixed fee” rather than “cost plus percentage”.

d) Performance based contracts

Performance-based contracts (PBC) are agreements that delegate service delivery to private providers under legally binding agreements that tie payments to measurable outputs that meet a predefined performance standard normally expressed in terms of quality, quantity or reliability level (Baquero, 2005). PBCs places on the contractor the responsibility to perform most of the quality control functions traditionally performed by the Procuring Entity, and contains measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of requirements, and positive and negative incentives.

e) Design-build contracts

Design-build contracts are a type of project delivery system assigning both design and construction services to one group. Design and build contracts are conducted in a mainly overlapping fashion, design is undertaken whilst construction is already underway, resulting in early completion of the project.

f) Time-based contracts (Regulation 314)

In time-based contracts the service provider provides services on a timed basis according to quality specifications, and the service provider’s remuneration is based on (i) agreed upon unit rates for staff multiplied by the actual time spent by the staff in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Client to closely supervise Consultant and to be involved in the daily execution of the assignment.

g) Retainer and/or success fee contract (Regulation 315)

Retainer and success fee contracts may be used where consultants such as, banks or financial firms, are required for preparation of companies for sale or merger of firms, notably in privatization operations. The remuneration of the consultant may include a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

h) Percentage contract (Regulation 316)

The percentage based contracts may be used where it is appropriate to relate the fee paid directly to the estimated or actual cost of the contract. The percentage based contract shall clearly define the total cost from which the percentage is to be

calculated and the consultant or service provider shall be required to indicate his cost as a percentage of the total cost of the assignment. The use of such a contract is recommended only if it is based on a fixed target cost and covers precisely defined services.

i) Indefinite delivery contract (Price agreement) (Regulation 317)

Is a contract whereby the professional agrees to provide the PE professional services on an “as-needed” basis during the term of the contract. The Procuring Entity and the service provider shall agree on the unit rates to be paid for the experts, and payments are made on the basis of the time actually used.

j) Running contracts (Regulation 318)

A running contract is a contract used for where continuity of expert service is desirable, such as financial auditing, procurement agency contracts and inspection agency.

Table 3: Contracts Types and Conditions for Use

Type of contract	Advantages	Disadvantages	Conditions for Use
Fixed price (lump sum) contracts	<ul style="list-style-type: none"> – Protects escalation of costs – cost known at outset – Provides maximum incentives for contractor efficiency (to achieve early completion and superior performance) – Minimum PE’s supervision – quality and schedule. 	<ul style="list-style-type: none"> – Provides the greatest financial risk to the contractor – Variations difficult and costly – Contractor free to choose lowest cost means, methods and materials that meet only “minimum contract requirements”. 	<ul style="list-style-type: none"> – Appropriate for projects involving little complexity and uncertainty, that is, for standardised products/services. – Also appropriate when contract management costs are expected to offset the benefits of risk-sharing in incentive contracts. – Generally inappropriate for work involving major uncertainties, such as work involving new technologies. – Provide PEs with an exact sum (barring exceptions and variations) to budget for their construction project. – Can be used for all

Type of contract	Advantages	Disadvantages	Conditions for Use
			categories of requirement
<i>Schedule of rates contracts</i>	<ul style="list-style-type: none"> – Time and cost risks are shared (PE at risk for total quantities; – Contractor at risk for fixed unit price) – Flexibility – scope and quantities easily adjustable 	<ul style="list-style-type: none"> – Final cost not known at outset (Bills of quantities at bid time only estimates) – Additional site staff needed to measure, control and report on units completed 	<ul style="list-style-type: none"> – Sufficient design definition to estimate quantities of units. – Adequate breakdown and definition of work units. – Good quantity surveying and reporting system – Adequate drawings – Payment terms properly tied to measured work completed – Site staff needed to measure, control and report on units completed – Suitable for works contracts.
<i>Contracts with special features (cost plus contracts)</i>	<ul style="list-style-type: none"> – Cost price fixed fee is similar to fixed-price contract – Cost plus percentage contracts provide Maximum flexibility for the PE to make changes in the work, including making changes in the scope of the work. – Cost plus percentage contracts provide maximum flexibility for the contractor in 	<ul style="list-style-type: none"> – Cost price fixed fee is similar to fixed-price contract – does not provide adequate incentive for the contractor to control costs – final cost is unknown – Cost plus percentage contracts makes it desirable for the contractor to use the most expensive materials and methods of installation because the greater the total cost, the more money the 	<ul style="list-style-type: none"> – Used when uncertainties involved in a contract's performance will not allow costs to be estimated with enough accuracy to use fixed contract pricing – Used where it is appropriate to relate the fee paid directly to the estimated or actual cost of the contract. – Costs must be adequately documented for the contractor to receive reimbursement – Can be used for all categories of requirements

Type of contract	Advantages	Disadvantages	Conditions for Use
	<p>accommodating changes made by the PE.</p> <ul style="list-style-type: none"> – Cost plus percentage contracts provide minimum risk for the contractor. 	<p>contractor makes.</p> <ul style="list-style-type: none"> – Open-ended contract for the owner. No definition of what the final cost of the project will be. 	
<i>Performance based contracts</i>	<ul style="list-style-type: none"> – Potential reduction in costs – Improved level of service (could cost more) – The transfer of risk to the contractor – More responsibility to contractors stimulates initiative and innovation – More responsibility and risk is transferred to the contractor. – Reduced administration: less effort to measure works 	<ul style="list-style-type: none"> – Loss of control and flexibility by PE – Lack of some (or unclearly specified) performance standards and level of service 	<ul style="list-style-type: none"> – Are appropriate for assignments where performance metrics can be easily defined
<i>Design-build contracts</i>	<ul style="list-style-type: none"> – Eliminates conflicts among the designer, Contractor, and Employer over poor design, specifications, and drawings. – Owner has a single point of responsibility for design and construction. 	<ul style="list-style-type: none"> – Contractor has the incentive to complete projects faster and less expensively which can mean reduced quality of materials and workmanship. – PE has less involvement and control of the design because the architectural 	<ul style="list-style-type: none"> – Appropriate for with large and complex construction works

Type of contract	Advantages	Disadvantages	Conditions for Use
	<ul style="list-style-type: none"> – Potential for better design and construction coordination because the architectural engineer is working for the contractor. – Employer reduces their risk because the D/B contractor is responsible for errors or omissions in the design documents. 	<ul style="list-style-type: none"> – engineer represents the D-B contractor's best interests, not the owner's. – The owner does not benefit from independent advice and input from the architectural engineer and contractor. 	
<i>Time-based contract</i>	<ul style="list-style-type: none"> – It is ideal where scope is unknown, while cost control and value for money are easy to achieve given good supervision 	<ul style="list-style-type: none"> – Difficult where record keeping is poor and both parties need to be open and to closely monitor and supervise the operations 	<ul style="list-style-type: none"> – Used when the scope and duration of the task are difficult to define. – Payment is based on agreed hourly, weekly or monthly fees. – Supervisor monitors progress of contract and payments (contract terms).
<i>Retainer and/or success fee contract</i>	<ul style="list-style-type: none"> – May motivate a contractor towards better service delivery; 	<ul style="list-style-type: none"> – Pauses a challenge as the pre agreed amount may be based on a wrong assumption and thus prove difficult for provider to implement 	<ul style="list-style-type: none"> – Used to retain a provider to offer services over prescribed period of time. – Success fee contracts links a provider's fee to an achieved objective to provide an incentive to the successful completion of a task. – Contract describes nature of success, time scales and action to be achieved – Appropriate for service assignments

Type of contract	Advantages	Disadvantages	Conditions for Use
<i>Indefinite delivery contract (Price agreement)</i>	<ul style="list-style-type: none"> – PE can perform a broad range of work, including unanticipated work, with contractor. – Allows for flexibility in ordering work to correspond to variations in unforeseen conditions. – Cost effective for larger labour intensive jobs 	<ul style="list-style-type: none"> – More administration needed, including inspection documentation and accounting for each delivery order. 	<ul style="list-style-type: none"> – Indefinite-delivery contracts are used to acquire supplies or services when the exact times or exact quantities of future deliveries are not known at the time of contract award. – Individual orders are issued when exact quantity and delivery date are known. – Prices are established based on a firm-fixed-price or fixed price with economic price adjustment, or – Rates are established for commercial services acquired on a time-and materials or labour-hour basis – Appropriate for service assignments
<i>Running contracts</i>	<ul style="list-style-type: none"> – Flexible – quantities easily adjustable 	<ul style="list-style-type: none"> – Total cost is unknown at the outset 	<ul style="list-style-type: none"> – The use of running contracts is subject to approval of the Authority. – Appropriate for service assignments

1.4.3 Choice of Contract Type

The choice of contract type is a principal means for PEs to divide the risk of cost overruns between the government and the contractor. For example, under a fixed-price contract, the contractor assumes most of the cost risk; by accepting responsibility for completing a specified amount of work for a fixed price, the contractor earns a profit if the total costs it incurs in performing the contract are less than the contract price, but loses money if its total costs exceed the contract price.

Under cost-reimbursement types of contracts, the PE assumes the cost risk because it pays the contractor's allowable costs incurred, to the extent prescribed by the contract,

although these contracts may also establish a ceiling that the contractor exceeds at its own risk.

- In the selection of choice of contract, the following factors should be taken into consideration
 - Nature of procurement;
 - Minimisation of risk;
 - Value for Money;
 - Cost control; and
 - Organisational requirement.

Under normal circumstances, the preferred contract type is the fixed-price contract wherein the contractor is obligated to provide the services described in the scope of work by a set date for a pre-determined price.

1.4.4 Conditions of Contract

The conditions of contract are the terms that collectively describe the rights, obligations and relationships of the entities involved in the performance of the contract. The conditions are a part of the employer-contractor agreement and are “general clauses” of the agreement. Contract conditions determine the allocation of risk and consequently, price. There are two major classes of conditions, i.e., General Conditions and Special Conditions.

- PEs should use standard bidding documents available from the PPRA website for all procurement. Where standard documents for the procurement are not available, documents prepared by the PE must be sent to PPRA for approval before use.

a) General Conditions

General Conditions are those written to cover conditions that will apply to most contracts including conditions related to time control, quality control, cost control and procedures for contract closure.

- Templates for General Conditions are available from PPRA website: www.ppra.go.tz in the Documents and Guidelines Section and are updated regularly.

b) Special Conditions

Special conditions are conditions specially prepared to modify and expand the general conditions as needed to fit the unique requirements of a specific project. Special Conditions (SC) may accommodate such items as indicated in below table:

Table 4: Typical issues addressed by special conditions

<ul style="list-style-type: none">- Site Possession Date- Appointing Authority for the Adjudicator- Period between Programme updates- Amount to be withheld by Contract supervisor in the case the contractor does not submit an updated programme is- Defects Liability Period- Interest rate (above prevailing interest rate for commercial borrowing)- Minimum amount of Interim Payment Certificate- List of Compensation Events- Whether the contract is subject to price adjustment- Amount of retention is [percent] of value of works of Interim Payment Certificate- Limit of retention [percent of contract price]- Amount of liquidated damage [between 0.1 and 0.15 percent of contract price per day]- Maximum amount of liquidated damages must be equivalent to the amount of the performance security [state the amount]- Bonus for early completion- Monthly Recovery of Advance Payments (percent of the amount of monthly Interim Payment Certificates)- Performance Security shall be [between ten (10) and fifteen (15) percent]- Date by which operating and maintenance manuals are required- Date by which “as built” drawings are required- Amount to be withheld for failing to produce “as built” drawings by the date required- Amount to be withheld for failing to produce operating and maintenance manuals by the date required.- Maximum amount of liquidated damages
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1.4.5 Standard Forms of Contract

Procuring entities are required to use standard forms of contract amended to suit the form of procurement. PPRA publishes standard forms of contract on its website (www.ppra.go.tz) which can be downloaded for customisation and use by PE.

a) Long-form Contract Agreement Form

For normal procurements above minor value a comprehensive contract is often used, incorporating specifications, general and specific conditions of contracts.

b) Local Purchase Orders Contracts

A Local Purchase Order (LPO) is a commercial document issued by a buyer to a seller, indicating the products, quantities and agreed prices for products or services that the seller will provide to the buyer within the national or local boundaries. Sending a signed purchase order to a supplier constitutes a legal offer to buy products or services. Usually, an LPO does not require acceptance by the

supplier. This Local Purchase Order format is used for minor value procurement following a Request for Quotations or a Direct Procurement procedure or for very simple requirements when a more comprehensive form of contract is unnecessary.

- Templates for LPOs for use in procurement are published by the PPRA, which requires signing by both the PE and seller. However, most LGAs in Tanzania use LPOs generated by Computerised Financial Management Systems (e.g. EPICOR), which require signing by the PE only as confirmation of acceptance of the seller's offer quotation.

c) Call-off Order Contracts

A call-off order refers to an order issued against an existing Long-term agreement (LTA). Call-off orders must quote the details of the relevant LTA, such as the LTA reference number or other specifics that facilitate future reference. They are signed by both seller and Procuring Entity. The use of call-off-order contracts in Tanzania was suspended in 2016.

c) Caution

The general and specials conditions have legal consequences that are the employer's responsibility. PMU and User Departments should not initiate conditions without guidance from the Accounting Officer and the Council's legal officer. Furthermore, the conditions must be approved by Council Tender Board as part of the tender dossier.

1.4.6 Procurement under Public Private Partnership

Public-private partnership refers to forms of co-operation between public authorities and the private sector which aim at ensuring the funding, construction, renovation, management and maintenance of infrastructure associated with the provision of a service. The Public-Private Partnership Act 2010 (URT 2010) and its Regulations 2015 (URT 2015) provide procedures under which PPP contracts may be managed. Further, the Public Procurement Regulations (2013) provides the procedures under which PEs may enter into PPPs contracts.

a) Management of Solicited PPP (PPR, 369)

Before undertaking the procurement of solicited PPP projects, PEs are required to carry out a feasibility study. The contracting authority shall not proceed with the procurement phase of solicited PPP or private sector participation project if the feasibility study indicates that the proposed project will not deliver value for money or improve the quality of the public service.

The contracting authority shall, after approval of the project by the Minister, prepare and submit to the Authority for advertisement in the Journal and Website a request for qualification in the form of the specific procurement notice.

The selection of a private party shall be in accordance with the competitive bidding procedures and shall be based on the “best value” to the project for the duration of the partnership as opposed to the lowest bidder. Factors that contribute “value” to a project shall include, but not limited to: project design, project delivery schedule, use of innovation and access to expertise.

b) Management of Unsolicited PPP (PPR, 374)

PEs are prohibited from conducting procurement process for unsolicited project proposal which requires or would require the Government guarantee for cash flow; provides for exclusivity clause; requires the government to finance the project at initial stages; or in any way, interferes with competitive tendering.

Exercises

Excercise 7. What types of contracts did your LGA award last financial year? And why?

Excercise 8. Local Purchase and Call-off Orders: Explain the differences between Local Purchase Order and Call-off Order.

Excercise 9. Procurement under PPP: Explain the procedures to be followed before initiating proceedings for procurement under PPP.

SESSION 2: ADMINISTRATION OF CONTRACTS

Session two deals with procedures and tools employed in administration of contracts. The session is divided into two units as follows:

Unit 2.1: Contract Execution, Changes, Disputes and Risk Management; and

Unit 2.2: Contract records, documents and communication.

After studying this session, participants will be able to administer execution of procurement contracts effectively, in particular:

- 1) Review and approval of the work plan;
- 2) Monitoring periodically progress in implementation of the contract, including determination of volume of works accomplished according to the work plan, and inspection and testing of quality aspects;
- 3) Management of variation orders, contract suspension and termination, price revisions, contract remedies such as imposition of liquidated damages, delayed payments, and disputes or claims settlement procedures;
- 4) Management of financial aspects and budget of contract implementation including payments, cost analysis and accounting; and
- 5) Organisation and management of documentation related to contract implementation, and preparation of periodic reports on the implementation of contract.

Unit 2.1: Contract Execution, Variations, Disputes and Risk Management

2.1.1 Unit Objectives

By the end of this unit, the participants will be able to:

1. Use appropriate tools and techniques to manage contract execution and risks;
2. Apply appropriate procedures for contract amendments and variations;
3. Employ appropriate dispute management and conflict resolution procedures;
4. Apply procedures for suspension or termination of contracts; and
5. Apply appropriate procedure for acceptance of supplied goods as well as completed works and services.

2.1.2 Managing Contract Execution

When the PE procures goods or services, the focus is on ensuring the goods or services are delivered on time, in the right quantity, quality is satisfactory, risks are minimised and costs are acceptable. Hence, the focus of the PE should always be on how they can effectively manage costs, quality, time and risks, which might have an impact on the contract implementation process and final outcome.

2.1.3 Administration of Goods Contracts

In administering goods contracts, Procuring Entities are required to do the following:

- Check compliance with the technical specifications of Goods and arrange for inspection of its quality and quantity;
- Check the compliance with delivery schedule and conditions and, arrange to settle delays;
- Ensure compliance of maintenance guarantee, after sales services and warranty obligations; and
- Ensure the application of the general conditions of contract and other terms specified in the particular conditions of contract.

2.1.4 Administration of Works and Non-Consultancy Services Contracts

In administering works and non-consultancy services contracts, PE are required to do the following:

- Follow up the Work Programme and ensure that it is within the time stated in the contract;
- Ensure contractor submits for approval to the Contract Supervisor a programme showing the general methods, arrangements, order, and timing for all the activities in the Works;
- Ensure the contractor submits for approval to the Contract Supervisor an updated programme at specified intervals, being not longer than the period stated in the contract conditions; and
- Ensure the Contractor provides the Contract supervisor with an updated cash flow forecast when updating the Programme.

Table 5 identifies performance factors in administration of works contracts.

Table 5: Performance checklist for administration of works contracts

1)	Timeliness of site possession
2)	Quality of project programme (schedule of work)
3)	Adherence to project programme
4)	Quality of contractor's site organization and staff
5)	Quality of supervising engineer's site staff
6)	Quality of quality assurance programme
7)	Adherence to quality assurance programme
8)	Quality of Environmental Management Plan (EMP)
9)	Management of contractual documents, including surety and insurances bonds
10)	Quality and management of project documentation with respect to:
	a) general correspondence
	b) site instructions
	c) minutes of site meetings
	d) progress reports
	e) works measurement and inspection records
	f) material testing records
	g) interim and final payment certificates
	h) variation orders
	i) claims
11)	Assessment (including validity) of variations
12)	Assessment (including validity) of claims and related cost overruns
13)	Assessment (including validity) of project delays and extensions of time

Source: PPRA Value for Money in Procurement Guideline

2.1.5 Administration of Consultancy Services Contracts

For the purpose of controlling time, cost and quality of inception to completion, the contract administration and management, may include the following:

- Reviewing the quality of designs, studies and other services provided for in the assignment;
- Monitoring the progress and timely completion of deliverables in the case of lump sum contracts and, utilisation of person-months in the case of Time-based Contracts;
- Monitoring the Consultant's reports and the availability of the key personnel specified in the Appendices for all types of consultancy related Contracts;
- Providing timely comments and feedback to the Consultants reports in line with the provisions of the Contract;
- Adhering to the work plan and allocation of time for assigned activity;
- Providing timely assistance to the Consultant as per provision of the Contract;

- Paying monthly payments or payments against deliverables;
- Determining appropriateness of any changes to the scope of work;
- Monitoring delays, additional tasks and the need for extensions of Contract;
- Issues relating to indemnification; and
- Other terms as specified in the General Conditions of Contract (GCC), Specific Conditions of Contract (SCC) and Terms of Reference (ToR).

2.1.6 Managing Time

The management of time is effectively done by using contract schedules that indicates key activities and their completion date. The schedule allows the organisation to identify any slippage or failure to timely completion. The schedule should be developed based on reasonable understanding of what is involved and how long it will realistically take. In case activities are not completed on the desired completion date, reasons should be established.

The Procuring Entity can in applicable cases extend the Intended Completion Date by the percentage specified in Contract and issue a Variation Order without the Contractor incurring additional costs. Regulation 111 (PPR, 2013) provides that:

1. An order for extension of time may be issued only by the Accounting Officer (unless formally delegated), and that the reasons for granting such an order shall be fully documented in the contract implementation records;
2. The order shall state the section of the general conditions of contract under which it is issued, the duration of extension and the special circumstances which have been taken into account;
3. Where, for any special circumstance, an extension of time is claimed by a tenderer, the claim for such extension shall be submitted in accordance with the conditions of contract;
4. The order for extension of time shall be treated strictly and fairly if the Procuring Entity is to have reasonable prospects of enforcing liquidated damages and if the tenderers resort to arbitration;
5. A tenderer shall not be requested to carry out further work on the contract where the contract completion certificate is issued; and
6. A Procuring Entity shall ensure that any extra work required is arranged independently of the original contract after the contract is accepted and complete.

Most contracts recognize that Contractors may have valid claims for the following three classes of delays:

1. **Excusable delays:** delays caused by Acts of God (Force Majeure), war, fire, floods, and other abnormal events which neither Employer nor Contractor can prevent by exercising due diligence. Such delays do not qualify for added compensation; but time extensions may be given to complete the contract on submission of acceptable supporting data;
2. **Compensable delays:** delays caused by Employer changes, neglect, or failure to cooperate. To receive monetary compensation for such delays Contractors must provide supporting data promptly; and
3. **Unacceptable delays:** events causing delays over which the Contractor does have control, such as late delivery of Contractor-supplied material or failure to supply an adequate number of employees as needed to do the work. No time extensions or added compensation would be allowed for these delays.

2.1.7 Managing Costs

Procuring Entities have the responsibility of ensuring that the costs are properly controlled and managed in accordance with prevailing market price. Any signs of cost escalations should be dealt with as early as possible before affecting performance.

2.1.8 Managing Contract Variations

Contract variations refer to additions or deductions which are not incidental to or arising out of the contract, and which alter the scope, extent or intention of the contract.

➤ Once signed, the contract or written agreement shall not be altered, except when an alteration is necessary for the benefit of the Procuring Entity or when an alteration does not prejudice the Procuring Entity (PPR, 110-1).

Any amendment to the contract that may change the original terms and conditions of such contract shall be prepared by the PMU in consultation with the User Department before it is submitted to the Tender Board for approval (PPR 61-1). Furthermore, a contract amendment shall not be issued to a tenderer prior to commitment of the full amount of funding of the amended contract price over the required period of the revised contract; and obtaining approval from other relevant bodies (PPR 61-2).

PPR 110 (4) prohibits procuring entities to authorise additions beyond the scope of the contract without having obtained prior written approval from the Paymaster General or appropriate budgetary approving authority for additional financial authority to meet the cost of such work.

PPR 110 (6) Changes in the scope of the contract includes all changes in the quantity or quality of goods to be supplied, services to be provided or work to be performed by a tenderer with whom a contract has been entered into and such changes shall generally be changes of a policy nature such as an increase in the area of a building or finishing to a higher standard than originally specified.

PPR 61 (3) A contract amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract (PPR 61 (3)) and shall not increase the total contract price by more than fifteen per cent of the original contract price without the approval of budget approving authority (PPR 61 (4)).

2.1.9 Managing Contract Risks

a) Definition

Generally, risk can be defined as ‘the *probability* and *impact* of an unwanted outcome happening’.

Variations in price or cost and foreign exchange, failure of either party to fulfil the conditions of the contract, unjustified (unauthorised) increase in scope of work or contracts transfer of ownership. Outcomes of risk includes cost overruns, contract disputes, quality failures, delays in delivery/completion, downtime, legal action (litigation) and ultimately reputation damage.

Risk management during contract period comprises those activities associate with identifying and controlling the risks that may potentially affect the successfully fulfilment of the contract (Easley, 2007).

b) Key activities in risk management

Risk management involves three key activities: risk analysis, risk assessment and risk mitigation. As explained below:

- i) **Risk analysis:** identify potential problems and estimate their probability of occurring;
- ii) **Risk assessment:** estimate the impact of a potential supply problem (glitch or disruption) on PE operations; and
- iii) **Risk mitigation:** design plans to prevent potential supply disruptions and allocate risks and responsibilities to people/departments that will be responsible for their management.

c) Importance of risk management

Procuring Entities must ensure that their procurement of goods and services achieves the best value for money outcome. At the corporate level, achieving best value for money outcomes requires public entities to ensure that their procurement activities are aligned with Government policies, objectives and strategies and those they actively support whole of government initiatives.

d) Classification of risks

Scope risks – Risks associated with “scope creep”, including changed programme requirements, changed performance specifications, re-defined technical deliverables, amended preferences (e.g. furniture, finishes and furnishing) and unanticipated external unknowns (e.g. site conditions).

Quality risks: The probability of not meeting the intended conformance (usability) of the goods, works or services. These are mishaps in terms of usability, conformance, satisfaction or the intended end-user’s specific needs.

Cost risks: Possibility of a budgeted procurement cost to surpass the present amount due to some uncalculated contingences and the materialisation of the same. They happen due to ineffective and/or inefficient controlling and monitoring of the procurement process – from initiation of the need throughout the subsequent stages of the procurement process.

Schedule (Time) risks: Possibilities of variations in time of delivery and/or completion of works projects or services contracts. Occurrence of these schedule risks have normally associative consequences with quality (if quality was identified as a primary of the contract) or with cost (if cost was identified as a primary and under fixed contract).

Reputation risks: refer to the potential loss that negative publicity regarding an institution's business practices or brands, whether true or not, will cause.

Table 6: Risk Management Table

Specific Risk	Pre-Risk Mitigation		Post-Risk Mitigation		Example of risk mitigation measures
	Probability	Impact	Probability	Impact	
Adversarial employer-employee relationship	M	M	M	M	LGA project supervisors carefully manage the work and not the contractor's employees, contract will be written so as not to give rise to creation of an employer-employee relationship
Cost of litigation, including investigation for discovery	L	M-H	L	M	Encourage the use of alternate dispute resolution mechanisms
Insolvency of contractor	L	H	L	M	Use financial security in the form of performance bonds or standby irrevocable line of credit
Settlement for wrongful dismissal of licensee or contractor	L	L	L	L	None
Etc					

Key: L = Low, M = Medium, H = High

e) Consequences of not managing risks effectively

The consequences of not managing procurement risk effectively can include:

- Discontinuity in the supply of essential goods or services;
- Avoidable increases in project costs and in the unit costs of purchased inputs, in both the immediate and longer-term;
- Loss of power and influence in relationships with essential suppliers;
- Loss of market share or revenue through inability to meet customers demand;
- Cash flow problems;
- Procurement outcomes that do not support organisational needs and objectives, e.g. undermine the LGA's ability to respond to changing circumstances;
- Opportunity for fraud and corruption;
- Negative impact on reputation in the market place; and
- Exposure of officers to prosecution and litigation.

It is important that all risks are identified and appropriately managed. There are a number of risks involved in contract management. Table 7 below presents types and examples of risks in LGA contract management.

Table 7: Types and Examples of Risks in LGA Contract Management

Category	Examples
General Risks	<ul style="list-style-type: none"> – The LGA is not complying with applicable laws and regulations (e.g. the Public Procurement Act on tendering), architectural, safety, fire, or others depending on type of project); – Bidding, supplier selection or contract amendments may not comply with the best practice or the Public Procurement Act and the Financial Memorandum; – LGA stakeholders do not want the project/ activity to take place; – There is a possibility that LGA employees or contractors intentionally misrepresent, conceal, omit information, or commit a crime/ fraud to deceive or manipulate the LGA; – Materials and tools (for a construction project) stored on site are not monitored resulting in theft; – The project may not be completed on time.
Contract Specific Risks	<ul style="list-style-type: none"> – The project design (for construction or engineering works) uses new technology that is not tried or tested; – The activity performed may lack quality and thus compromises integrity (or safety in case of construction).
Billing and Payment Risks	<ul style="list-style-type: none"> – There is a possibility that the budget is not sufficient to meet the needs of the project; – There is a possibility that the work may be behind schedule in accordance to contract agreement; – There is a possibility that payment made is not in accordance with the level of work completed; – Financial reporting guidelines may not be adhered to; – There is a possibility that the invoice balances and project stages are not accurately stated and appropriately reconciled; – Critical information necessary to adequately manage the project (e.g. change orders, billing adjustments, and cost overrun) are not being sufficiently reported to the appropriate level of the LGA management; – Sub-contractors may submit payments under different name or bill for services already charged by the main contractor.

Source: URT, (2014), Accounting and Administrative Controls: Participants Handbook, SULGO (URT 2014a)

Controls within contract management need to be designed so that they address the above risks at each stage of the contract. Table 8 below gives examples of such control procedures in contract management (note that most of the controls are most suited for construction projects).

Table 8: Control Procedures for Addressing Contract Management Risks

Category	Examples
Pre-contract	<ul style="list-style-type: none"> – Ensure that clear objectives of the project are defined clearly in the technical specifications; – Run background checks on suppliers prior being asked to bid; – Require that suppliers selection be documented; – Include a right to audit provision in supplier contract specifying reimbursement for audit costs if the audit results in the discovery of overpayment in excess of five percent of the total contract amount; – Require suppliers to maintain insurance and provide proof of the same.
Contract Execution	<ul style="list-style-type: none"> – Perform periodic walkthrough and issue follow-up reports accordingly; – Require budgets be updated monthly to show expected costs and costs incurred to date; – Require status update or minutes of meetings be kept and maintained as part of project documentation; – Request for reimbursable expenses be back with receipts and proof that payment for expenses has already been made.
Post Contract	<ul style="list-style-type: none"> – Ensure that final lien waivers are secured; – Run a proof of expenses occurred against expenses accrued to ensure consistency; – Secure and file documents according to required retention rules.

Source: URT, (2014), Accounting and Administrative Controls: Participants Handbook, SULGO

2.1.10 Termination of Contracts and Settlement of Disputes

a) Termination of contracts

Section 113 (1) – (2) PPR, 2013 provides procedures for termination for abandoning works or services. Where successful tenderer fails to execute the contract or agreement within a specified time or fails to comply with the contract or agreement without a justifiable and acceptance reason which results into the termination of such contract or agreement, the Accounting Officer shall refer the matter to the Authority and to the Attorney General for information and appropriate action.

The Procuring Entity or the Contractor and the Consultant may terminate the Contract, in accordance with the Conditions of Contract, if the other party causes a fundamental breach of the Contract.

The Procuring Entity shall refer to grounds on which, in accordance with the provisions of GCC, a Contract is terminated, and such grounds may include, in particular:

- Termination by the Procuring Entity on the grounds of default of the Supplier, Contractor or Consultant in the performance of the Contract;
- Termination by the Procuring Entity in the public interest;
- Termination pursuant to the force majeure; and
- Termination for the convenience of the Procuring Entity.

In the event that a Contract is terminated, the subsequent actions for concluding the contracts physically and financially shall be laid down in clear terms in the conditions of the Contract.

- Any disputes or claims arising out of the implementation of the Contract shall be dealt with chronologically for settlement by amicable solutions, adjudications and arbitration in accordance with such provisions laid down in the Contract; and
- The SCC shall outline the framework of and procedure for, amicable settlement and arbitration.

➤ Except with prior written approval of the Authority, a Procuring Entity shall not procure from, contract with, or engage a tenderer or a firm whose contract is terminated for failure to comply with contract without justifiable reasons.

b) Liquidated damages

Regulation 112 of PPR, 2013 provides for liquidated damages in case of undelivered goods, works or services as follows:

1. A procurement entity shall impose on a tenderer, a liquidated damages for undelivered materials or goods, undelivered or delayed services or delayed works;
2. The rates of liquidated damages per day shall be;
 - a) in case of procurement of goods or materials, 0.10 to 0.20 percent of the contract value per day of delayed materials or goods, up to a sum equivalent to the amount of the performance guarantee;
 - b) in case of procurement of works, 0.10 up to 0.15 percent of the contract value per day up to a sum equivalent to the amount of the performance guarantee; and
 - c) In case of employment of consultant, 0.10 up to 0.20 percent of the contract value per day up to a sum equivalent to the amount of the performance guarantee.

3. The liquidated damages rates shall be specified in the request for proposals or tender documents and in the contract, and the maximum amount of the liquidated

2.1.11 Dispute Management and Conflict Resolutions

Any bidder who claims to have suffered or that may suffer any loss or injury as a result of a breach of a duty imposed on a Procuring Entity by PPA 2011 may seek a review. The following conditions must be adhered to:

1. Accounting Officer shall within seven working days after submission of a complaint or dispute deliver a written decision stating reasons for decisions;
2. A tenderer who is aggrieved by the decision of the Accounting Officer may refer the matter to the appeal authority within seven working days from the date of communication of decision of the AO or upon the expiry of the period within which the Accounting Officer ought to have made a decision;
3. Complaint or dispute shall not be entertained unless it is submitted within seven working days from the date the tenderer submitting it become aware of the circumstances giving rise to complaint or dispute; and
4. Accounting Officer shall not entertain a complaint or dispute or continue entertaining a complaint or dispute after the procurement contract has entered into force.

2.1.12 Acceptance of Deliverables and Contract Settlement

Contractors expect to receive periodic payments for work completed and materials expended. Unless other arrangements are made, payments are made monthly under agreed procedures. The PE's Contract Supervisor meets within a specified time after the end of each month to determine and agree to the percentage of completion and value for individual work items. The contractor prepares an invoice and progress payment request for the agreed amount and submits them for approval and payment.

A portion (usually 10%) of each progress payment is retained or kept by the Owner (Client) until the Contractor has met all contractual obligations. An Owner releases the final progress payment and retainage to the Contractor only when three conditions are met: (1) The Owner's certificate of completion and acceptance has been issued and the entire work is complete and accepted by the Project Supervisor, (2) the Contractor has issued a general release and waiver of lien for claims against the owner, and (3) no unsettled Owner claims exist against the Contractor. None of these three conditions

can be met until the entire contract is complete, thus providing an incentive for Contractors to complete the work as scheduled.

The following conditions need to be observed by a Procuring Entity before goods, services or work delivered by a supplier accepted:

a) Goods (PPR, 2013)

1. Goods delivered shall be inspected, samples and tested and shall not be accepted if they are below the standards stated in the contract [Sect 244 (1)];
2. Supplier shall incur costs related to rejection [Sect 244 (2)];
3. Goods rejected to be collected from the Procuring Entity within seven working days [Sect 244 (3)];
4. Accounting Officer should appoint in writing inspection and acceptance committee for each tender (Sect 245); and
5. According to section 248 PPR, 2013, where goods are accepted, a signed goods acceptance shall be issued to the supplier and a copy of certificate shall be kept by the Procuring Entity to support the processing of payments.

b) Works and Services (Reg 243, PPR, 2013)

1. Procuring Entity shall monitor the service provider or contractor's performance against the statement of requirements or schedule of works stated in the contract, by means of daily, weekly or monthly reports from the Procuring Entity's supervisor;
2. PE shall authorize payments by measurement and certification, at intervals or stages stated in the contract, percentage of such payment may be retained as retention money;
3. PE may refuse to authorise further payments if there are shortcomings;
4. In case contractor or service provider fails to complete the work or to provide the service PE may withhold payment of any moneys retained or call any performance security;
5. Funds that have been committed under any contingency included in the contract value may be used to cover variations in costs according to any formula stated in the contract and for additional services or works that are considered to be necessary by the PE;
6. When the service has been provided or works have been completed to the satisfaction of the PE, and after any period provided in the contract has elapsed, the PE shall authorise final payment and release any performance guarantee provided the service provider or contractor has made all the defects identified; and
7. PE should timely capitalise work in progress and completed works.

2.1.13 Subcontract Management

Due to the absence of a direct contractual relationship with the subcontractor, the PE must rely on the prime contractor to manage subcontract work. Thus, the PE must ensure that the prime contractor exercises adequate controls over subcontractors. In doing so, PE has contract administration responsibility to ensure the prime contractor is obtaining satisfactory technical and/or project performance from subcontractors.

Exercises

Excercise 10. Case study - Rehabilitation of Kwamdulu Bus Station

Kwamdulu District Authority was audited by the CAG in 2013/2014 F/Y. Observations for the construction stage were as follows;

1. There was no contractor's schedule of work;
2. Contract supervisor was not appointed by the AO;
3. Performance security was not provided by the contractor as per clause 55.1 of special conditions of contract;
4. There was no site meetings minutes/records;
5. Measurement sheets were not found in project implementation files; not attached to payment certificates; and
6. Contractor had not completed the work, was found on site after expiration of the contract without approval for extension of time.

Question:

What are the implications of Kwamdulu bus station on contract management?

Excercise 11. Case study - Contract Variation

Mabadiliko District Council: The total overpayment of Tsh. 20 million was made to contractor M/s Ujenzi Ltd through variation orders which were not executed: overpayment of Tsh. 5 million was paid through variation order No.1 which was neither approved by the Tender Board nor executed and overpayment of Tsh. 15 million through variation order No. 2 for gravel overhaul beyond 5 km. However, the issue of overhaul was neither queried by the bidders during tendering stage nor raised during negotiation stage thus rendering the variation order null and void.

Required:

1. Explain the possible causes of the weaknesses indicate in the case above.
2. Explain how proper contract administration could have improved performance of the contract.

Unit 2.2: Contract Records, Documents and Communication

2.2.1 Unit Objectives

Upon successful completion of the unit participants will be able to:

1. Generate a record of documents required for procurement contract administration;
2. Manage records relating to common forms of procurement contracts;
3. Use proper procedures in communication with contractors, stakeholders and final users; and
4. Use up-to-date contract documents and checklists (website PPRA).

2.2.2 Contract Records

The Procuring Entities shall maintain records and documents regarding their public procurement activities for a minimum period of five (5) years for assisting the PPRA in carrying out its procurement monitoring and review responsibilities under PPA (2011) and PPR (2013). Each procurement file shall as a minimum contain the following documents and information identified in Table 9 related to contract administration and management.

Table 9: Types of Contract records

Category and Requirements	Type of Record
Contract Management: Goods, Works and Non-Consultancy Services	<ol style="list-style-type: none">1. Copy of appointment letter of inspection and acceptance committee, Reg. 2452. Signed personal covenants forms for inspection and acceptance committee, PPA 102 (1)3. Where goods are accepted, a copy of signed goods acceptance certificate issued to the supplier, Reg. 2484. Where any member of the inspection and acceptance committee refuses to accept delivery, a copy of written dissenting opinion submitted to the Accounting Officer for consideration and decision, Reg. 250 (1).5. Where the Accounting Officer considers necessary that any contracted work be managed by a supervisor, a copy of appointment letter of a public officer under the jurisdiction of the Procuring Entity or a consultant to be a supervisor, Reg. 252 (1)6. Performance reports prepared by work supervisor on monthly or within the period prescribed by the accounting office, Reg. 252 (2)

Category and Requirements	Type of Record
	<ol style="list-style-type: none"> 7. Measurement and certification, at the intervals or stages stated in the contract, Reg. 243 (1) 8. delivery and acceptance reports for Goods, completion report 9. Works and, completion report for Services; 10. copies of all Amendments made to the Contract and, those Variation Orders issued affecting the conditions of the Contract relating to the Contract price and the delivery or Work completion schedule; 11. Notification to the service provider or contractor on any short-comings, Reg. 243 (3) 12. Copy of notification to the service provider or contractor of the breach of the terms of the contract, where applicable, and invoke the procedure for instituting disputes prescribed in the contract, Reg. 243 (4) 13. Site meetings minutes and reports 14. All records of the payment including the bills, invoices for Procurement of Goods, Works and Services.
Contract Management: Consultancy Services	<ol style="list-style-type: none"> 1. Copy of contract agreement; 2. A copy of appointment letter of a public officer under the jurisdiction of the Procuring Entity or a consultant to be a supervisor, Reg. 252 (1) 3. Monitoring report on the performance of the consultant against the terms of reference stated in the contract, by means of daily, weekly or monthly reports from the Procuring Entity's supervisor responsible for the services (319-1) 4. Measurement and certification of consultancy services, Reg. 319 (2) (a) 5. Report on any short-comings, Reg. 319 (2) (b) <p>Copy of notification to the service provider or contractor of the breach of the terms of the contract, where applicable, and invoke the procedure for instituting disputes prescribed in the contract, Reg. 243 (4)</p>

Source: Training Module 3: Procurement Record Management and Reporting for Local Government Authorities (PPRA, PO-RALG, BTC, 2016).

2.2.3 Procurement Contract Documents and Checklists

i) Contract documents for medium works

- **Contract form:** Date, Employer's name, contractor's name and signatures;
- **General conditions of contract:** not to be edited/amended; General issues, time control, quality control, cost control and finishing contract;

- **Special Conditions of Contract:** Supplement the general editions of contract; whenever there is conflict the provisions the SCC shall prevail over those in the General conditions of contract;
- **Specifications:** Precise and clear specification to respond realistically and completed to the requirements of the employer;
- **Drawings;** Actual drawings including site plans;
- **Form of tender;** currency, amount of advance payment, adjudication, summary of payment currency;
- **Letter of acceptance;**
- **Qualification of information:** form of qualification filled by tenderer: eligibility, financial situation and performance, financial capability, equipment and plant, experience, work programme, health policy, personnel, subcontracting and joint venture; and
- **Forms;** Tender securing declaration, bank guarantee, performance bond, advance payment guarantee, undertaking by tenderer on anti-bribery policy.

ii) Contract documents for Individual Consultant

- Contract agreement form; dates, client's and consultant's names;
- Services;
- Terms and conditions;
- Payment (Ceilings, schedule of payment, payment conditions);
- Performance standards;
- Confidentiality statement;
- Ownership of materials;
- Insurance;
- Assignment;
- Law and language;
- Dispute resolution;
- Signatures; and
- Integrity.

iii) Local Purchase Order (LPO) of Goods as per PPRA requirements

- Description of goods, name and address of the supplier, quotation Reference No.;
- Terms and conditions of the LPO showing contract sum, delivery point, delivery time, warranty;
- Payment to supplier;
- Schedule of requirements and prices;
- General conditions of contract for LPO; and
- Forms; Manufacturer authorization and non-bribery policy.

Exercises

Excercise 12. Refer to case study one in unit 2.1 - Why it is important to keep records for site meetings?

Excercise 13. Fill in the table various actors involved in creation, approval and ratification of contract documents

Function	Actor(s)
1. Approve appointment letter of inspection and acceptance committee, Reg. 245	
2. Sign personal covenants forms for inspection and acceptance committee, PPA 102 (1)	
3. Sign a copy of signed goods acceptance certificate issued to the supplier, Reg. 248	
4. Sign a copy of written dissenting opinion submitted to the Accounting Officer for consideration and decision, Reg. 250 (1).	
5. Approves through a copy of appointment letter of a public officer under the jurisdiction of the Procuring Entity or a consultant to be a supervisor, Reg. 252 (1)	
6. Create works/ consultancy performance reports on monthly or within the period prescribed by the accounting office, Reg. 252 (2)	
7. Create measurement and certification reports, at the intervals or stages stated in the contract, Reg. 243 (1)	
8. Approves and notify the service provider or contractor on any short-comings, Reg. 243 (3)	
9. Create a copy of notification to the service provider or contractor of the breach of the terms of the contract, where applicable, and invoke the procedure for instituting disputes prescribed in the contract, Reg. 243 (4)	
10. Create site meetings minutes and reports	
11. Create reports to be submitted to PPRA	

SESSION 3: ENSURING QUALITY AND VALUE FOR MONEY

The session is divided in two Units as follows:

Unit 3.1: Quality Assurance: Plans, Tools and Performance Monitoring; and

Unit 3.2: Value for Money in Procurement Contracts.

By the end of this Session participants will be able to manage contract quality to deliver value for money or improve the quality of the public service.

Unit 3.1: Quality Assurance: Plans, Tools and Performance Monitoring

3.1.1 Unit Objectives

By the end of the Unit the participants will be able to:

1. Use Quality Assurance Plans and tools in procurement contract management;
2. Monitor and manage contractor/supplier performance including closure;
3. Measure and provide adequate inspection and supervision;
4. Explain the role of contract supervisor; and
5. Explain the role of external advice (legal experts, etc).

3.1.2 Introduction

Quality refers to the totality of features and characteristics of a product or service that relies on its ability to satisfy stated or implied needs. The International Organization for Standardization (ISO) formally defines quality as the '*totality of characteristics of an entity that bear on its ability to satisfy stated or implied needs*' (ISO, 1994a).

Quality assurance refers to the application of planned, systematic quality activities to ensure that the project will employ all processes needed to meet requirements (Rose Kenneth 2005), in other words:

Quality assurance refers to the procedures and programs used to ensure that levels of quality established in design criteria for each work or project element are met.

Quality assurance is also related to quality control which, defined as, procedures and programs used by Employer and Contractors to monitor and ensure that design criteria have been met in the completed work. It refers to the activities that are carried

out on the production line to prevent or eliminate causes of unsatisfactory performance (Chung 2002). In other words:

Quality control refers to the monitoring of specific project results to determine if they comply with relevant quality standards and identifying ways to eliminate causes of unsatisfactory performance.

A quality assurance plan is necessary to ensure the quality of the contract deliverables. Documentation for the contract is an important control in the quality assurance plan.

The following are common sources of defects and client dissatisfaction:

- Misinterpretation of drawings and specifications;
- Use of out-dated drawings and specifications;
- Poor communication with the architect/engineer, subcontractors and material suppliers;
- Poor coordination of subcontracted work;
- Ambiguous instructions or unqualified operators; and
- Inadequate supervision and verification on site.

3.1.3 Content of Quality Assurance Plan

A quality assurance plan should include at least the following elements (Rose Kenneth 2005):

- The work breakdown structure reference number for the task concerned;
- A statement of the requirement (usually from the end-user);
- A statement of the specification that is specific and measurable;
- A description of the assurance activity (what is to be done);
- Schedule information (when it is to be done); and
- Designation of the responsible entity (who will do it).

Table 10 shows a common matrix of a quality assurance plan.

Table 10: Sample Quality assurance plan matrix

WBS Ref	Requirement	Specification	Assurance Activity	Schedule	Responsible Entity		
	(from user)	(specific and measurable)	(What is to be done?)	(When will it be done?)	(Who will do it?)		
					CON	TPIA	KDC
			Testing for...	Random	P	R	A

P-Perform, R-Review, A-Accept, CON-Contractor, TPIA-Third party inspection agency, KDC-K-District Council, WBS-Work Breakdown Structure

Definitions/examples:

- **Requirement** (generally stated) – “Durable black and white printer”
- **Specification** (specific and measurable) – “Printing output per minute, quality of printing, etc. ”
- **Assurance activity** (action to be taken) – Determine number of printing output per minute, determine quality of printing.
- **Metric** (means of measurement) – number of paper output per minute, quality of printing in pixels, etc.

3.1.4 Inspection and Testing

In order to ensure that Goods, Works or Services to be procured conform to the technical requirements set forth in the procurement Contract, PEs may establish inspection and testing facilities, form inspection teams, enter into arrangements for the joint or collective use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed.

Inspection plays a very broad role in managing quality. Frequent inspections ensure that the process is performing as planned, with the result being fewer nonconforming outputs at the end of the process. In-process inspection may reveal deficiencies that can be corrected before they cause costly scrap and rework (Rose Kenneth 2005). Inspections may include several kinds of activities, such as:

- Measuring physical characteristics of products;
- Examining products for completeness or correct assembly; and
- Testing products for performance.

Third party inspection agencies, such as Tanzania National Roads Agency (TANROADS) laboratories for roadworks, may be used for testing.

3.1.5 Contract Closeout

Contract close-out is the final project procurement management process. It includes verification to determine if all work was completed correctly and satisfactorily, administrative activities to update records to reflect final results, archiving information for future use. Procurement audits are often undertaken during contract close-out to identify lessons learned in the procurement process. Training module No 5 provides details on the contract close-out.

3.1.6 Performance Management

Performance management must be undertaken throughout the life-time of the contract. Performance management involves: monitoring, assessment and taking action.

➤ The term 'performance monitoring' means measuring, analysing and managing a supplier's ability to comply with, and preferably exceed, their contractual obligations.

Performance assessment refers to the process of measurement, valuation and judgment about performance through the terms such as efficiency, effectiveness, significance and empowerment under the framework of principles and concepts so as to achieve organisational aims.

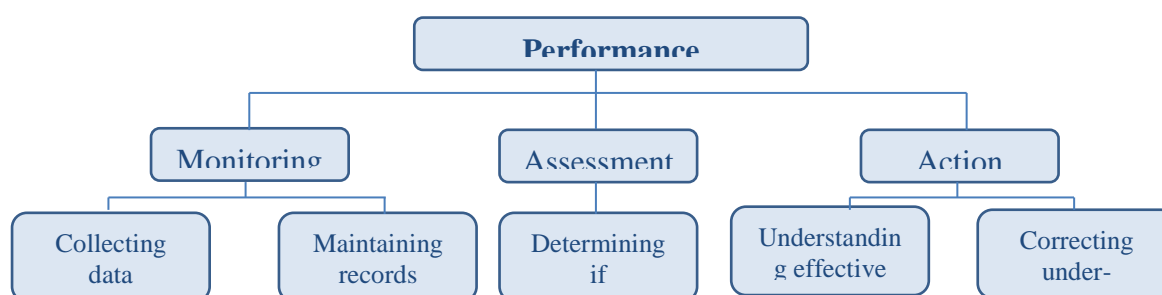


Figure 2: Components of contract performance management

3.1.7 Actions to Correct Under-Performance

At the early stages of underperformance, agreeing upon informal remedial action will often be the best and most economical approach. Such action could include replacing or using additional personnel, reporting back more frequently on progress and modifying processes or systems for clarifying the LGA's requirements. But depending on the seriousness of the underperformance, the action taken may need to be more

formal and could include: Withholding payments, developing and documenting strategies and other formal mechanisms.

Exercises

Excercise 14.

Explain the key tasks involved in performance management, and identify the office responsible for each task.

Excercise 15.

Explain one action taken by your LGA in correcting under-performance on contract implemented recently in your LGA.

Excercise 16. Case study on Performance Management

Value for Money Audit for Kazi Town Council revealed the following: The total of Tsh. 30 million was overpaid to contractor M/s ABC for Routine Maintenance of 10 km for Mapinduzi road for exaggerating executed quantities in the following items; raising the road embankment over 40m stretch (measured quantity 411 m³ while paid 880 m³ (Tsh. 4 million) as in the BoQ); raising the road embankment over 30m stretch along Mpunga street (unexecuted but paid – 350 m³ (Tsh. 5 million) and imported gravel on 8 km Roads (measured 5,000 m³ while paid 6,000 m³ as in the BoQ).

Required:

Explain how good performance management could have addressed the weaknesses indicated in the case above.

Excercise 17. Case study on Time extensions

A contract is for 1 year, ending June 30th with a possible 1 year extension upon agreement by both parties. AO sends the service provider a letter on June 15th notifying the service provider of the intent to extend for another year upon response by the service provider that they agree. The service provider responds on June 30th. The contract extension is developed on July 10th and sent to the service provider for signature. The service provider returns the signed contract on July 14th.

Required: Does the case above meet criteria for a proper contract extension? Explain your answer?

Excercise 18. Quality assurance plan

Prepare quality assurance plans for two works projects planned to be implemented in your Council in the following sectors:

- a) Rural roads
- b) Water supply

Unit 3.2: Importance of Value for Money in Procurement Contracts

3.2.1 Unit Objectives

By the end of the Unit the participants will be able to:

1. Explain value for money and its function in public procurement; and
2. Use value-for-money criteria and tests in managing procurement contracts.

3.2.2 Introduction

This unit provides an overview of how procurement ensures that procuring entities obtain best value for money spent when purchasing goods or services to deliver activities approved. It provides guidelines on:

- Steps that, if adequately followed, will maintain or enhance value for money spent through the procurement process; and
- The financial and non-financial attributes which are appropriate to value during the procurement process.

Definition of Value for Money

“Value for Money” is a concept generally used to assess an organisation’s capacity to obtain the maximum benefit from the goods, services or works it acquires or provides, in close relation to the resources available to it. This assessment does not measure only the cost of goods, services or work. It equally takes into account a complex mix of factors, such as quality, cost, use of resources, and fitness for the organization’s purposes, timeliness and opportunity (KPMG 2014).

Achieving VfM requires a balance between three coordinates or the “three E’s”, as they are commonly known:

- **Economy** - careful use of resources to minimize expenses, time and effort required;
- **Efficiency** - delivery of better results for a certain factor, or minimizing a certain factor for the delivery of the same results, always maintaining the *quality*; and
- **Effectiveness** – delivery of better results or generation of a better return for the same level of expenses, time and effort.

In the light of the 3Es, VfM can be defined as the optimum mix of and balance between *the full life-cycle cost of a product, service or work and quality* (in the sense of fitness for purpose) in order to meet the end user’s/beneficiary’s requirements.

In other words, VfM requires Procuring Entities to purchase the optimum combination of features that satisfy their needs. Therefore, the assessment of VfM requires the different qualities, intrinsic costs, longevity, durability, etc. of the various products on offer to be measured against their cost.

Table 11 provides an example on how to assess value for money for goods procurement.

Table 11: Example on assessment of Value for Money

Example: Purchase of printers

There are three laser jet printers on offer, all of which provide the same technical output in terms of pages per minute and have equal life span:

Printer A: Cost of TZS 500,000 cost of toner TZS 175,000 life of toner 8,000 pages

Printer B: Cost of TZS 600,000 cost of toner TZS 190,000 life of toner 10,000 pages

Printer C: Cost of TZS 800,000 cost of toner TZS 50,000 life of toner 8,000 pages

Printer A is the lowest price, but does it offer value-for-money? That depends on use. For an the office that produces about 60,000 pages per year the cost of toner per page is TZS 21.88 for printer A, TZS 19.00 for printer B and TZS 6.5 for printer C and the real cost of the printers per year period is:

Printer A: $\text{TZS } 500,000 + \text{TZS } 21.88 \times 60,000 = \text{TZS } 1,812,500.00$

Printer B: $\text{TZS } 600,000 + \text{TZS } 19.00 \times 60,000 = \text{TZS } 1,740,000.00$

Printer C: $\text{TZS } 750,000 + \text{TZS } 6.25 \times 60,000 = \text{TZS } 1,125,000.00$

Printer C probably offers the best value-for-money. Thus, if these printers are in use for many years and if the offices purchase several printers, then the savings to be made from buying the more expensive printers become significant.

3.2.3 Value-For-Money Criteria and Tests in Managing Procurement Contracts

In order to obtain best value for money, procurement officials must (UNOPS 2014):

- Maximise competition;
- Ensure good planning and clear specifications and minimise financial risk, e.g. thorough background checks on capacity (technical and financial) of bidders;
- Carefully establish the evaluation criteria (in order to select the offer with the highest expectation to meet PEs' needs in accordance with the evaluation parameters set forth in the tender documents);
- Consider all costs, e.g. life cycle costs, transportation costs, installation costs, maintenance costs, sustainable procurement considerations;
- Ensure, whenever possible, that social and environmental benefits are optimised and adverse impacts are minimized;

- Ensure impartial and comprehensive evaluation of offers in a timely manner; and
- Ensure selection of the contractor whose offer has the highest degree of realism and whose performance is expected to best meet the specified requirements at the lowest overall expense to the organization.

Table 12 describes the criteria which are commonly used in assessment of Value for Money in procurement.

Table 12: Criteria used in assessment of Value for Money in procurement

Stage	Criteria
Planning, Design and Tender Documentation	<ol style="list-style-type: none"> 1) Existence of the project in the approved budget 2) Existence of the project in the procurement plan 3) Compliance of project planning, particularly with respect to: assessment of competing alternatives based on feasibility studies carried out; analysis of feasibility based on appropriate architectural and structural design software; timely appointment of independent design professional or Contract supervisor; and availability of both Architectural and Structural Design Reports. 4) Accuracy and completeness of architectural and structural designs and reports 5) Accuracy, appropriateness and completeness of technical specifications 6) Overall appropriateness of the design in terms of economy and function (fitness for purpose) 7) Accuracy and completeness of BOQs for the works and their consistency with the drawings and technical specifications 8) Accuracy and completeness of bidding documents 9) Accuracy of the Engineer's estimates
Procurement	<ol style="list-style-type: none"> 1) Use of standard tender and contract documents 2) The tender notice sent to PPRA 3) The selection method 4) Prequalification and shortlisting 5) Time for submitting bids 6) Communication of clarification to bidders 7) Evaluation process and award of contract 8) Composition of tender evaluation committee 9) Members of evaluation team signing code of ethics 10) Evaluation done as per the evaluation criteria contained in the tender dossier or Request for Proposal 11) Notification of evaluation results to unsuccessful bidders 12) Publication of awards 13) Quality and comprehensiveness of the tender evaluation report

Stage	Criteria
	14) Competitiveness of rates quoted for major items of construction when compared with prevailing market prices 15) Overall competitiveness of the most economic tender when compared with prevailing market prices in both private and public sectors 16) Capacity and competence of the selected contractor in relation to project size and complexity
Execution	1) Timeliness of site possession 2) Quality of project programme (schedule of work) 3) Adherence to project programme 4) Quality of contractor's site organization and staff 5) Quality of supervising engineer's site staff 6) Quality of quality assurance programme 7) Adherence to quality assurance programme 8) Quality of Hoardings and other temporary structures 9) Management of contractual documents, including surety and insurances bonds 10) Quality and management of project documentation with respect to: general correspondence, site instructions, minutes of site meetings, progress reports, works measurement and inspection, records, material testing records, interim and final payment certificates, variation orders, claims 11) Assessment (including validity of) variations 12) Assessment (including validity of) claims and related cost overruns 13) Assessment (including validity of) project delays and extensions of time
Project completion and Closure	1) Quality and completeness of as-built-drawings 2) Compilation and Management of snag list 3) Timely issuance of Substantial Completion Certificate, Final Certificate and settlement of Final Account 4) Management of the defects liability period 5) Quality and adequacy of the final project report 6) Compliance of final quantities paid for with those reflected by the actual investment as per as-built-drawings 7) Compliance of project cost as per final account with accepted tender price 8) Compliance of actual project completion time with the contract period
Quality of executed works	1) Based on visual assessment, determine whether the completed works are satisfactory in terms of: Overall quality of workmanship; Overall quality of materials used; Overall quality of walls, columns, beams; Overall quality of plaster and painting or any other type of finishes; Overall quality of roof structure and covering; Overall

Stage	Criteria
	<p>quality of ceiling; Overall quality of External works; Absence of defects, such as cracks, bends, failures, etc; Functional requirements (assess whether floors, lifts, fittings, doors, windows, etc are functioning properly)</p> <p>2) Based on physical site measurements, determine whether dimensions of the following major items of construction of the completed works comply with the drawings and technical specifications: Correctness of setting out (designed/specified versus actual/verified) ; Compliance on scope (Quantum of work done versus specified/paid for); Correctness of plinth levels; Correctness of functional requirements (verification of rooms dimensions); Dimensions of windows, doors, etc; Compliance on materials utilization (specifications, warranties, dimensions, make or source, etc); Visual assessment of quality of materials used and works done;</p> <p>3) Based on site measurements, determine whether dimensions of rooms and other functions comply with the technical drawings and specifications</p> <p>4) Based on sample field tests determine whether the quality of materials used in concrete structure comply with the technical specifications;</p> <p>5) Based on sample field tests determine whether the quality of materials used in finishing works comply with the technical specifications;</p> <p>6) Assess compliance of site clean-up and restoration of disturbed and/or damaged areas with Environmental Management</p> <p>7) For uncompleted projects, assess compliance of on-going construction activities with safety and Environmental Management Plan (EMP) requirements</p>

Source: PPRA

Exercises

Excercise 19. Case study on Excess Bill of Quantities

Value for money audit of the Construction of Maboresho District Council Multipurpose Hall at Maboresho town revealed the following: there were provisions in the Bills of Quantities which were repetitive on the same function especially on the Raft Foundation concrete Class 30, finishing and floor tiles. The excess quantities were valued at 100 million.

Required: Explain the possible causes of the above weakness and how it can be avoided through observing best practices in the procurement cycle as well as administration and management of procurement contracts.

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ANNEXES

Annex 1: Questions for Pre-Training Assessment

S/n	Statement	True (T) or False (F)
1.	Contract administration involves record keeping and ensuring adequate documentation exists	
2.	Payments that exceed the progress of the project shift risk to the PE	
3.	Contract management is a post-award function	
4.	The PMU is responsible to manage the works of inspection committee	
5.	The PMU is required to prepare and submit to the Accounting Officer performance report on monthly basis or within the period prescribed by the Accounting Officer	
6.	The Contract Supervisor is required to certify for payments to suppliers, contractors or consultants	
7.	The PMU is required to prepare project closure reports	
8.	Most works contracts implemented in LGAs are lump sum contracts	
9.	Lump-sum contracts are used when it is difficult to define the scope and the length of services	
10.	The purpose of Conditions of Contract is to define the basic rights, responsibilities, and relationships of the entities involved in the performance of the contract	
11.	Before undertaking the procurement of solicited PPP projects, PEs are required to carry out a feasibility study	
12.	PEs are prohibited from conducting procurement process for unsolicited project proposal which- requires or would require the Government guarantee for cash flow	
13.	An order for extension of time may be issued by the contract supervisor	
14.	Accounting Officer (AO) is responsible for handling complaints or disputes before and after the procurement contract has entered into force	
15.	Delays caused by Acts of God (Force Majeure), war, fire, floods, and other abnormal events which neither Employer nor Contractor can prevent by exercising due diligence qualify for added compensation	

S/n	Statement	True (T) or False (F)
16.	Any amendment to the contract that may change the original terms and conditions of such contract shall be prepared by the procurement management unit in consultation with the User Department before it is submitted to the Accounting Officer for approval.	

Annex 2: Sample letter for Appointment of Contract Supervisor

LETTER FOR APPOINTMENT OF CONTRACT SUPERVISOR

HALMASHAURI YA WILAYA YA ABC

(Barua zote ziandikwe kwa Mkurugenzi Mtendaji Wilaya)

Simu Na XXX
Unapokea nafaaka ya taja:

<<< **NEMBO**>>>

S.L.P XXX,
WILAYA,
MKOA.

Kumb. Na. XXX/C/B/85/VOL.II/
10/05/2016

Ndugu,
Jina.....
Cheo.....
S.L.P XXX
WILAYA.

YAH: KUTEULIWA KUSIMAMIA MRADI WA MATENGENEZO YA
UJENZI/UKARABATI WA

Tafadhali husika na kichwa cha habari hapo juu.

Nimekuteua kusimamia mradi wa Matengenezo ya (Mara kwa mara,sehemu
korofi,Muda maalumu). Barabara ya

.....

Ambao utafanya na Mkandarasi M/S....., ambao utanza tarehe
..... hadi tarehe

Majukumu yako ni kama ifuatavyo.

- (i). Kusimamia kwa karibu mradi huu kwa kufuata taratibu za mikataba.
- (ii). Kusimamia ubora wa viwango kazi vinavyokubalika kwa mujibu wa mkataba.
- (iii). Kusimamia utekelezaji wa mradi kwa kufuata mpango kazi "Work programme"
ya

Mkandarasi kama zipo dalili za kutotekelezeka mpango kazi.

- (iv). Kuandaa malipo kulingana na kazi zilizokamilika na zinazostahili kulipwa kwa uhalisia

na sio kufuata' BOQ' lipa "actual works"

- (v). Kuandaa vikao vya maeneo ya kazi "site meeting" zitakazo wahuisha, Mwajiri,
PMU,

Viongozi wa serikali za vijiji/kata waliopo karibu na eneo la mradi pamoja na Mkandarasi kila mwezi.

(vi). Kusimamia upimaji na ubora wa kazi inavyofanywa na Mkandarasi ukishirikiana na

TANROADS.

(vii). Kushirikisha Wananchi walio karibu na eneo la mradi katika utekelezaji wa mradi ikiwa

Ni pamoja na kuwapa taarifa juu ya maendeleo ya mradi.

(viii). Kumsimamia mkandarasi kuhusu masuala mtambuka katika eneo la mradi huu ikiwa ni

Pamoja na ushiriki wa sawa wa kijinsia (wanawake na wanaume) katika kuajiri vibarua,

Ugawaji wa vipeperushi na “condom” katika maeneo ya mradi ili kupunguza maambukizi ya VVU.

(ix). Kusimamia kwa karibu rasilimali zilizopo barabarani (existing road structure and

Furnitures) ili zisiharibiwe wakati wa utekelezaji wa mradi huu ili kupunguza gharama

Za kurudia kazi.

(x). Kumshauri Mhandisi wa ujenzi *pale inapobidi* juu ya kuongeza na kupunguza kazi

Kulingana na mkataba.

(xi). Kutoa mapendekezo kwa maandishi na vitendo juu ya Wananchi wanaofanya shughuli

Zozote katika eneo la barabara (yaani, umbali usiozidi mita 15 kila upande wa barabara).

Hakikisha unatekeleza majukumu yote hayo kwa umakini na kuhakikisha utekelezaji wa mradi huu unakamilika kama ulivyo katika mkataba. Iwapo mradi huu utatekelezwa chini ya kiwango utawajibishwa kwa mujibu wa sheria na taratibu za kiutumishi.

Nakutakia kazi njema.

XXXXX

MKURUGENZI MTENDAJI (W)

WILAYA.

Nakala 1. Mhandisi wa Ujenzi (W)

2. Afisa Ugavi (W)

Annex 3: Request for Approval of Contract Amendment

REQUEST FOR APPROVAL OF CONTRACT AMENDMENT

[For Submission to Tender Board]

Name of the Procuring Entity: *[insert name of Procuring Entity (PE)]*

Tender ID No.: *[Insert tender identification number]*

Subject of Procurement: *[insert subject of procurement]*

Method of Procurement: *[insert method of procurement]*

SUBMISSION INFORMATION		
1.	How many times (if any) has the contract been amended?	
2.	Insert: <ul style="list-style-type: none">• Original contract value• Total value of any previous amendments (+ /- currency and amount)• percentage of original contract value	
3.	Describe proposed amendment to contract	
4.	Reason for amendment of contract	
5.	Insert: <ul style="list-style-type: none">• Value of proposed contract amendment (+/- currency and amount)• percentage of original contract value	
6.	Any other relevant information	

Documents attached: *(list any other documents attached)*

Draft Contract Amendment

Related Documents Submitted Previously: *(available for reference from Secretary to Tender Board)*

Previous Submission: <i>(Section letter and title)</i>		Date Approved:	
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Contract Document and all previous amendments

The Tender Board *[insert either “has” or “has not”]* approved Contract amendment number *[insert number of amendment]* amounting to *[insert currency and amount of the proposed contract amendment]* to an amended Contract value of *[insert amended Contract value in currency and amount]*.

The information contained in this form and the attached documents is complete, true and accurate and in accordance with the Public Procurement Act No. 7 of 2011, it's Regulations and funds available for this contract amendment:

Secretary of the Tender Board	Chairperson of the Tender Board
Signature:	Signature:
Name:	Name:
Date:	Date:

Annex 4: Training Evaluation Form

TRAINING EVALUATION FORM

Name of Module:	
Venue of Training:	
Dates of Training	From To
Trainer(s):	1. 2.
Name of LGA:	
Name (Optional):	
Position:	

Indicate your answer by putting a circle around the number (i), (ii), (iii), (iv) or (v).

PART ONE: OVERALL RELEVANCE OF THE COURSE

1. The objectives of the course were relevant to my training needs:

- (i) Completely agree; means that all the objectives were relevant
- (ii) Mostly agree; means that most of the objectives were relevant
- (iii) Agree; shows approximately half of the objectives were relevant
- (iv) Slightly agree; indicates that a few objectives were relevant
- (v) Completely disagree; to the extent that all objectives were irrelevant

2. The outputs of the course were relevant to my work:

- (i) Completely agree; means that all output were relevant
- (ii) Mostly agree; implies that most output were relevant
- (iii) Agree; shows approximately half of the output were relevant
- (iv) Slightly agree; indicates that a few output relevant
- (v) Completely disagree; to the extent that all output were irrelevant

PART TWO: COURSE CONTENT

3. The content of the course was the same as I expected:

- (i) Completely agree; all the parts of the course were covered as I expected
- (ii) Mostly agree; means that most of the parts of the course were covered as I expected but a few were omitted
- (iii) Agree; indicates that approximately one half of what I expected to cover in the course were actually covered while most of them were omitted
- (iv) Slightly agree; indicates that most of the parts of the course I expected to cover were omitted
- (v) Completely disagree; to the extent that all parts I expected to cover in the course were omitted.

4. I found the following topics particularly useful (list in order of usefulness):

1.
2.
3.

5. I found the following topics particularly not useful (list in order of non-usefulness):

1.
2.
3.

6. I found the overall content of the course very easy to understand:

- (i) Completely agree; that the course content was easy to understand
- (ii) Mostly agree; means that the course content was quite easy to understand
- (iii) Agree; shows that I found my level of understanding fairly acceptable
- (iv) Slightly agree; implies that I found the course content somewhat difficult to understand
- (v) Completely disagree; indicates that found the content very difficult to understand

7. I intend to more effectively perform the following tasks when back in my duty station (list in order of priority)

1.
2.
3.

PART THREE: COURSE DELIVERY AND ORGANISATION

8. The overall presentation of the facilitators was:

- (i) Excellent
- (ii) Very good
- (iii) Good
- (iv) Fair
- (v) Poor

Suggestion:

9. The training methods are:

- (i) Very good
- (ii) Good
- (iii) Poor

Suggestion:

10. I found theory and practice well-balanced in course delivery:

- (i) Completely agree
- (ii) Mostly agree
- (iii) Agree
- (iv) Slightly agree
- (v) Completely disagree

Suggestion:

11. The duration of the course is:

- (i) Too long
- (ii) Adequate
- (iii) Too short

Suggestion:

12. The workload of the course is:

- (i) Too little
- (ii) Just right
- (iii) Too heavy

Suggestion:

13. The training aids and materials are:

- (i) Very adequate
- (ii) Adequate
- (iii) Inadequate

Suggestion:

14. The training venue was:

- (i) Very convenient
- (ii) Convenient
- (iii) Not convenient

Suggestion:

15. The meals and services were:

- (i) Very adequate
- (ii) Adequate
- (iii) Inadequate

Suggestion:

PART FOUR: SUGGESTIONS FOR FUTURE IMPROVEMENTS

11. Give up to three suggestions for future improvement of similar short-term course:

1.
2.
3.

12. What other training would improve your performance on the job?

1.
2.
3.

13. Provide any other comments as you deem necessary

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.....

We thank you for your response.

Date:
