



dpwrt

Department:
Public Works; Roads and Transport
North West Provincial Government
Republic of South Africa

LEGAL RELATED POLICY

POLICY TITLE : CONTRACT MANAGEMENT POLICY

DEPARTMENT : PUBLIC WORKS, ROADS AND TRANSPORT

1. PREAMBLE

1.1 The Department of Public Works Roads and Transport recognize that there is a great need for the following:-

- i. the need to finalize the structure that will ensure regular and consistent adherence to good governance and standards;
- ii. the need to have a formal and independent risk Management process in place for the Management of regulating risk;
- iii. the need to ensure that Service Providers comply and adheres to the conditions of the Service Level Agreements with the Department.

1. LEGISLATIVE FRAMEWORK

- i. The Constitution of the Republic of South Africa, Act 1996;
- ii. Public Service Act, 1994;
- iii. Basic Service Act, 1994;
- iv. Public Finance Management Act and related Acts.

2. PURPOSE

2.1 To make provision for measures and procedures through which this policy addresses the following:-

- i. adequately addresses all material risks to which the Department is exposed;
- ii. adequately addresses all material objectives and aspects of applicable legislation;
- iii. adequately ensuring that there is constant monitoring of contracts and service level agreements entered into by and between the Department and various Service Providers;
- iv. adequately ensuring compliance by the Department with the terms of various agreements entered into by and between it and various parties;
- v. that it is readily available to all staff;
- vi. establish prompt mechanisms for reporting and resolving non-compliance with laws and regulations.

3. SCOPE OF APPLICATION

3.1 This policy shall apply to all employees within the North West Department of Public works Roads and Transport. This includes (Road Workers – Road Camps) construction engineering ,and/or Admin Staff, Officials, etc.

4. POLICY PROVISIONS AND ROLES / RESPONSIBILITIES

4.1 The Head of the Department shall appoint a Compliance Officer.

4.2 Such Compliance Officer shall be based within the office of Supply Chain Management and shall be in constant communication with the Legal Department to ensure that there is compliance.

5. OBJECTIVES OF THE COMPLIANCE FUNCTION

5.1 In line with international best practices, the objectives of the compliance function shall be said to be:-

5.1.1 to assist Senior Management of the Department in discharging their responsibility to comply with applicable statutory, regulating and supervisory requirement of Supply Chain Management with a view to:-

- i. protecting the reputation of the Department;
- ii. avoiding legal action against the entity in respect to compliance matter;
- iii. enabling the Department to demonstrate to the regulatory entities that it is “fit and proper” to undertake its business.

6. DUTIES OF THE COMPLIANCE OFFICER

6.1 He / she must:-

- i. understand, keep abreast of and communicate existing compliance requirements as well as future compliance requirements and changes to the law;
- ii. to oversee the implementation of compliance procedures;
- iii. to co-ordinate and oversee the risk analysis process in the Department;
- iv. to formulate a monitoring program that monitors compliance at all levels of the Department and provide for non-compliance with provisions of contracts including Service Level Agreements;
- v. to ensure that training / awareness is undertaken;
- vi. investigate cases of non-compliance;
- vii. make recommendations to the Head of the Department about action to be taken after consultation with the Legal Services.

7. ROLE PLAYERS

7.1 Key role players are Supply Chain Management, Departmental Procurement Committee, Legal and Risk Management in conjunction with the Compliance Officer, Service Providers and Programme Managers.

8. FUNCTION OF SUPPLY CHAIN MANAGEMENT (AFTER AWARD)

8.1 Supply Chain Management shall ensure that all contracts signed after award of tenders are forwarded to Legal Services and to the Compliance Officer for proper monitoring.

8.2 Such contracts shall be accompanied by the appointment letter and brief facts regarding the following: -

- i. when was the contract awarded;

- ii. when is the contract going to expire;
- iii. what is the notice period in the event of termination;
- iv. what is the value of the contract;
- v. what are the key deliverables of the contract;
- vi. the frequency of monitoring the said contract;
- vii. the contact person of the programme.

9. FUNCTIONS OF LEGAL SERVICES

9.1 To receive tender documents and letters of appointment from Supply Chain Management after award of tenders.

- i. To draft Service Level Agreements on behalf of the Department.
- ii. To advise Supply Chain on compliance.
- iii. To advise the Department on termination or rectification of breach.
- iv. To draft termination letters on behalf of the Department.
- v. To institute action or defend claims on behalf of the Department resulting from contracts entered by and between them.

NB Supply Chain Management shall comply with the guidelines when entering into contracts:-

9.1 Non-standard, especially complex, agreements shall always be referred for vetting to the Legal Section;

- i. the parties shall be correctly cited;
- ii. correct names;
- iii. correct registration / identity numbers.

9.2 Have the signatories got authority to sign?

- i. all contracts on behalf of the Department must be signed by the Head of the Department or his/ her duly authorized delegate
- ii. whoever is signing on behalf of the other party e.g. proper / appropriate resolution / authorization obtained.

9.3 Shall verify the capacity to contract.

- i. minor requiring guardian's assistance;
- ii. marriages in community of property or in terms of an Antenuptual Contract i.e. is spouse's consent required?

9.4 Legal Services shall verify where possible, that the constitution or other enabling document of an entity (Partnership, Trust, Close Corporation or Company) permit it to enter into the contract contemplated?

9.5 In the case of a Trust, does the Trust Deed permit the Trustee to enter into the contract and is the contract to the benefit of the beneficiary/ies?

9.6 All blank spaces required to be filled in, been completed and appropriately filled.

9.7 All parties, including witnesses must sign all amendments to authenticate them.

9.8 The *domicilium* address required must be filled in with a physical address.

9.9 Supply Chain shall ensure that resolutive or suspensive conditions, imposing obligations on the Department, the other party or any third party, which might affect the coming into existence of the contract, are noted and forwarded to the relevant Directorate to fulfill.

9.10 Shall ensure that dates are correctly filled in by both / all signatories.

9.11 Witnesses shall append their full names to the agreement in block letters, for later identification.

9.12 The official shall check with Legal Section whether the agreement requires revenue stamps.

10. REVIEW AND MONITORING OF CONTRACTS

10.1 Supply Chain Management together with Legal Services must review all signed contracts Department every six (6) months to determine whether there is compliance with all terms and conditions of the contract.

10.2 The Department shall have a comprehensive list of which contracts are current and which are soon to expire.

10.3 The Department shall have a database of all contracts issued and entered into and Supply Chain shall keep a register, which may also be available to other Directorates on request.

10.4 Supply Chain shall confirm with Finance as to whether all payments to Service Providers have been made in terms of the provisions of the contract or Service Level Agreement.

10.5 Department must observe the following **Contract Management** process:-

- i. performance discussions (monthly);
- ii. payment cycles (3 monthly);
- iii. escalation cycle (6 monthly);
- iv. re-negotiation or re-tender (3 yearly / 5 yearly or depending on contract).

10.6 The Department shall ensure that the following Contract Management stages are strictly adhered to: -

10.6.1 Tender Development

- i. Specification
- ii. Tender Strategy
- iii. Maintenance Plans
- iv. Budget allocation

10.7 Tender Evaluation

10.8 Drafting of Service Level Agreement (SLA)

10.9 Signing of SLA by all Parties

10.10 Contract Management

- i. Measurement and reporting
- ii. Monitoring and evaluation

10.11 Re-negotiation or Re-tender

11. TERMINATION OF CONTRACTS

- 11.1 No official in the Department shall terminate a contract without first consulting with Legal Services to establish the consequence of such termination.
- 11.2 Termination of all contracts and SLAs shall be effected subject to DPC recommendation to the Head of Department.
- 11.3 The Department shall ensure that they go into dispute resolution before suspension of contracts and finally termination. This is called escalation of non-conformance).
- 11.4 Legal Services shall confirm to the DPC that all corrective measures have been taken before termination as provided for in the General Conditions of Contract and / or Special Conditions of Contract: -
 - 11.4.1 e.g. certain contracts will provide that before a contract is terminated then a letter requiring breach to be remedied must be dispatched to the Service Provider to remedy the non-performance or breach.
- 11.5 Officials must remember that termination of contracts may end up in Court. Officials of the Department must remember that it will have the onus to proof breach and as such all paperwork regarding termination must be kept readily available.

12. RE-NEGOTIATION AND RE-TENDER

- 12.1 The Department shall ensure that at least three (3) months before the expiry of each contract or depending on the provisions of each contract a decision must be taken whether to re-negotiate or re-tender a particular contract depending on the provisions of the PFMA.
- 12.2 In the event of re-negotiation a meeting must be held with the Service Provider to negotiate new terms of the new contract.
- 12.3 Where a contract is to be re-tendered the Service Provider must be notified 3 (three) before expiry of the contract.

APPROVED



PJ N VAN STADEN
DEPUTY DIRECTOR GENERAL

1 September 2009

Date