



PUBLIC PROCUREMENT AUTHORITY (PPA)

ACCRA, GHANA

**CONTRACT ADMINISTRATION MANUAL FOR
GOODS**

MANUAL 1

PREPARED BY

**GIMPA Consultancy Services
P.O. Box AH 50, Achimota
Greenhill
Accra.**

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FOREWORD

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

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

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

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

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

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LIST OF ABBREVIATIONS/ACRONYMS

Act 663	Public Procurement Act, 2003
ADR	Alternative Dispute Resolution
CAGD	Controller and Accountant General’s Department
CAP	Contract Administration Plan
CoA	Chart of Accounts
CFR	Cost and Freight
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance Paid To
CPT	Carriage Paid To
DANIDA	Danish International Development Agency
DAF	Delivered at Frontier
DAP	Delivered at Place
DAT	Delivered at Terminal
DDU	Delivered Duty Paid
DEQ	Delivered Ex Quay
DFID	Department for International Development
ERMS	Electronic Records Management Strategy
ERP	Enterprise Resource Planning
EXW	Ex Works
FAA	Financial Administration Act (Legal and Regulatory Framework)
FAR	Financial Administration Regulations (Legal and Regulatory Framework Reform)
FAS	Free Alongside Ship
FCA	Free Carrier
FOB	Free on Board
GCC	General Conditions of Contract
GIFMIS	Ghana Integrated Financial Management Information Systems
GoG	Government of Ghana
ICT	Information & Communication Technology
ICT	International Competitive Tender
IFIs	International Financial Institutions
IGF	Internally Generated Funds

ISO	International Standardization Organization
INCOTERMS	International Commercial Terms
IPPD2	Integrated Personnel and Payroll Database
LPO	Local Purchase Order
MDAs	Ministries, Departments and Agencies
MMDAs	Metropolitan, Municipal and District Assemblies
MoF	Ministry of Finance
NCT	National Competitive Tender
NITA	National Information Technology Agency
PE	Procurement Entity
PFM	Public Financial Management
PO	Purchase Order
PPA	Public Procurement Authority
PRAAD	Public Records and Archives Administration Department
P2P	Procure to Pay
PUFMARP	Public Financial Management Reform Programme
PV	Payment Voucher
RFQ	Request for Quotation
RM	Records Management
SCC	Special Conditions of Contract
SRA	Store Receipt Advice
SRV	Stores Receipt Voucher
SWIFT	Society of Worldwide International Financial Telecommunication
TIN	Tax Payer Identification Numbering
UK	United Kingdom

GLOSSARY OF TERMS

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

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

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

TERM	DEFINITION
Tender	An offer to supply goods or works conforming to particular specifications.
Tenderer	A person who puts in a bid or offer in a procurement contract.
Works	Work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembly, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

INTRODUCTION

Background

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

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

Purpose of the Manuals

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

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

Scope of Manual on Goods-1

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

Content/Structure of the Manual on Goods-1

The Manual consists of an introduction and thirteen (13) chapters as follows:

- ❖ Introduction
- ❖ 1.0: Contract Principles
- ❖ 2.0: Basics of Contract Administration
- ❖ 3.0: Forms and Conditions of Standard Contract for Goods
- ❖ 4.0: Contract Administration Process: Post-Award Preliminary Tasks
- ❖ 5.0: Monitoring Contract Performance & Reporting
- ❖ 6.0: Managing Contract Changes/Variations
- ❖ 7.0: Payments
- ❖ 8.0: Claims & Settlement of Disputes
- ❖ 9.0: Termination of Contract
- ❖ 10.0: Contract Records Management
- ❖ 11.0: Evaluation of Contract Performance
- ❖ 12.0: Post- Implementation Tasks
- ❖ 13.0: INCOTERMS

Exceptions to the Manual

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

Forms/Templates

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

1.0 CONTRACT PRINCIPLES

1.1 Introduction

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

1.2 Contract – Definition

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

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

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

1.3 Essential Elements of a Valid Contract

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

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

With certain exceptions, a contract need not be in writing. However, enforceability will depend on being able to prove the existence and terms of a contract. It is therefore highly recommended that all contracts be put into writing.

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

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

1.4 Formation of a Contract

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

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

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

1.5 The Law Applicable to a Contract

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

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

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

1.6 The Nature and Types of Goods

According to Act 663(amended) Section 98, ‘Goods’ means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves.’ The following are examples of goods:

- Computers and accessories
- Stationery
- Bottled liquid
- Drinks
- Books
- Furniture
- Vehicles
- Plant and equipment
- Spare parts
- Manufactured components, products
- Commodities-rice, sugar, cereals
- Fertilizer
- Farm produce
- Detergents
- Glassware
- Generators
- Air conditioners
- Etc., etc.

The delivery/supply of some of these goods may, in addition, include siting and installation of equipment and/or machinery.

1.7 Types of Contracts for Goods Procurement

Different types of contract are used in the public sector in Ghana for goods procurement depending on the methods of procurement which are determined in accordance with thresholds specified in the Public Procurement Act, 2003 (Act 663) as amended. The methods which have forms of contract in the tender documents are Request for Quotations (RFQ), National Competitive Tendering (NCT), Restricted Tendering and International Competitive Tendering (ICT).

The standard forms of contract for goods procurement under the Public Procurement Act, 2003 (Act 663) as amended, are as follows:

- i. Standard Contract for Request for Price Quotations
- ii. Standard Contract for National Competitive Tendering & Restricted Tendering
- iii. Standard Contract for International Competitive Tendering
- iv. Framework Agreement

The standard forms of contract have terms and conditions. Most contracts for goods procurement are of short-duration and therefore fixed price. Long duration contracts, usually **exceeding eighteen (18) months** will have a provision for price adjustment in the terms and conditions.

In accordance with Public Procurement Act, 20003 (Act 663) as amended, “Framework Agreement, means a long-term agreement with suppliers, contractors and providers of non-consulting services which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. Framework agreements are generally based on prices that are either pre-agreed or determined at the call-off stage through competition or a process allowing their revision without further competition.”

It has to be noted that no contract exists until the procurement entity issues a Purchase Order (PO) or “call-off” against the Framework Agreement.

1.8 Factors Affecting the Choice of Contract Type

The factors affecting the choice of contract are largely dependent on the methods of procurement as specified in the Public Procurement Act, 2003 (Act 663) Amended. The contract type is determined prior to tendering and contract award.

1.9 General Principles for Contracts

The following general principles apply to contracts:

- The terms of contract must be precise, definite and without any ambiguities.
- Standard forms of contracts should be adopted wherever possible, if not, legal and financial advice should be sought in drafting the clauses.
- Price variation clause to be provided only in long-term contracts, where the delivery period extends beyond eighteen (18) months.
- The contract should also contain the mode and terms of payment.
- The terms of a contract, including the scope and specifications once entered into, should not be materially varied.
- All contracts shall contain a provision for recovery of liquidated damages for defaults on the part of the supplier or service provider.
- A warranty clause should be incorporated in the contract
- Suitable provision for settlement of disputes shall be incorporated into the contract

2.0 BASICS OF CONTRACT ADMINISTRATION

2.1 Introduction

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

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

Contract Administration is the responsibility of the Procurement Entity and is distinguished from physical performance of the contract which is the responsibility of the Supplier, Contractor, Consultant or Technical Service Provider.

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

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

2.1.1 Nature of Contract Management and Administration

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

Although the actual planning begins during the selection process, Contract Administration actually starts upon the signing of the contract, which is the point at which the parties to the contract are bound by its terms and conditions. As with contract management, contract administration ensures that each party adheres to the contract and performs at or above the levels specified in the contract. If we compare the nature or characteristics of the activities associated with both contract management and contract administration (see below) then we can see that the differences are fundamental, yet without efficient contract administration, then effective contract management becomes very difficult, if not impossible.

³ UN Handbook on Procurement, 2006

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

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

2.2 Objectives of Contract Administration

The main objectives of Contract Administration are:

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

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

2.3 The Role of Contract Administration

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

- Planning the relationship;
- Monitoring its development as the contract proceeds;
- Measuring its achievement;
- Taking corrective action to safeguard the interests of the Procurement Entity to ensure successful execution of the contract.

Contract Administration requires multi-disciplinary skills which, if inadequately coordinated and discharged, can adversely affect the outcome of an otherwise impeccable tendering process. A flawed Contract Administration process will undoubtedly lead to increased costs and delay in contract completion and may also expose the Procurement Entity to legal complications with unpredictable results.

2.4 The Benefits of Good Contract Administration

Effective contract administration will provide the following benefits:

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

2.5 Summary of Main Tasks of Contract Administration

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

2.5.1 Important Parties in a Goods Contract

The important parties in a goods contract are the Procurement Entity and the Supplier

- **The Procurement Entity/Purchaser**

The Procurement Entity is an entity conducting public procurement under Act 663 as amended.

The Procurement Entity sources for an item in order to satisfy a need.

- **The Supplier**

The Supplier is any potential party or the party to a procurement contract with the procurement entity.

The Supplier delivers the item ordered by the Procurement Entity at a cost.

The two parties-Procurement Entity and Supplier- and their assigns are bound by the terms and conditions of the contract.

2.6 Organization for Contract Administration

2.6.1 Legal and Institutional Arrangements for Contract Administration in Ghana

Figure1 illustrates the current legal and institutional arrangements for Contract Administration in Ghana. The figure displays the coordination and reporting obligations of the Procurement Entity on the national and international levels (depending on whether foreign financing is involved). The Procurement Entity has to conform to the set procedures of the national and international parties involved in its activities and has to correspondingly develop its reporting and operational procedures to comply with the requirements of the relevant parties.

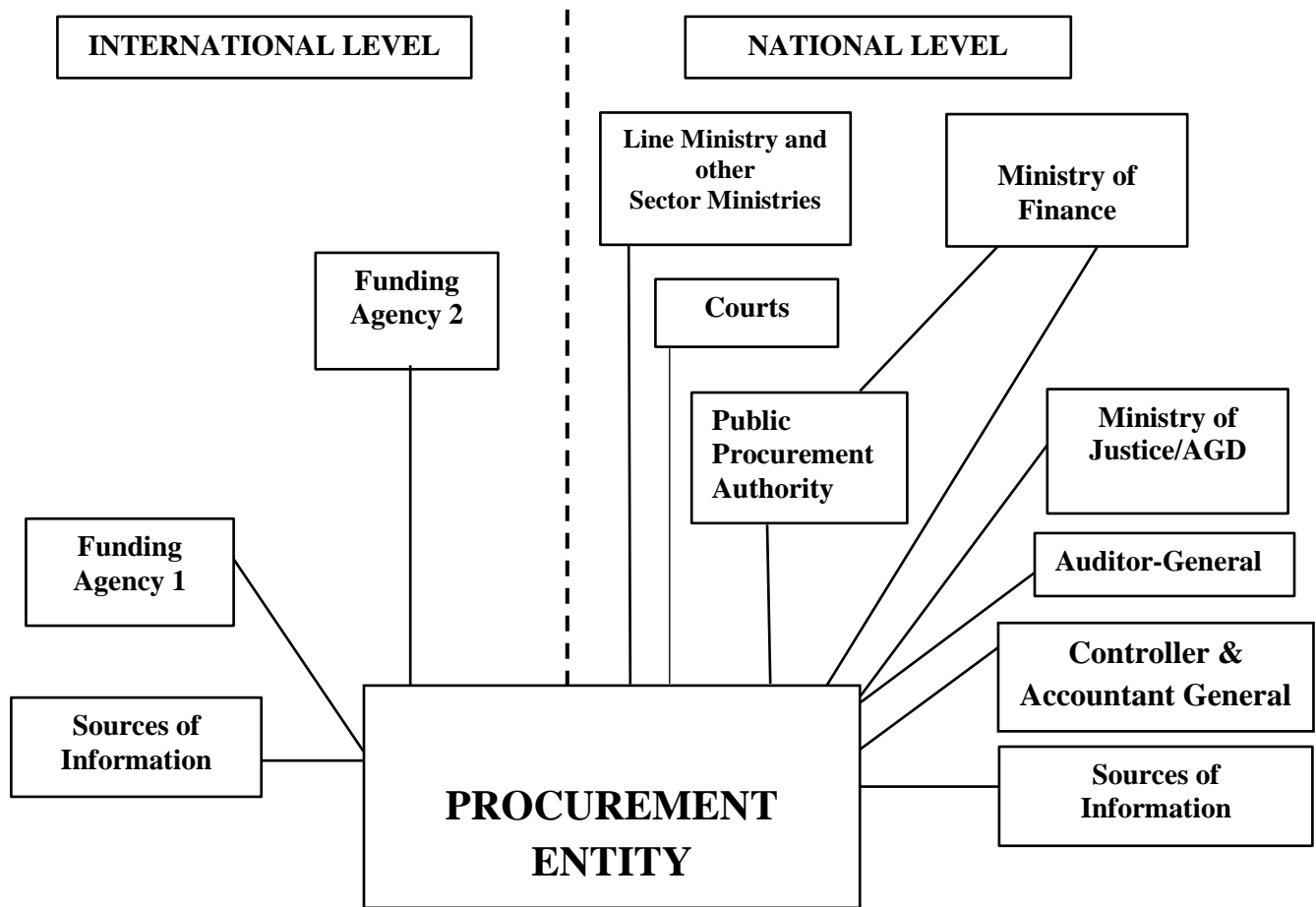
For wholly Government of Ghana funding, it is only the right side of the figure that is applicable.

The institutions involved in public contract administration include the following:

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

Figure 1: Institutional Arrangements for Contract Administration in Ghana

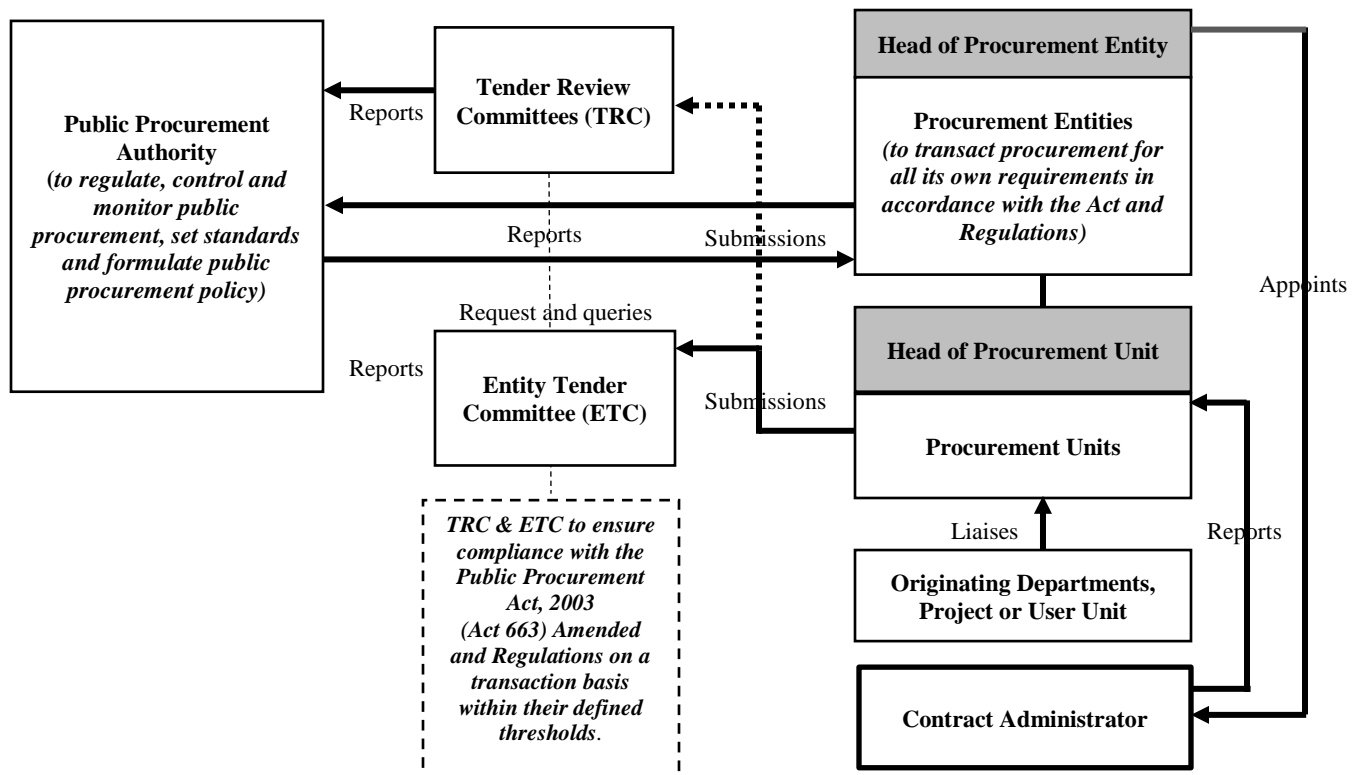
[Reporting & Coordination Obligations of the Procurement Entity]



2.6.2 Organization of Principal Procurement Bodies/Structures in Contract administration

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

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



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

The Public Procurement Authority

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

The Tender Review Committees and the Entity Tender Committees

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

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

The Procurement Entity

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

The Procurement Unit

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

The Originating Departments, Projects or User Departments

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

The Contract Administrator

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

Finance/Accounts Department

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

2.6.3 Contract Administration Organization for Supply of Goods

There must be one person who will serve as the primary contact in the Procurement Entity for administering goods contracts, and that person is called the Contract Administrator. In procurement entities, where goods procured are usually simple and of low values, the Contract Administrator may be called an Expediter. It is important that the Supplier gets direction from only one person for day-to-day matters involving expediting of orders, etc., so as to avoid conflicting directions and to establish the authority of that one person. It is equally important that this person be accountable for and have the authority to administer the day-to-day activities in order to develop a sense of ownership of the project or procurement transaction and to make sure that the person closest to the assignment is able to directly see that the contract requirements are met.

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

It is worth noting that in most simple supply of goods contracts, the Expeditor, acting as the Contract Administrator can handle all responsibilities with the support of an Assistant.

2.7 Responsibilities of the Contract Administrator

The Contract Administrator is 'an individual appointed by the head of entity to administer a contract on behalf of the entity'. The primary responsibilities of the Contract Administrator include:

- Participating, as necessary, in developing the solicitation and writing the draft documents. (Contract administration must be considered during this process.)
- Monitoring the Supplier’s performance to ensure that delivery conforms to the contract requirements.
- Authorizing payments consistent with the contract terms.
- Exercising remedies, as appropriate, where a Supplier’s performance is deficient.
- Facilitating resolution of disputes in a timely manner.
- Meeting with the Supplier when the need arises so as to review progress, discuss problems and consider necessary changes.
- Establishing control of correspondence, data and reports.
- Identifying potential problems and solutions.
- Managing any public property used in contract performance.
- Documenting significant events.
- Maintaining appropriate records.

2.8 Skills of the Contract Administrator

Contract administration is not a clerical activity. The Contract Administrator must be proactive and ideally needs to have the following competencies:

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

2.9 Poor and/or Fraudulent Contract Administration

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

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

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

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

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

- (iii) delay in payment

Poor capacity, while dangerous for the contract implementation, can be remedied through continuous and intensive training (both formal and on-the-job); hiring staff with the appropriate expertise and experience; and through close supervision. Consequently, the negative effect of lack of capacity can be successfully mitigated, especially if the issue of capacity is addressed at an early stage during contract implementation.

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

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

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

2.10 Fraud and Corruption in Contract Implementation

The contract implementation stage is the most prone to fraudulent and corrupt practices. This is a common-sense conclusion, since the implementation phase is when money enters into the equation of relations between the two parties – Procurement Entity and Supplier. Fraud and corruption undermine the very foundation of these relations, which should be based on responsibility (in achieving the scope of the contract efficiently) and accountability (for every action).

Section 93 of Public Procurement Acts 663 & 914 on Corrupt Practices states the following:

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

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

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

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

Despite all efforts to prevent and fight these practices by International Financing Institutions and Public Anti-Corruption Agencies, corruption still persists. The most frequent cases of fraud and corruption involve:

- Scope of the contract is not achieved as goods ordered are not delivered per the Purchase order, although the money has been spent;
- Unjustified variations and change requests granted by the Procurement Entity;
- Products are substituted by inferior, less expensive and lower quality products than specified in the contracts;
- Delay in delivery/installation of Goods and Equipment.

Possible indicators of Corruption:

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

- frequent change orders / variation requests especially with regard to items with high prices;
- requests for subcontracting, especially to firms that took part in the bidding process and were rejected or offered higher prices;
- failure to report any deviations from the contract;
- poor filing and recordkeeping (missing invoices, supporting documents etc.).

Remedial and pro-active Actions:

- Maintain close control on the Supplier (permanent contact, spot checks, site visits, issues log, inspection and control logbook etc.);
- Enforce a relevant and comprehensive reporting system (monthly, quarterly, by milestone etc.) to monitor closely all aspects that are important for contract management: actual vs. planned progress (both quantity and quality); timeliness of deliverables, etc.;
- Enforce internal audit procedures, four eyes principle (particularly with regard to the actual verification of invoices and supporting documents). The transaction must be approved by at least two people as a form of control mechanism. The person approving the payment should not be involved in the verification of payment documents;
- Penalize promptly any failure to report delays, variation orders, deviations from the technical specifications and any leniency towards the Supplier;
- Enforce all applicable and reasonable contract remedies – liquidated damages for delays or for non-compliance; remedies against the insurance policies and performance securities, etc.;

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

2.11 Conflicts of Interest

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

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

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

3.0 FORMS AND CONDITIONS OF STANDARD GOODS CONTRACTS

3.1 Introduction

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

3.2 Basic Documentation for Goods Contract

Documentation for goods contract comprises a set of documents that constitutes the contract between the Procurement Entity and the Supplier. These normally include the following documents:

- the Purchaser’s notification of award
- The Tender submitted by the Supplier
- The Price Schedules
- The Schedule(s) of Requirements
- The Technical Specifications and any accompanying drawings and samples of the Purchaser;
- The form of the contract- the actual document signed by both parties;
- General Conditions of Contract;
- Special Conditions of Contract;
- Copies of any relevant meeting minutes of negotiations or letters which have been exchanged;
- Securities or bonds.
- Amendments to the tender documents (if any)
- Special agreements on subjects such as installation, commissioning, etc.

3.2 Form of Goods Contract

The Contract Form represents the agreement between the two parties concerned, i.e. the Procurement Entity and the Supplier and is the document signed by both parties. In brief it summarizes the obligations of the Supplier and the Procurement Entity and defines in broad terms the basis of the agreement. Central to this agreement are the documents forming part of the contract. The Revised Standard Forms of Contract for Goods of the Public Procurement Authority (PPA) are discussed below.

3.2.1 Standard Contract for Request for Price Quotation

A typical Form of Contract for **Request for Price Quotation** is presented below.

Section 111: Form of Contract

THIS AGREEMENT made the day of20.....between [*name of Purchaser*] (hereinafter called “the Purchaser”) of the one part and [*name of Supplier*] of [*city and country of Supplier*] (hereinafter called “the Supplier”) of the other part:

WHEREAS the Purchaser invited bids for certain goods and ancillary services, viz.,

[*brief description of goods and services*]

and has accepted a tender by the Supplier for the supply of those goods and services in the sum of [*contract price in words and figures*] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
 - a. Tender Form and the Price Schedule submitted by the Supplier;
 - b. The Schedule of Requirements;
 - c. The Technical Specifications;
 - d. The Conditions of Contract; and
 - e. The Purchaser’s Notification of Award.
3. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the goods and services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the goods and services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the Contract.
5. This Agreement shall not be valid unless;
 - (a) signing by both parties;

- (b) authorization in the form of a Purchase Order (PO) generated from the Ghana Integrated Financial Management Information Systems (GIFMIS) or in a form specified by the Ministry of Finance (MoF) pursuant to the Applicable Law;
- (c) the fulfillment of conditions precedent such as the submission of performance bond, if any, that may be required on the part of either party under the Agreement or under the Applicable law.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

On behalf of the Purchaser

On behalf of the Supplier

Name:

Name:

Designation:

Designation:

Sign:

Sign:

Seal:

Seal:

The Price Quotation Form of Contract is the simplest of the standard forms of contract of the PPA and has one set of integrated Conditions of Contract with seventeen (17) clauses, ranging from Definitions to Operations, Maintenance and Spare Parts Manual.

3.2.2 Standard Contract Form for National Competitive Tendering

Contract Form

THIS AGREEMENT made the _____ day of _____ [mm] 20____ between [name of Purchaser] of [country of Purchaser] (hereinafter called “the Purchaser”) of the one part and [name of Supplier] of [city and country of Supplier] (hereinafter called “the Supplier”) of the other part:

WHEREAS the Purchaser invited Tenders for certain goods and ancillary services, viz., [brief description of goods and services] and has accepted a Tender by the Supplier for the supply of those goods and services in the sum of [contract price in words and figures in Cedis] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
 - (a) the Tender Form and the Price Schedule submitted by the Tenderer;
 - (b) the Schedule of Requirements;
 - (c) the Technical Specifications;
 - (d) the General Conditions of Contract;
 - (e) the Special Conditions of Contract;
 - (f) the Purchaser’s Notification of Award; and
 - (g) Contract Data Sheet (*to be used only when there are corrections to the original price schedule submitted by the supplier*).
3. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the goods and services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the goods and services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the Contract.
5. This Agreement shall not be valid unless;
 - (a) signing by both parties;

- (b) authorization in the form of a Purchase Order (PO) generated from the Ghana Integrated Financial Management Information Systems (GIFMIS) or in a form specified by the Ministry of Finance (MoF) pursuant to the Applicable Law.
- (c) the fulfillment of conditions precedent such as the submission of performance bond, if any, that may be required on the part of either party under the Agreement or under the Applicable law.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

On behalf of the Purchaser

On behalf of the Supplier

Name:

Name:

Signature:

Signature:

Designation:

Designation:

Seal:

Seal:

Date:

Date:

Witnessed By:

Witnessed by:

Name:

Name:

Signature:

Signature:

Designation:

Designation:

Date:

Date:

3.2.3 Standard Contract Form for International Competitive Tendering

Presented below is the form of contract for International Competitive Tendering.

Contract

THIS AGREEMENT made the ___ day of, _____ between _____ of _____ (hereinafter “the Purchaser”), of the one part, and _____ of _____ (hereinafter “the Supplier”), of the other part:

WHEREAS the Purchaser invited Tenders for certain Goods and Related Services, viz., and has accepted a Tender by the Supplier for the supply of those Goods and Related Services in the sum of _____ - _____ (hereinafter “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
 - (a) the Purchaser’s Notification to the Supplier of award of Contract;
 - (b) the Tender Submission Sheet and the Price Schedules submitted by the Supplier;
 - (c) the Special Conditions of Contract;
 - (d) the General Conditions of Contract;
 - (e) the Schedule of Requirements
 - (f) the Technical Specifications and
 - (g) the Minutes of Negotiation.
3. In consideration of the payments to be made by the Purchaser to the Supplier as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Related Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Related Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
5. This Agreement shall not be valid unless;
 - (a) signed by both parties
 - (b) authorized in the form of a Purchase Order (PO) generated from the Ghana Integrated Financial Management Information Systems (GIFMIS) or in a form specified by the Ministry of Finance (MoF) pursuant to the Applicable Law.
 - (c) the fulfillment of conditions precedent such as the submission performance bond, if any, that may be required on the part of either party under the Agreement or under the Applicable law

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Ghana on the day, month and year indicated above.

For the Purchaser:

Name _____

Signature _____

Witnessed by _____

For the Supplier:

Name _____

Signature _____

Witnessed by _____

ITT 36.4(b) requires that no agreement shall be valid unless a purchase is duly authorized in the form of a Purchase Order (PO) generated from the Ghana Integrated Financial Management Information Systems (GIFMIS) or in a form specified by the Ministry of Finance (MoF) pursuant to the relevant laws on public expenditure under the Applicable Law. Until then any written acceptance of the Tender/notification of award, shall not constitute a binding Contract

3.3 General Conditions of Contract (GCC)

Section III. General Conditions of Contract (National Competitive Tendering)

The GCC, read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, express all the rights and obligations of the Procurement Entity and the Supplier. The General Conditions of Contract included in the Standard Tender Documents shall not be altered. Any changes and complementary information, which may be needed, shall be introduced only through the Special Conditions of Contract. The contract documents shall always be the reference documents during the contract execution, in particular in the event of disputes.

3.3.1 Clauses under the GCC

There are thirty-two clauses in the General Conditions of Contract for **National Competitive Tendering**. These are briefly explained below:

1. **Definitions-** The definitions are for the interpretation of terms used in the contract.
2. **Application-** These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract
3. **Country of origin-** All goods and services supplied under the contract shall have their origin in Ghana or in eligible countries as specified in the Special Conditions of Contract. For purposes of this clause “origin” means the place where the goods are mined, grown, produced or manufactured, or from which Services are supplied. The origin of goods and services is distinct from the nationality of the Supplier
4. **Standards-** Goods supplied under this Contract shall conform to the standards or codes mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods’ country of origin. Where such standards and codes are national or relate to a particular country or origin, other authoritative standards that ensure substantial equivalence to the standards and codes specified will be acceptable. Such standards shall be the latest issued by the concerned institution unless otherwise expressly stated in the Contract.
5. **Use of Contract Documents and Information-** The Supplier shall not, without the Purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. The Supplier shall make use of the said information only for purposes of performing the Contract. Any other mentioned document apart from the Contract shall remain the property of the Purchaser and shall be returned by the Supplier to the Purchaser on completion of the Contract if so required.

6. **Patent Rights-** The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Purchaser's country.
7. **Performance Security-** The Supplier shall furnish the Purchaser with a performance security within fourteen (14) days after receipt of notification of award of contract. The proceeds of the security shall be paid to the Purchaser by the Supplier as a compensation for any loss in case of breach of contract or non-performance by the latter. The amount of the performance security and the period of warranty shall be specified in the SCC. This is normally 5% to 10% of the Contract price. The security shall be in the form provided for in the Tender Document or any other form acceptable to the Purchaser. It will be discharged by the Purchaser and returned to the Supplier not later than 28 days after the expiration of the one year warranty period following the date of issue of the certificate of final acceptance of equipment and after the installation and commissioning of the equipment.
8. **Inspections and Tests-** The Purchaser has the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The specific scope and procedure to be followed for the inspection and tests are specified in the SCC. The Purchaser may reject the goods if it does not conform to the specification. The Supplier shall replace the rejected goods or make alterations necessary to meet the specification at no extra cost to the Purchaser.
9. **Packing-** This condition specifies that the Supplier shall provide such packing for the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The Supplier is also to adhere to any additional packing requirement specified in the SCC or subsequently instructed by the Purchaser.
10. **Delivery and Transfer of Risk-** This requirement of the contract shall normally be in accordance with the **INCOTERMS** governing the supply of the goods, otherwise it should follow international practice or as specified in the SCC.
11. **Insurance** – The goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery. This shall be in accordance with the stated INCOTERMS in the Contract, otherwise it should be as specified in the SCC or must follow international practice.
12. **Transportation-** Unless otherwise specified in the SCC, responsibility for arranging transportation of the goods shall be in accordance with the stated INCOTERMS in the Contract.
13. **Incidental Services-** Incidental services may be part of the Contract, to the extent that they are specified elsewhere in the contract document, usually in the SCC. This may require the Supplier to provide a supervision service on site for assembly/or start- up of the supplied

goods, furnishing of tools required for assembly, training of the Purchaser's personnel at the Supplier's plant and also maintenance or repair of the goods for an agreed period of time. This does not, however, relieve the Supplier of any warranty obligations under the contract.

14. **Spare Parts-** Spare parts may be part of the Contract , to the extent that they are specified elsewhere in the contract document , usually in the SCC
15. **Warranty-**The Supplier warrants that the quality of the goods meet the specification requested for in the Tender document. This provision protects the Purchaser in case of poor quality of the goods, during a certain period of delivery, which is to be specified in the SCC. It shall remain valid for 12 months after the goods have been delivered to the final destination indicated in the Contract, installed and commissioned to the satisfaction of the Purchaser.
16. **Payment-** Payment terms and methods shall be in accordance with international commercial practices applicable to the specific goods. General principles are specified in the GCC, while specific terms and methods applicable to the Contract shall be specified in the SCC. Letters of credit are normally used to pay for imports. The documentation required is specified in the SCC
17. **Prices-**Prices charged by the Supplier for goods and services delivered and services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorized in the Special Conditions of Contract. The price adjustment formula must be stated in the SCC.
18. **Change Orders-** The provisions and obligations of either party to the contract may have to be changed within the general scope of the contract. This may include, for example drawings, designs, method of shipment, packing, place of delivery and or services to be provided. If any such change causes an increase or decrease in the cost of the time required for the Supplier's performance of any provisions under the contract, an equitable adjustment may be made in the contract price or delivery schedule, or both, and the Contract may accordingly be amended. Any claims by the Supplier for adjustment under this clause must be assessed within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order. This has to be in writing.
19. **Contract Amendments-**Variations or modification of the terms of the Contract can only be made in writing and needs to be signed by the Parties
20. **Assignment** –The Supplier shall not assign, in whole or in part, its obligations to perform under the Contract, except with the Purchaser's prior written consent.
21. **Subcontracts-** The Supplier shall notify the Purchaser in writing of all subcontracts awarded under this Contract if not already specified in the Tender .Such notification, be it

in the original tender or later, shall not relieve the Supplier from any liability or obligation under the Contract.

22. **Delays in the Supplier's Performance-** Delivery of the goods and performance of services shall be made by the Supplier in accordance with the time schedule specified by the Purchaser in the Schedule of Requirements.
23. **Liquidated Damages-** Subject to GCC Clause 25, if the Supplier fails to deliver any or all of the goods or to perform within the time period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to 0.5% of the Contract price of the delayed goods for each week of delay until actual delivery, up to a maximum deduction of 10% of the delayed goods Contract price as is stated in the SCC. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 24.
24. **Termination for Default-** Purchaser may terminate the Contract for default on the part of the Supplier. Some of the circumstances for termination by the Purchaser for default are when the Supplier fails to deliver any or all the goods within the time period(s) specified in the Contract or if in the judgment of the Purchaser the Supplier has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. The related clauses specify all the circumstances, implication and procedure for the termination.
25. **Force Majeure-** It is normal practice that contracts include a clause of force majeure. This protects both parties from certain risks in events such as natural disasters, which are beyond the control of either party, and have major consequences for the Contract.
26. **Termination for Insolvency-** The Purchaser may at any time terminate the Contract by giving written notice, without compensation to the Supplier due to insolvency on the part of the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.
27. **Termination for Convenience-** Purchaser may terminate the Contract for convenience. The related clauses specify the circumstances, implication and procedure for the termination.
28. **Resolution of Disputes-** Disputes may occur during contract execution resulting in claims from either party. General provisions are specified on how to settle disputes either by direct informal negotiations, mutual consultation and amicable resolution, or arbitration. The provision for international arbitration may be considered when the Supplier is from a foreign country as this is seen as contributing to fairness of treatment of tenderers. Specific procedures to be followed in the event of disputes and arbitration are specified in the SCC. It requires that the dispute shall be settled by arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL)

- 29. Governing Language-** The Contract shall be written in the language as specified in the SCC. Subject to GCC Clause 30, the version of the Contract written in English shall govern its interpretation. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in the English language. Act 663 specifies English as the governing language.
- 30. Applicable Law-** The applicable law prescribed in the GCC is the law of the Purchaser's country, Ghana. This provision may be modified in the SCC, if need be.
- 31. Notices-**Any notice given by one party to the other pursuant to the Contract shall be sent in writing to the other party's address as specified for that purpose in the SCC.
- 32. Taxes and Duties-** The Supplier shall be entirely responsible for all taxes, duties, license fees, etc incurred until delivery of the goods to the Purchaser. The application of this general provision is straightforward, when the Contract is limited to the delivery of the goods. In the case of more complex contracts, where the scope includes provision of related services within the Purchaser's country, the problem of tax liabilities may become more complicated. Usually, the Supplier is made liable for taxes on related services. In such a case appropriate specific provision shall be specified in the SCC

3.4 Summary List of Clauses in SCC for National Competitive Tendering

The following SCC shall supplement the GCC. Whenever there is a conflict, the provisions in the SCC shall prevail over those in the GCC. The list of clauses of the SCC are:

- i. Definitions
- ii. Country of Origin
- iii. Performance Security
- iv. Inspection and Tests
- v. Packing
- vi. Delivery and Documents
- vii. Insurance
- viii. Incidental Services
- ix. Spare Parts
- x. Warranty
- xi. Payment
- xii. Prices
- xiii. Liquidated Damages
- xiv. Resolution of Disputes
- xv. Governing Language
- xvi. Notices

3.5 General Conditions of Contract (GCC) & Special Conditions of Contract (SCC) for International Competitive Tendering

The General Conditions of Contract (GCC) & the Special Conditions of Contract (SCC) for International Competitive Tendering are provided in Appendix 2 for ease of reference.

4.0 CONTRACT ADMINISTRATION PROCESS: POST-AWARD PRELIMINARY TASKS

4.1 Introduction

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

4.2 Contract Administration Planning (Policies, Systems and Procedures)

The Purchaser must first ensure that proper internal arrangements with respect to Contract administration are made in its organization. This mainly has to do with the Procurement Entity's staff and processes as described below:

- Assign detailed tasks to the individual or the team responsible with specific duties during the contract administration process. This would be equivalent to creating job descriptions for everyone involved. The tasks assigned to each individual should be precise and realistic (taking into account the specific experience, expertise and workload of each staff). For example, the Procurement Specialist should know that he/she would be responsible for keeping track of the main contract milestones (effective date; deadlines for delivery, installation, payment, warranty period etc.); the technical expert should supervise all aspects related to the technical specifications, functional guarantees, inspections and tests, etc.
- Establish internal procedures (hierarchy, communication, level of authority, flow of documents, verification and acceptance procedures, payment procedures, internal audit etc.);
- Evaluate risks associated with the implementation of the contract, identification of the main remedies or mitigation measures, as well as parties responsible for their enforcement;
- Coordinate arrangements with third parties (other agencies, end users, beneficiaries etc.)
- Develop procedure for keeping track of the contract's price adjustment mechanism (if any)
- Develop Contract Administration Plan and Contract Milestones.

4.3 Contract Administration Plan (CAP)

In contract administration, the focus is on obtaining supplies and related services, of requisite quality, on time, and within budget. While the legal requirements of the contract are determinative of the proper course of action of public officials in administering a contract, the exercise of skill and judgment is often required in order to protect effectively the public interest. The Contract Administration Plan is a compilation of required "action schedules", implementation supervision procedures and payment procedures that must be followed and

coordinated by the Procurement Entity to ensure compliance with contract terms and conditions during contract performance by “both” parties to the contract. In other words, it details “**what**” needs to be done and by “**whom**”, “**how**” and “**when**” it needs to be done for the proper functioning of the contract.

The Contract Administration plan should aim at identifying the administrative and technical tasks required for the successful performance of the contract and at putting in place “**checks and controls**” to detect non-performance by either the Procurement Entity or the Supplier at the appropriate time in order to reduce the risks to the delivery of the procurement package caused by possible implementation problems.

4.3.1 Main Elements of a Contract Administration Plan

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

Deliverables

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

Schedules

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

Finances

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

Work Plan

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

Risk Management

- Identify risks that could hinder successful execution of the assignment.
- Loss of key personnel, natural disasters and financial constraints are common risks Suppliers face.
- Prepare a strategy for addressing the risks that you identify.
- Build some leeway into the work plan for making possible course corrections or adjusting contract milestones without incurring additional costs or missing deadlines.

4.3.2 Key Milestones of a Contract for Supply of Goods

There are certain key milestones that need to be monitored during contract administration. These include the following:

- Contract Effectiveness;
- Contract Commencement;
- Receipt of Advance Payment Security;
- Receipt of Performance Security;
- Payment of any required Advance payment;
- Pre-delivery, post- delivery or destination inspection of the goods (if stated in the Contract);
- Delivery dates of the goods according to the contract delivery schedule;
- Delivery of related services -installation and commissioning of goods (if stated in the Contract);
- Payments made in respect of the goods in accordance with the contract payment terms;
- Release of all Securities (required under the contract terms; and
- Contract Closure.

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

4.3.3 Monitoring Performance of Key Milestones

Receipt of a Performance Security

Upon Contract signature the first task is to return the Tender Security to the successful Tenderer in exchange for the Performance Security.

Contract Effectiveness

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

Contract Commencement (or Contract Mobilization)

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

Receipt of Advance Payment Security

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

Payment of Any Required Advance Payment

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

Pre-delivery, Post Delivery or Destination Inspection of the Goods

Inspection requirements will be stated in the contract, and tasks will need to be scheduled into the Contract Milestone Checklist so that appropriate arrangements are initiated by the Procurement Entity at the time they are required to be tasked.

Delivery Dates of the Goods According to the Contract Delivery Schedule

The contract will usually specify the delivery periods that will apply to the items contracted. Delivery dates will be calculated from the date of contract effectiveness (or contract commencement). The delivery dates will be included in the Contract Milestone Checklist and be central to the Contract Administrator's activities throughout the contract period.

There is a further need to hold the factual record of delivery dates just in case the Procurement Entity decides to claim against the Supplier in respect of late delivery in accordance with the terms of the contract.

Delivery of Related Services - Installation and Commissioning of Goods

The contract will also specify the related services to be provided in respect of the contracted goods. The delivery dates will be included in the Contract Milestone Checklist and be synchronized by the Contract Administrator with the site delivery of the goods.

Payments Made in Respect of the Goods in Accordance with the Contract Payment Terms

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

Release of all Securities

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

Contract Closure

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

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

4.3.4 Contract Milestone Checklist for Each Contract

As the composition of each contract differs, so the Contract Milestones for each contract will also differ. Additionally it is important to take a view of the key events of each contract in advance to determine the likely dates that those key events have to occur so that these are transferred into the Contract Administrator's Diary or Journal.

A Contract Milestone Checklist Form is shown in **Table 1** and includes a number of typical tasks that may be covered in a contract.

Table 1: Contract Milestone Checklist for Supply and Installation

Task	Original Target Date	Revised Target Date	Actual Date
Contract Effectiveness	(e.g.) 28 Jan 20...		
Contract signature (Procurement Entity (PE))	30 Nov 20...		
Contract dispatched to Supplier	01 Dec 20...		
Contract signature (Supplier)	02 Dec 20...		
Return of signed contract to PE	06 Dec 20...		
Production of Advance Payment(A/P) Security	10 Dec 20...		
Production of A/P Invoice	15 Dec 20...		
Dispatch of Invoice & A/P Security	16 Dec 20...		
Receipt of Supplier Invoice & A/P Security	21 Dec 20...		
Approval of A/P Security	27 Dec 20...		
Approval of A/P Invoice	30 Dec 20...		
Payment of A/P Invoice	20 Jan 20...		
Funds released to Supplier	24 Jan 20...		
Funds received by Supplier	28 Jan 20...		
Production Period	18 Apr 20...		
Supplier commences production	31 Jan 20...		
Production period	11 Apr 20...		
Supplier delivery scheduled	18 Apr 20...		
Delivery and Installation Period	01 Jun 20...		
Shipment scheduled	25 Apr 20...		
Shipment received in Ghana	11 May 20...		
Shipment received on site	20 May 20...		
Plant installed	27 May 20...		
Plant commissioning	01 Jun 20...		
Commissioning certificate signed	01 Jun 20...		

As can be seen in **Table 1**, a complete view of the likely timescale and all associated tasks that must be completed prior to receiving the actual goods concerned, are fully apparent to the Contract Administrator.

4.3.5 Managing the Contract Checklist

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

Contract commencement

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

Ongoing management

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

Contract extension/renewal

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

Ending the contract

- Has the Supplier delivered all the goods required?
- Has the Supplier met all the contractual obligations?

- Has an evaluation of the contract been undertaken and, where appropriate, lessons learnt been built into future contracting activities?
- Has the Supplier's performance been evaluated, properly documented, and feedback provided to the Supplier?

4.4 Commencement/Kick-off Meeting(s)

Although not as critical in goods procurement as in the case of civil works or consulting contracts, a Commencement or Kick-off meeting with the Supplier is recommended at the start of the project. The meeting should not be attended by only the Contract Administrator/ Project Manager or Purchaser's staff involved in contract supervision, but also by representatives of the end users or beneficiaries of the goods being procured, if applicable (e.g. when goods are procured for certain schools, local communities, other Government agencies etc.)

4.4.1 Critical issues to be established during the kick-off meeting

These include:

- Introducing the parties, their roles and responsibilities - this applies equally to Supplier's representatives as well as Purchaser's staff charged with managing the contract.
- Establishing communication procedures - (mechanisms, frequency etc.).
- Study of contract documents - priority and inter-correlation of contract documents; conditions of contract; specifications; payment schedules and covenants; implementation milestones (delivery, installation, commissioning, acceptance etc.);
- Review of applicable legislation and any obligations in connection with the execution of the contract in the Purchaser's country (e.g. contract registration; registration of goods; applicable tax regime, reporting obligations to other Government agencies; import licenses; customs clearance procedures etc.);
- Establish a reporting system between the parties (level, frequency, templates for reports for each party involved) if applicable (particularly in the case of more complex supply and installation contracts);
- Define escalation procedures to unblock critical situations or bottlenecks (delays in performance or in obtaining permits and approvals; non-performance of Supplier etc.);
- Ensuring that all parties involved in the contract implementation share the same understanding of their rights, roles and responsibilities derived from the contract documents; of each other's expectations of the timeframe; of any particular constraints in the implementation.
- Establishing a tentative Effective Date or Commencement Date, by which all conditions required by the Contract would be met (signing of Contract Agreement, submission of performance security and advance payment guarantee, payment of advance etc.), where applicable (e.g. supply and installation of information systems).

4.5 Verification of Advance Payment Security and Performance Securities

The Purchaser's staff should:

- i) Check the securities (performance security, advance payment guarantee) for the correct (i) amount; (ii) validity; (iii) wording and format. The text of the security should not contain any significant deviation from the sample forms included in the bidding

documents. The Purchaser should reject any additional texts introducing conditions that would render the security invalid or make it harder to forfeit.

- ii) Submit the securities to the Purchaser's commercial bank and request verification of the authenticity of the signatures of the issuing bank. This process should not normally exceed a few business days and the cost of this service is usually negligible, so the Purchaser should always request this verification. This is especially important in the case of (i) unknown suppliers; and (ii) securities issued in questionable jurisdictions (e.g. offshore fiscal havens).

A special mention should be made regarding the requirement that the Supplier maintains a (reduced) performance security during the warranty period. The Purchaser shall make sure that the security is duly provided and is enforceable throughout the warranty period.

4.6 Verification of Insurance Policies

Purchaser's staff should check whether the requested insurance has been properly contracted by the Supplier, particularly with regard to the amount and the coverage, which should be as requested by the conditions of contract and the applicable INCOTERMS delivery condition.

More complex insurances should be demanded by the Purchaser from the Supplier in the case of complex contracts, such as supply and installation of information systems or supply and installation of plant and equipment. Given the nature of these contracts, which include more activities than just the simple supply of goods, special attention should be paid to the additional insurance policies that the Supplier (and its subcontractors) needs to take out and maintain, such as:

- Installation "All Risks" Insurance;
- Third Party Liability Insurance;
- Employer's Liability Insurance;
- Contractor's Professional Liability Insurance (if requested, under a plant design, supply and installation contract).

Purchaser's staff should check if the policies have been contracted, paid and maintained according to the conditions of the contract. Important aspects to consider:

- Insured parties – does the Cargo Insurance and Installation "All Risks" Insurance expressly name both the Purchaser and the Supplier as jointly insured? Policies where only the Supplier is insured are not acceptable as they may leave the Purchaser liable for certain risks.
- Exclusions – events (risks) that are not covered by the insurance policy (i.e. if the goods are damaged following the occurrence of an excluded event, the insurer does not pay for the damage). There are many cases where the Supplier gets very cheap insurance precisely because most events are excluded (usually through "silent" addenda to the insurance policy). This is why the Purchaser should always check the exclusions of the policies and should request directly from the insurance company confirmation about the exact list of exclusions and their applicability.
- Terms and conditions that may render the policies invalid under certain circumstances or events – the Purchaser should check any conditions attached to the insurance policies such as prior notification requirements and any other clauses that may affect its rights

under the terms of the policy. Special attention should be paid in the case of changes in the scope of contract because most of the insurers would require to be notified whenever such changes occur. The same applies to extensions of time for supply – the Purchaser should make sure that the policies are properly extended to cover the new reality of the contract.

4.7 Inspections

The reason for inspecting goods is to ensure their conformance to the specifications of the Purchase Contract. This may be done by an outsourced inspection company at the country of shipment, at the port of destination or by the Procurement Entity. The Procurement Entity's storekeepers and technical staff or the inspection committee/department may perform the inspection function. It normally consists of quality inspection combined with checks of the quantity or weight/volume of the goods, their marking and packing. Common methods of inspection include visual inspection, performance, and safety testing.

Visual inspection is normally conducted by the inspection team, who would look at the physical appearance of the item supplied so as to ascertain if it complies with the specification provided by the Purchaser to the Supplier.

Performance testing is done by the inspector subjecting the item supplied to a strict test so as to determine whether it complies with the performance specification or requirements

Safety test is conducted by subjecting the item supplied to a strict check to ensure that it would not compromise the health and safety of the user department. For example, a sample of lime hydrated supplied for water treatment would be tested by the Chemist/Bacteriologist to ascertain if it is safe to be used for water treatment or not. His/her report will determine whether the bulk consignment supplied should be accepted or rejected by the Procurement Entity.

The following activities need to be undertaken before goods can be received into the Procurement Entity's store:

- Verification
- Checking technical requirements
- Certification

Verification

The receipt of non-technical items at the store requires that the verification procedures listed below are followed by the Stores Unit

- Check the number of cases or other packaging units against the delivery docket's detail.
- Sign for the number of cases or other units against the delivery docket details.
- If a detailed check is not possible, write the word, 'unchecked' on delivery document before signing them
- Check the quantity received against the packing or delivery note.
- Notify the superior officer if the material is damaged or if there is a discrepancy in quantity and prepare a 'Claim Form'.

- Notify the Purchasing Unit that materials have been received and also report on any damaged item or discrepancy observed.
- Prepare and sign Stores Receipt Voucher(SRV)
- Internal Audit Unit conducts pre- audit exercise of the items supplied
- Copies of the SRV, Purchase Order and invoice are sent to the Accounts Unit for payment to be effected after the Purchase Clerk has recorded the supply in the purchase register.

Checking

Certain items delivered to the store require checking by inspectors with the necessary technical competency, from the Procurement Entity, before they are accepted. This is to ensure that the items, delivered by the Supplier, comply with the specification on the Purchase Order (PO) and the sample(s), if any.

Certification

This requires the exercise of engineering judgment where progress payment is to be made before the contract is completed.

A typical contract such as the manufacture of a large steam boiler would allow for payment to be made at the various stages of the work. At certain stages, judgment must be made of the total value of the job, which has been completed. The user department or Consultant prepares an engineer's certificate stating that work to the invoiced value had been properly done (or materials to the invoiced value had been delivered in good condition, on time, etc.) The Contract Administrator may then initiate payment request on behalf of the Supplier.

Under GCC 8.2 the inspections and tests may be conducted on the premises of the Supplier or its sub-Supplier(s) at point of delivery and/or at the Goods final destination. If conducted on the premises of the Supplier or its sub-Supplier(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

GCC 8.3 stipulates that should any inspected or tested Goods fail to conform to the Specifications, the Purchaser may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser.

GCC 8.4 states: "The Purchaser's right to inspect, test and, where necessary, reject the goods after the goods arrival in the Purchaser's country shall in no way be limited or waived by reason of the goods having previously been inspected, tested and passed by the Purchaser or its representative prior to the goods' shipment from the country of origin."

5.0 MONITORING CONTRACT PERFORMANCE & REPORTING

5.1 Introduction

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

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

Monitoring contract performance covers key areas of contract administration, namely: time control, quality and quantity control, resolution of performance problems & contract remedies, internal and external communication, processing payments, contract modifications/changes, site visits, maintaining contract documentation, scheduling and holding meetings and managing securities and insurance policies.

5.2 Time Control

To ensure timely control with the objective of prompt delivery by the Supplier, the Contract Administrator may need to do the following:

- Check compliance with the contract milestones (delivery, installation, pre-commissioning, commissioning, functional testing, acceptance etc.). See Section 4.2;
- Check if separate times for completion are provided for different parts of the facilities or subsystems (in supply and installation contracts);
- Take actions to speed up progress and ensure compliance with contractual time for completion. This may call for the need to expedite the order so as to ensure that there is no delayed supply of goods ordered. Expediting may commence immediately the contract is placed with the Supplier and continue with the following:
 - ✓ Ensure the contract document is received by the Supplier
 - ✓ Ensure the contract document is signed and returned by the Supplier
 - ✓ Establish the effective date of the contract
 - ✓ Ensure Performance Security is received from the Supplier (if the contract stipulates so)
 - ✓ Ensure the Letter of Credit is established in favour of the Supplier (if required by the contract)
 - ✓ Ensure Advance Payment Security is received (if required)
 - ✓ Initiate payment process for Advance Payment (if required)
 - ✓ Ensure that installment payments are made (if the contract stipulates so)
 - ✓ Liaise with Supplier to ensure adherence to delivery schedule
 - ✓ Follow up to ensure prompt payments to Supplier
 - ✓ Application of liquidated damages for delay should the need arise.

5.3 Quality Control

Quality control is concerned with defect detection and correction. It relates to such activities as determining where, how and at what intervals inspection should take place, the collection and analysis of data relating to defects and determining what corrective action should be taken. This is addressed by GCC 8.1, below;

“The Purchaser or its Representative shall, at no extra cost, have the right to inspect and/or to test the goods to confirm their conformity to the contract. The Special Conditions of Contract and /or the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing of the identity of any representatives retained for these purposes within 21 days after award of the contract.”

The above GCC Clause is to ensure that the Supplier does not deviate from delivering the required specification. It is therefore seen as a means to achieve strict quality compliance with the PO.

GCC Clause 15.1 addresses the issue of warranty. It requires that the Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or materials is required by the Purchaser’s specifications) or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.

Functional guarantee could also help to achieve quality control in Goods procurement. It may be in the form of a need to have standard rating for the items to be supplied from a recognized body, such as the International Organization for Standardization (ISO) or its equivalent. The Supplier may also be required to issue warranty with respect to the items supplied.

5.4 Resolution of Performance Problems & Contract Remedies

A performance problem may be caused by the Supplier, the Procurement entity or both. It may be as a result of an action or inaction by either or both parties. This can result in a breach of the contract terms and conditions. Examples of performance problems are as follows:

- The Supplier’s inability to deliver the goods on schedule to the Procurement Entity.
- Delay in processing Supplier’s payment by the Procurement Entity.
- A claim for warranty repairs or replacement by the Procurement Entity, which has been rejected by the Supplier

Performance problems could affect timely delivery of supplies as well as result in delayed payment to the Supplier.

5.4.1 Effects of Performance Problems

Performance problems may affect:

- Timely execution of the procurement
- Cost of the procurement

Resolution of performance problems needs to be tackled by the Contract Administrator so that there will be successful execution of the procurement. The Contract Administrator should go through a fact-finding process with his team, the Supplier and end-user. He/she must do well to reach a practical solution that will allow the contract to proceed, while at the same time safeguarding the interest of the Procurement Entity. In certain situations, the Contract Administrator may decide to suspend contract progress fully or partially, while a solution is being worked out, or may consider termination of the contract in an extreme case.

The Contract Administrator must do well to tackle performance problems by taking the following steps:

- Interpret contract clauses related to the problem. Clause 22 of the GCC for example addresses delays in Supplier's performance.
- Collect evidence from all parties
- Establish facts
- Determine cost/delivery impact related to the problem
- Devise an optimum solution
- Inform parties concerned of decision taken in writing

5.5 Internal and External Communication

Establishing a good means of communication is one of the keys to successful contract administration. Normally the practice of communication begins immediately after the end of tender procedure and signature of contract, with a kick-off meeting between the Contract Administrator and Supplier. This sets the foundation for continuous information exchange between the parties. Personnel authorized by both parties to have written communication with each other must be identified. Also the frequency of official communication between the Procurement Entity and Supplier must be defined so as to ensure effective expediting of the Purchase Order. There might also be the need for review meetings so as to ensure that any challenges that might lead to delayed deliveries by the Supplier are quickly addressed. In addition to that, there must be an established procedure for keeping minutes of the meetings held.

In order to avoid problems with communication between the Procurement Entity and the Supplier, the following need to be observed:

- Deadlines for communication must be adhered to
- Any notice, consent approval or decision by any person required by the contract shall be made in writing unless otherwise defined in the contract

5.5.1 Contract Reporting

The reporting requirements are usually listed in the contract. It is important to set a monitoring mechanism for timely receipt and review of reports in order to ensure adequate reaction to them

This ensures that information regarding the appearance of a problem in the execution of the contract is reported promptly to those who have the power to act in taking the necessary mitigating measures. For example, when the Supplier is deemed by the Contract Administrator to have unduly delayed the delivery of goods as required by the contract, the head of Legal Department must be informed in order for a decision to be taken as to what relief measures are to be sought under the contract; a relief available to the Procurement Entity in this case might be to, for example, invoke the liquidated damages clause.

5.6 Processing Payments

A sound payment system must:

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

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

5.7 Contract Modifications

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

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

5.8 Maintaining Documentation

Maintaining documentation is essential in order to provide proof of performance, management of changes, justification for claims, and evidence in the unlikely event of litigation. The most important documentation is the official copy of the contract, contract modifications, and conformed working copies of the contract. Other important forms of documentation include: external and internal correspondence, meeting minutes, progress reports, telephone logs, expediting reports and contract close-out documents.

5.9 Site Visits

The Contract Administrator may need to arrange regular meetings of all stakeholders at the Project site as a means of ensuring that there is timely delivery and installation, testing and commissioning of equipment supplied by the Supplier.

5.10 Securities and Insurance

A security is a legally enforceable instrument given by a third party “guarantor” to a purchaser to guarantee the obligations of a supplier of goods and associated services under a contract. The guarantor, usually a bank or insurance firm, is obliged to pay a sum of money to the Purchaser should the Supplier fail to meet the guaranteed obligation. Examples of securities are Tender Security (GCC 16), Performance Security (GCC37).

5.10.1 Tender Security

A tender security is intended to ensure the seriousness of the tenderer. Tender Security secures the payment of the guaranteed amount:

- If the tenderer withdraws the offer before its expiry date;
- If the contract, after being awarded, is not accepted by the tenderer;
- If after a contract award, the tender security is not replaced by a performance security, where required.

The tender security can be in the form of a bank guarantee or an insurance bond.

5.10.2 Performance Security

A performance security is usually provided at the time of contract award, for an agreed percentage of the total contract value. Performance securities, in the form of a bank guarantee or an insurance bond, are also widely used in the procurement of goods and associated services. A performance security will not of itself guarantee that contracts are carried out efficiently and to time, but would be one of a number of commercial pressures on the Supplier to supply the goods on schedule.

5.10.3 Mobilization Security

Advance payment to a Supplier should be avoided wherever possible. Where it cannot be avoided it should be secured with a mobilization security in the form of a bank guarantee or insurance bond from a reputable financial institution.

5.10.4 Insurance

From the Supplier’s factory and or warehouse en route to the buyer’s place of delivery, goods may often have to cover long distances by various modes of transport. The goods supplied under the contract must be insured against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the conditions of contract. Such insurance shall be arranged and paid for by the Supplier as indicated in SCC 11.1.

6.0 MANAGING CONTRACT CHANGES/VARIATIONS

6.1 Introduction

Variations are meant to facilitate adaption to unanticipated events or changes within the general scope of the contract. The contract defines the permitted circumstances and limits within which the change can be made. It also identifies the person who is to authorize the change.

6.2 Types of Variation

GCC Clause 8.1 states: “The Purchaser may at any time, by a written order given to the Supplier pursuant to GCC Clause 31, make changes within the general scope of the Contract in any one or more of the following:

1. drawings, designs, or specifications, where goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
2. the method of shipment or packing
3. the place of delivery
4. services to be provided by the Supplier.”

6.2.1 Main issue to consider when analyzing a Variation

The change must not distort the initial conditions of competition; in effect there must not be a drastic change in the original specification based upon which the procurement was made This is to ensure that there is transparency, fairness and non-discrimination in the public procurement process (Public Procurement Act, 2003 (Act 663) as Amended, Section 2)

6.3 Contract Amendment

A contract amendment is any written change to the original terms and conditions of the contract. The contract amendment may become necessary, for example as a result of additional or reduced requirements by the Procurement entity. The contract may allow the Purchaser to modify the contract values by a pre-determined percentage when it is deemed to be in the public interest and essential for the work of the Procurement Entity. This must be approved at the appropriate level by the Entity’s Tender Committee and the Supplier and confirmed in a formal contract amendment or addendum. GCC 19.1, “Subject to GCC 18, no variations or modifications of the terms of the Contract shall be made except by written amendment signed by the parties.”

The Procurement Entity shall:

- Identify and agree with the Supplier the specific clauses in the contract, which need to be changed, and the new values or terms as well as conditions that may apply. There is the need to keep minutes of the Contract Variation Meetings as a record for reference in case of disputes.
- Prepare a draft amendment document for approval by the Entity Tender Committee together with a report justifying the reasons for the amendment

After the approval by the Entity Tender Committee, the Contract Administrator must ensure that:

- There is record of any change in contract value in the Commitment Register and also in the Contract Register
- Record any other contractual changes in the Contract Register
- Obtain any necessary addition to the Performance Security from the Supplier
- Arrange for signature for the contract amended document
- Distribute copies to all concerned

The contract amendment should be done in accordance with Section 87 of Public Procurement Act, 2003 (Act 663) Amended.

6.4 Contract Variations Checklist

Key issues to consider in managing contract variations include:

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

7.0 PAYMENTS

7.1 Introduction

It is the obligation of the Contract Administrator to initiate payment process following the supply of goods by the Supplier. The Supplier is required to deliver the goods ordered by the Procurement Entity to a designated point by a specified date. The Supplier's delivery obligation may be specified by the applicable INCOTERMS used in the contract (INCOTERMS are covered in Chapter 13)

When this is done, the items are inspected by the inspection team/committee, which includes the Procurement Officer, Storekeeper, User Department, etc. A pre-audit is undertaken by the Internal Audit Unit and passed if there is no audit query of the items supplied. The goods are accepted by the Storekeeper if there is strict compliance with the specification, amount and quantity as contained in the GIFMIS generated Purchase Order, the invoice and waybill. The Storekeeper then prepares a Stores Receipt Voucher (SRV). This is forwarded together with a copy of the Purchase Order and invoice to the Accounts department/Controller and Accountant General's Department for payment to be made to the Supplier.

7.2 Payment Terms

The contract will detail the payment terms in the SCC. The terms will include some of the following:

- Milestones against which payments will be made
- Portion or percentage to be paid against each milestone
- Methods by which foreign and local currency costs would be paid
- Documents that would be required for payments to be made
- Period that payment would be made

7.3 Review and Approval of Payment Applications

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

- Well-established mechanism for the verification and approval of payment documents – internal audit, four eyes principle (i.e. the transaction must be approved by at least two people as a form of control mechanism), etc.
- Verification of unit rates, prices and quantities;
- Verification of supporting documents (invoices; bills of lading; insurance policies; delivery protocols; operational acceptance certificates; etc.);
- Existence of required approvals from the Project Manager (if applicable);
- Check if the requested amounts have not been already paid;
- Verification of invoices (correct name, address, identification information and bank account of the payee);
- Check if the payee's information in the invoice is the same as in the contract and previous payments;
- Check if the payment request fits the payment schedule/milestones in the contract;
- Availability of funds and applicable payment method (payment from Special Account; Direct Payment; Special Commitment for Letters of Credit etc.);

7.4 The GIFMIS Payment System

7.4.1 Introduction

It is Government decision to deploy GIFMIS for the management of all public funds (Consolidated Funds (CF), Internally-Generated Funds (IGF), Statutory Funds (SF) and Donor Funds (DF)) across MDAs and MMDAs in the country, as part of the broader PFM reforms programme. The use of GIFMIS for processing financial transactions at MDAs and MMDAs started in 2012. It is a legal requirement to use GIFMIS for processing public financial transactions under section 25(6) of the new PFM Act, 2016 (Act 921). The objective is to improve efficiency, comprehensiveness and transparency in Public Financial Management through the GIFMIS platform (Objective II of the PFM Strategy, 2015- 2018).

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

Implementation of GIFMIS and Government Directive

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

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

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

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

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

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

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

What is PFM System?

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

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

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

What Is GIFMIS?

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

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

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

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

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

Aims of GIFMIS

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

Why GIFMIS?

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

- Lack of uniform chart of accounts (COA) which make the comparison of the performance of various budgets difficult.
- Strengthen Internal Controls and Auditing Capabilities

Expected Outcome of GIFMIS

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

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

GIFMIS Financial Modules

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

Key PFM Problems Being Addressed By GIFMIS

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

Key Users of GIFMIS

1. Vote controllers
2. Spending Officers
3. Budget Officers
4. Accountants
5. Procurement officers
6. Store officers
7. Treasury officers

-
8. Administrators and HR Managers
 9. Internal Auditors
 10. External auditors

7.4.2 GIFMIS Budget Reforms At MOF

The key budget reform initiatives under the GIFMIS include:

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

Budget Preparation

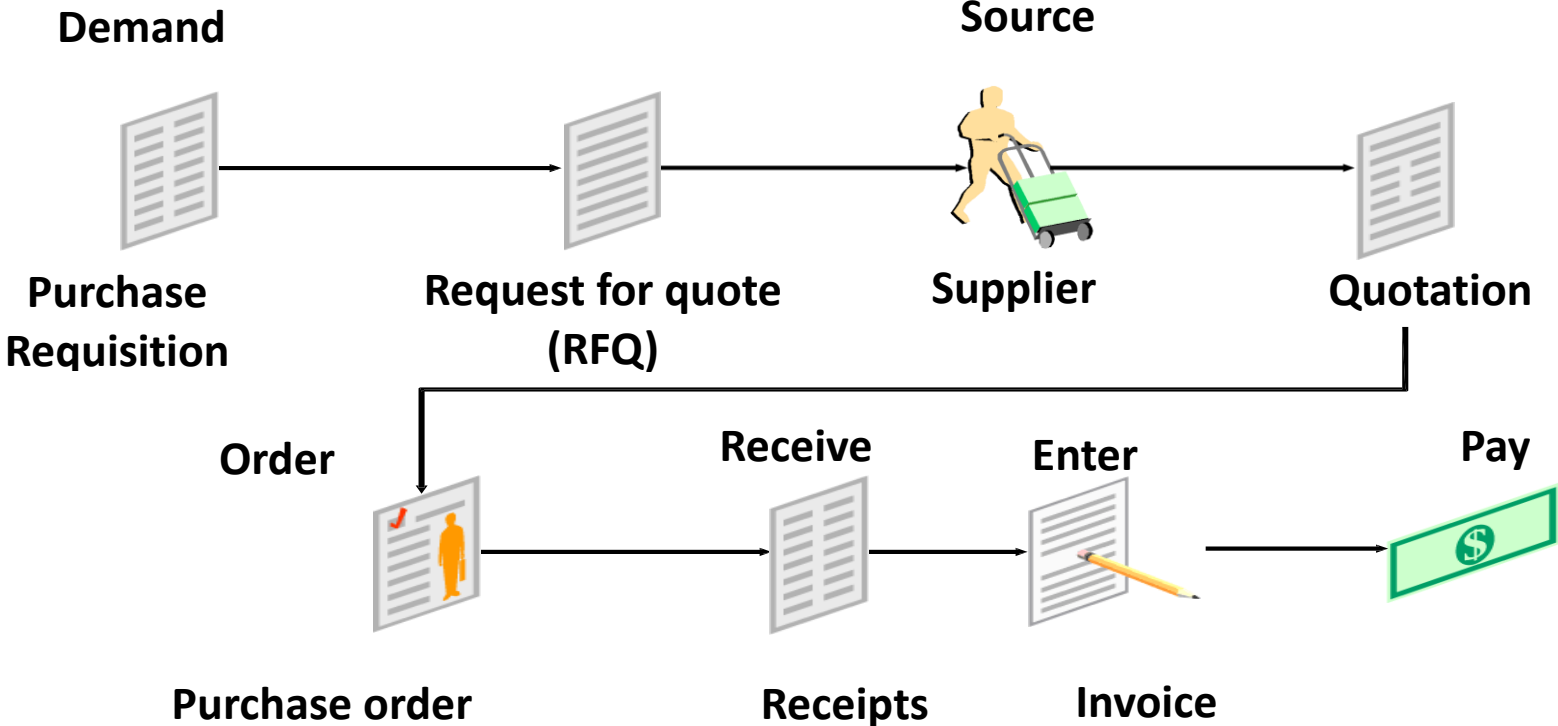
The budget preparation steps include:

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

7.4.3 GIFMIS Procure To Pay Process (P2P)

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

Figure 3: Procure To Pay Process



Summary of GIFMIS Business Processes (P2P)

The Standard Processes are:

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

The expenditure processes include:

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

This is not used at the moment due to some few issues like ABR that needs to be resolved.

7. Effect payments on the system
 - Electronic Funds Transfer for 3rd party's transactions
 - System Cheques for moneys required for internal payments

7.4.4 GIFMIS Detailed Business Processes

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

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

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

Expenditure Process (P2P)

Type of Purchase Orders on GIFMIS

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

- 1. Standard Purchase Orders:** You generally create standard purchase orders for one-time purchase of various items. You create standard purchase orders when you know the details of the goods or services you require, estimated costs, quantities, delivery schedules, and accounting distributions. If you use encumbrance accounting, the purchase order may be encumbered since the required information is known.
- 2. Contract Purchase Orders:** You create contract purchase agreements with your suppliers to agree on specific terms and conditions without indicating the goods and services that you will be purchasing. You can later issue standard purchase orders referencing your contracts, and you can encumber these purchase orders if you use encumbrance accounting.
- 3. Planned Purchase Order**
 - a) A planned purchase order is a long-term agreement committing to buy items or services from a single source. You must specify tentative delivery schedules and all details for goods or services that you want to buy, including charge account, quantities, and estimated cost.

- b) You can issue scheduled releases against a planned purchase order to place the actual orders. **If you use encumbrance accounting, you can use the planned purchase order to reserve funds for long term agreements.**

You can also change the accounting distributions on each release and the system will reverse the encumbrance for the planned purchase order and create a new encumbrance for the release.

4. Blanket Purchase Agreements

- a. You create blanket purchase agreements when you know the detail of the goods or services you plan to buy from a specific supplier in a period, but you do not yet know the detail of your delivery schedules. You can use blanket purchase agreements to specify negotiated prices for your items before actually purchasing them.

Blanket purchase agreements can be created for a single organization or to be shared by different business units of your organization.

- b. You can issue a blanket release against a blanket purchase agreement to place the actual order as long as the release is within the blanket agreement effectivity dates). If you use encumbrance accounting, you can encumber each release.

Preparation of Store Receipt Advice (SRA) on GIFMIS

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

Setting up of Suppliers

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

Company details

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

Supplier Bank Details:

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

NB.

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

Definition and Scope of Fixed Assets for MDAs/MMDAs

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

The GIFMIS Fixed Assets Module

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

Implementation Strategy

- Categorization of Fixed Assets in 3 Categories
 - Main (Transport Equipment)
 - Major (Motor Vehicles)
 - Minor (Salon Cars)
- Mapping of Fixed Assets Categories to Natural Accounts which are used to prepare Appropriation Budget.
- FA has been deployed to the following MDAs:
CAGD, MOF, MOH, MWRWH, MTR

7.4.5 GIFMIS Implementation Status

1. Systems Set-ups

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

- Budget component
- Financial Accounting(FA) component

- HR Management component
- Payroll component

Additional hardware and software are being installed for enhancement

2. System Rollout

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

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

3. System Maintenance

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

Next Steps

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

Some Challenges

- Inadequate ICT infrastructure in the public sector of Ghana, especially Network connectivity. NITA must be supported for this.

- Relatively low computer literacy in the public sector
- Change management- expectation by end-users that the system should support old ways instead of current best practices.
- People having the Mentality that the system has failed before and will still fail when enough progress has been made.

8.0 CLAIMS & SETTLEMENT OF DISPUTES

8.1 Introduction

Claims and disputes are inevitable in contract administration. It is only logical that when they do arise concrete measures are taken to resolve them before they escalate.

8.2 Claims

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

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

Any claim should include:

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

Claims may be genuine and will have to be assessed for their merits. Protracted disagreements over settlement of claims usually lead to disputes. Either the Procurement Entity or the Supplier may make a claim in respect of procurement of goods contract. However, the most common case is that of a Supplier submitting a claim for the Procurement Entity to pay interest on an outstanding amount of money for goods supplied thirty (30) days after the agreed due date. (GCC16.4)

Contracts cannot be closed out until all claims are resolved.

8.2.1 Checklist on Claims

Reasons why a Supplier may submit claim for additional payment:

- Delayed payment by Procurement Entity
- When the Supplier is requested by Procurement Entity to deliver the goods to a farther destination than originally indicated in the Contract
- A law, Regulation or other Administrative Act is promulgated or amended by the government, which directly results in an increase in the price of the goods.
- An increase in price as a result of a change in drawings, designs or specifications. This is in a situation where goods to be supplied under the Contract are to be specifically manufactured for the Procurement Entity.

Lessons learned

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

8.3 Disputes

A dispute normally arises under a contract when there is a disagreement about:

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

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

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

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

8.4 Contract Provisions

GCC Clause 28 in the contract for National Competitive Tendering (NCT) makes provision on the Resolution of Disputes as follows:

GCC Clause 28.1 states that: "The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract".

GCC Clause 28.2 says that "If, after twenty-eight (28) days from the commencement of such informal negotiations, the Purchaser and the Supplier have been unable to resolve amicably a Contract dispute, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the **Special Conditions of Contract**. These mechanisms may include, but are not restricted to, conciliation mediated by a third party, adjudication in an agreed national or international forum, and/or national and international arbitration".

This contract provision is the same for International Competitive Tendering (ICT) contract on Settlement of Disputes (GCC Clause 10.1-10.2)

8.5 Dispute Avoidance

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

8.6 Contract Condition

As early as possible (preferably at the Invitation to Tender stage) a clause should be included in the contract requiring both parties to adopt a suitable dispute resolution procedure which should include a reference to an appropriate appointing body if arbitrations are to be used or to an ADR procedure, or both. For many industries and professions, there are trade bodies or organizations that are appropriate in the case of a specialized contract. It is advisable to take advice from legal counsel on the suitability of such clauses for a particular contract.

8.7 Dispute Management

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

8.8 Dispute Resolution Procedures

Resolution of disputes comprises of series of processes that are aimed at the settlement of any type of disagreement that may arise between the Purchaser and Supplier under the Contract. The methods for dispute resolution are characterized by two key parameters:

- The degree of involvement of the parties in the decision: The dispute may be resolved exclusively between the two parties without any third party involved or through a third party intervention or by a decision of a court of competent jurisdiction.
- The degree of formality: The dispute resolution may be formal or informal or totally formal

These two parameters are revolving around a common axis, that is, the greater the degree of consent of the parties in the final decision, the less formal the method of resolving the dispute and vice versa.

Generally there are four main avenues for dispute resolution

- Negotiation
- Alternative Dispute Resolution(ADR)
- Arbitration
- Litigation

8.8.1 Negotiation

Direct negotiation should be used and all possible efforts made to reach an agreement before possibly progressing to other resolution procedures.

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

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

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

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

Techniques for initiating negotiated techniques to a dispute include:

- Discussing and negotiating the various elements of the disagreement, on a “without prejudice” basis
- Dividing the problems into separate elements, i.e. technical and financial to enable discussion of technical differences in isolation of financial implication;
- Seeking the assistance of independent experts to identify possible solutions that may be mutually satisfactory.

Advantages of Negotiation

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

Disadvantages may be that:

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

8.8.2 Alternative Dispute Resolution (ADR) Procedures

ADR clause in an agreement normally ensures that the use of this avenue takes precedence over arbitration or litigation. The current ADR law in Ghana is the Ghana Alternative Dispute Resolution Act 2010, Act 798. ADR can be used at any time by agreement of the various parties.

The various procedures are:

- Mediation/Conciliation
- Adjudication
- Dispute Review Board/Dispute Advisor

Mediation

- It is a private voluntary dispute resolution mechanism in which a neutral mediator (an impartial third party) assists the parties in reaching a mutually acceptable solution to the dispute.
- It is a private voluntary dispute resolution in which a neutral mediator assists the parties in reaching a mutually acceptable solution to the dispute.
- Mediators have no authority to impose a judgment. They work with the parties jointly and in private sessions, assessing strengths and weaknesses of the parties' positions, areas of common ground, and the possibility of creative forward-looking solutions
- Mediations are conducted on a "without prejudice" basis.
- Private meeting between the mediator and each party are confidential to that party, unless authority is given to the mediator for disclosure.
- If there is a settlement as a result of the mediation, it is normal practice for the parties to record the terms in writing. Parties may elect to have legal representation during mediation.
- About 90 per cent of cases that go to mediation/conciliation are settled (There are insignificant technical differences between mediation and conciliation-in practice, the name of the process is irrelevant provided all parties agree and understand the procedure they wish to use).

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

Adjudication

The Adjudicator is an expert in the subject matter of the contract. He/she may be proposed by the Procurement Entity and accepted by the Supplier. If both parties cannot agree on the Adjudicator, then an appointing authority, which is usually a professional body perceived by both parties as an impartial mediator, will select the Adjudicator. He/she will look into the matter of the dispute as a step toward its resolution. Although the Adjudicator's decision is not binding, it is usually respected by both parties. However, should any of them disagree with the decision, then that party may refer the matter to arbitration.

Dispute Review Board/Dispute Advisor

This is a more formalized version of mediation

- Dispute review board comprises a group of experts at the beginning of a contract, before disputes arise, to develop cooperation between Purchaser and Supplier and to advise on controversial matters that may arise.
- It is intended for large complex contracts

Advantages of using ADR

- Keep cost of dispute to a minimum
- Speedy resolution
- Confidentiality, avoiding the publicity of a court hearing
- The parties retain control over the procedure and outcome
- Maintain and improve communication between the parties

8.8.3 Arbitration

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

It is, nevertheless, an adversarial procedure with the possibility that neither party will be satisfied with the outcome and it may be costly. Other possible drawbacks that should be considered before entering into arbitration include: the difficulty in selecting an agreed arbitrator; the expertise of the arbitrator for the particular case; uncertain appeal rights; and the lack of legal precedence.

Using Arbitration Procedures

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

Appointment of Arbitrator

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

Rules of Arbitration

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

Jurisdiction of Arbitrator(s)

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

Arbitrators' Fees and Awards

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

Rights of Appeal

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

Arbitration in International Contract

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

- The International Chamber of Commerce, Paris
- The London Court of International Arbitration;

- The American Arbitration Association;
- The Arbitration Institute of the Stockholm Chamber of Commerce.

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

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

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

Merits of Arbitration

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

Demerits

- Selection of experts could be a challenge
- Expensive

8.8.4 Litigation

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

Merits of Court Action

- Available to everybody
- Free process

Demerits

- Slow and long process
- Judges sometimes lack technical expertise of the subject matter of dispute

9.0 TERMINATION OF CONTRACT

9.1 Introduction

Sometimes a decision is taken to terminate a contract prior to its conclusion and the completion of the supply of goods. When a contract is terminated, the parties are relieved from further unperformed obligations in accordance with the agreed terms and conditions. This may be for various reasons, for example, political disturbances or natural disasters which are beyond the control of the Supplier and the Procurement Entity. In some cases, termination is the optimal choice; in others, it is detrimental to the overall intent of the procurement, which is generally to support the implementation of an investment project. This implies a missed opportunity and a waste of the funds already expended on the procurement. Termination of Contract needs to be avoided if there is an opportunity to remedy the contract.

A contract may be terminated under distinct processes: Liquidated Damages, Termination for Default, Termination for Corrupt or Fraudulent Practices, Force Majeure, Termination for Insolvency and Termination for Convenience.

GCC Clauses 23, 24, 25, 26 and 27 of the Revised Draft Standard Tender Document for Procurement of Goods (NCT) specify conditions under which contract termination can be effected.

9.2 Liquidated Damages

Subject to GCC Clause 25, Force Majeure, if the Supplier fails to deliver any or all of the goods or to perform within the time period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to (0.5%) of the contract price of the delayed goods for each week of delay until actual delivery, up to a maximum deduction of (10%) percent of the delayed goods Contract Price. **Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 24(Termination for Default).**

Subject to GCC Clause 25, Force Majeure, if the Supplier fails to deliver any or all of the goods or to perform within the time period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to (0.5%) of the contract price of the delayed goods for each week of delay until actual delivery, up to a maximum deduction of (10%) percent of the delayed goods Contract Price. **Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 24(Termination for Default).**

9.3 Termination for Default

The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, terminate the Contract in whole or in part:

- a. if the Supplier fails to deliver any or all of the goods within the time period(s) specified in the Contract, or any extension thereof granted by the Purchaser pursuant to GCC Clause 22(Delays in the Supplier’s Performance); or
- b. if the Supplier fails to perform any other obligation(s) under the Contract.

In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC paragraphs 24.1 and 24.3 (Termination for Corrupt or Fraudulent Practices), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, goods or services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar goods or services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

9.4 Termination for Corrupt or Fraudulent Practices

The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, terminate the Contract in whole or in part if the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

For the purpose of this clause:

“corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract, and includes collusive practice among Tenders (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the benefits of free and open competition;

9.5 Force Majeure

For purposes of this Contract, “Force Majeure” means an event beyond the control of the parties to the Contract and not involving either party’s fault or negligence and not foreseeable.

If, at any time during the existence of the Contract, either party is unable to perform in whole or part any obligation under this Contract because of such events which include, but are not restricted to, acts of God, acts of Government in its sovereign capacity, war, revolutions, hostility, civil commotions, strikes, fires, floods, epidemics, quarantine restrictions, freight embargoes,

explosions, then the date of fulfillment of Contract shall be postponed during the period when such circumstances are operative.

The party which is unable to perform its obligations under the present Contract shall, within fourteen (14) days of occurrence of the Force Majeure event, inform the other party with suitable documentary evidence. Non-availability of raw materials from regular sources shall not be an excuse for the Supplier for not performing its obligations under this clause.

Any waiver/extension of time in respect of the delivery/acceptance of any instalment or part of the goods shall not be deemed to be a waiver/extension of time in respect of the remaining deliveries

If such inability to perform continues for a period of more than three (3) months, each party shall have the right to be released from further performance of the Contract, in which case, neither party shall have the right to claim damages from the other. All prior performance shall be subject to Contract terms.

Notwithstanding the provisions of GCC Clauses 22, 23 and 24, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages or termination for default if, and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of Force Majeure.

If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

9.6 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving written notice to the Supplier, without compensation to the Supplier, if the Supplier becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

9.7 Termination for Convenience

The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

- a. to have any portion completed and delivered on the agreed terms and prices; and/or
- b. to cancel the remainder and pay the Supplier an agreed amount for partially completed Goods and for materials and parts previously procured by the Supplier.

9.8 Issues to be considered by Procurement Entity before deciding to Terminate the Contract

- Has every possible effort been put forward, in order to assist the Supplier with resolving the non-compliance?
- Have the terms of the contract as well as the relevant legislation been examined in order to ensure the legality of terminating the contract?
- Has the Supplier justified in a convincing manner the appearance of the specific non-compliance?
- How urgent is the need for the supply of the specific product? The Procurement Entity must weigh the benefits against the disadvantage of continuing the cooperation with the existing Supplier or conducting new tender to select another Supplier
- Is there availability of the specific products?
- If yes how much time is required to acquire them?

9.9 Actions for terminating the contract by the Procurement Entity

Before terminating the contract, the Purchaser must send notice to the Supplier affording him a time period within which it shall invite him to comply with its contractual obligation.

Content of Termination Notice

- Reference number and date of signature of the contract.
- Date on which termination of the contract is to be put in effect
- Reference to the term(s) based on which the contract is terminated
- Complete and precise statement of the evidence justifying the termination
- Statement that the contract being terminated may be re-announced from the beginning and that the Supplier is considered liable for the additional costs that the Purchaser will incur in order to conduct a new tender. (Before this statement is drafted, the Procurement Entity must be sure the contract provides this right to it)

9.10 Contingency Planning

The Procurement Entity must ensure that a plan is put in place in order to:

- i. mitigate any adverse consequences of termination of contract, in whatever form; and
- ii. complete the project without undue delay.

10.0 CONTRACT RECORDS MANAGEMENT

10.1 Introduction

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

10.1.1 What Is Records Management?

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

10.1.2 Importance of Records

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

10.1.3 Procurement and Contract Records

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

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

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

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

10.1.4 Benefits of Good Records Management

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

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

10.1.5 Principles of Good Records Management

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

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

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

10.1.6 Consequences of Failure to Maintain Adequate Procurement Records

Failure to effectively manage procurement records means:

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

10.1.7 The Records Life Cycle

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

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

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

Non-current or inactive records

These are documents that are hardly ever referred to for the conduct of business operations. Non-current records should be reviewed and appraised in order to make judgment on their further retention. Those that are selected as valuable records should be preserved in a departmental records

centre or with prior arrangements transferred to the National Archives for long term preservation as archival records. Note that procurement records must be kept for at least six (6) years from the date the contract started.

10.1.8 Opening a New File

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

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

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

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

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

10.1.9 Filing of Papers

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

10.1.10 File Movement Controls

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

- To monitor access to records by users
- To ensure a particular matter is dealt with by the responsible officer

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

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

A file movement register should have the following format:

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

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

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

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

10.1.11 Closing a File

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

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

10.1.12 Records Accommodation/Space

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

10.1.13 Equipment

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

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

10.1.14 Records Personnel

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

10.2 Contract Administration File and Documentation

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

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

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

Contract Management File/Folder

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

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

10.2.1 Contracts Register

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

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

10.2.2 Separate Contract Files

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

10.2.3 Contract Sub-files

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

10.3 Automation of Records Management (Electronic Records Management)

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

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

10.3.1 Benefits of Automation

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

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

10.3.2 Records Management Functions That Can Be Automated

The following areas of records management can be automated:

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

10.3.3 E-mail

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

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

10.3.4 Digitization (Imaging/Scanning)

After the acquisition and installation of the records management software and hardware, it may be necessary to migrate some or all the existing paper files and documents into the automated system. This can be achieved through the process of digitization. The two main objectives of digitizing paper records are access and preservation.

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

The other benefits of digitization include:

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

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

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

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

10.3.5 Challenges in the Management of Electronic Records

Some of the challenges of managing electronic records include:

- Impermanence of the storage media and technological obsolescence. Electronic storage media is fragile and changes with time;
- Changes in technology means that records that were generated in computer seven years ago may not be accessible today. This calls for regular migrating of the records to new computer systems to ensure they remain accessible;
- Security and integrity of the information can be compromised through inadvertent or intentional alterations and unauthorized deletions. An electronic file can easily be altered without leaving any evidence that alteration has been done;

- High risk of wholesale loss or destruction of business records, and
- Evidential status of electronic records is unreliable and legal admissibility of electronic records in Ghana has to be ascertained.

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

11.0 EVALUATION OF CONTRACT PERFORMANCE

11.1 Introduction

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

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

11.2 Evaluation of Supplier Performance

Supplier performance evaluation, normally referred to as ‘Vendor rating’ is the objective, numerical assessment of a Supplier’s performance after a contract has been completed, and it is used to help Suppliers improve their performance to contribute to future decisions about their suitability.

Generally, Supplier performance evaluation is important for two reasons. First, it provides a means of monitoring the quality of work done on a specific procurement task or project. Second, the cumulative record of performance on previous projects is a key element in evaluation of the Supplier’s qualifications for future work.

Performance evaluation of Suppliers can be done in two ways:

- in stages (quarterly, mid- term, etc.) as the contract implementation progresses.
- at the end of the procurement, when all the goods have been delivered.

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

Factors, criteria or indicators to evaluate a Supplier’s performance will normally include, among others, the following:

- Price
- Quality
- Delivery(Milestones Timelines)
- Service/Customer satisfaction (including supplier administrative effectiveness)

Performance indicators measure how well the Supplier is meeting the key deliverables of the contract. Performance management systems should include alerts when key performance indicators (KPIs) are not met.

The factors are weighted in relation to their importance to the organisation. The result of a Supplier evaluation or assessment is the ‘rating’ obtained by the supplier on the basis of the weighted factors. A Supplier’s declining standards can be highlighted and brought to their attention.

The feedback will enable the Supplier to improve upon their performance in future so as to be more competitive and thus offer value for money in subsequent business dealings.

Supplier performance can form part of the criteria for evaluation of tenders in future procurements.

11.3 Evaluation of Management (Supervision of Contract)

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

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

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

- Discharging Procurement Entity’s or Purchaser’s obligations in accordance with the terms and conditions of the contract.
- Collaborative relationship.
- Providing Procurement Entity’s inputs, for instance data, as and when required.
- Reviewing Supplier’s correspondence and providing feedback on time.
- Maintaining regular contacts with supplier to keep track of progress and any challenges in executing the contract.
- Facilitating payments when due.

11.4 Evaluation Processes

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

- an evaluation plan that sets out clear terms of reference, methods and sources of data collection and analysis, budget, clear timeframes and reporting arrangements;

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- relevant skills to manage and conduct the evaluation (either in-house or through contracted personnel);
 - senior management support;
 - an evaluation report in which conclusions are supported by the data; and
 - recommendations that provide an indication of their likely benefits.

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

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

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

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

Feedback to the Supplier

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

Lessons Learnt

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

Report to Stakeholders.

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

11.5 Evaluation Checklist

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

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

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

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

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

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

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

11.6 Contract Review

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

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

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

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

12.0 POST-IMPLEMENTATION TASKS

12.1 Introduction

Post-implementation tasks in goods contracts involve three main areas – Operational Acceptance, Warranty and Contract Close-out. These post-implementation tasks are discussed within the context of contract administration.

12.2 Operational Acceptance Certificate(s)

Under operational acceptance there is the need for the Procurement entity do the following:

- **Functional guarantees-** check if all the functional guarantees are met and all tests on delivered items have been successfully passed
- **Acceptance of goods-**check against delivery lists and specifications.
- **Inventory procedures-**check that all goods have been properly registered in end users' records and that they could easily be tracked down and identified
- **Succession planning-**determine who takes over the goods; is appropriate funding available for the proper maintenance and operation of the goods; do the end users know what to do in case of defects etc.)

12.3 Warranty

Contracts for goods typically provide for a warranty clause. A warranty is normally a promise that the goods will meet the required standard. Warranty for goods must be invoked during a specified period from acceptance in accordance with contract requirements.

12.3.1 Rights under Warranties

The Procurement Entity's rights under warranty are founded on either:

- Standard warranties for off-the-shelf commercial goods
- Specific warranties for purpose-made equipment

12.3.2 Timely Notice

Timely notice of a warranty claim to the Supplier is of paramount importance and is usually initiated by the Contract Administrator in writing specifying the defective part of the procurement (and the nature of the defect) and requesting the Supplier to rectify the defect within a certain period of time called for under the contract. The costs to remedy the defects are borne by the Supplier and include either:

- Cost of repair; or
- Cost of replacement.

12.3.3 Extension of Warranty Period

In goods contracts, the Contract Administrator may also require an extension of the warranty period to compensate for the down time as a result of the repair or replacement. In order for the

Procurement Entity to retain the means to enforce the Supplier's/Contractor's/ obligations under a warranty or defects liability period, the validity of the Performance Security (or a specified portion of it) must remain in form throughout this period (usually one year from final acceptance.)

12.3.4 Other Factors Affecting Warranties for Goods

In international goods contract, unless there is an explicit statement in the contract that shipment cost of defective components are to be borne by the Supplier, the latter may decline to bear such expenses. It is important that the contract provides for repair/replacement of defective components at the expense of the Supplier should the latter fail to act within the specified period under the warranty clause. The vendor's liability can extend beyond the warranty period should defects in the procurement package be discovered that can be attributed to:

- Supplier's gross negligence;
- Supplier's fraud (misleading information, falsified test, etc.);
- Latent defects which could not be discovered through reasonable inspection at the time of acceptance.

12.3.5 Refusal of Supplier to Accept Remedies

If the Supplier does not consent to any of the above remedies, then the issue has to be addressed through a dispute settlement mechanism which has been covered in detail in Session 9.

12.3.6 What to note about Warranties

- Ensure that Performance Security for the amount has been submitted and is valid and enforceable for the duration of the warranty period;
- Ensure that the contractor is promptly notified about any defect and duly remedies the defects in due time (enforce the conditions of the Service Level Agreement in the case of contracts for supply and installation of information systems);
- Check how the Supplier fulfilled its duties during the warranty period;
- Ensure that the Supplier has no outstanding obligations, duties or debts;

12.4 Contract Close-out

Contract close-out is a Procurement Entity's housekeeping exercise governed by its operational procedures. For goods contract, close-out formalities may be completed upon delivery and acceptance of the goods.

The contract file must be closed by the Contract Administrator on finalization of all administrative matters related to the contract subsequent to its completion. The contract is complete when all the goods ordered have been delivered by the Supplier and accepted by the Purchaser.

Activities involved in contract close out are:

- Receipt of Supplier's invoice
- Processing of payment
- Release of advance payment security

- Preparation of evaluation report as to performance of the Supplier
- Findings and lessons learnt from the particular contract to be used as guidance for future procurement so as to avoid the shortcomings of the current contract in future

13.0 INCOTERMS (2010)

13.1 Introduction

International Commercial Terms, known as “INCOTERMS”, are internationally accepted terms defining the responsibilities of exporters and importers in the arrangement of shipments and the transfer of liability involved at various stages of the transaction.

INCOTERMS do not cover ownership or the transfer of title of goods. It is crucial to agree on an INCOTERM at the start of a negotiation/quotation of a sale, as it will affect the costs and responsibilities involved in shipping, insurance and tariffs.

The new INCOTERMS 2010 rules were revised by the International Chamber of Commerce and became effective on January 1, 2011. Four terms were eliminated (DAF, DEQ, DES, DDU) and two were added: Delivered at Place (DAP) and Delivered at Terminal (DAT).

The modifications affect obligations, risk transfer, and cost sharing for the Seller and Buyer, resulting in better clarification and application of the eleven (11) INCOTERMS, and consistent with the way global trade is actually conducted since the last update in 2000.

It should be noted that INCOTERMS are revised every ten (10) years.

13.2 Categories of INCOTERMS

There are two categories of INCOTERMS:

i. INCOTERMS (2010) Applicable for All Modes of Transport:

- EXW: ex-works
- FCA: free carrier
- CPT: carriage paid to
- CIP : carriage and insurance paid to
- DAT: delivered at terminal
- DAP: delivered at place
- DDP : delivered duty paid

ii. INCOTERMS (2010) Only Applicable for Sea and Inland Waterway Transport

- FAS : free alongside ship
- FOB : free on board
- CFR : cost and freight
- CIF : cost, insurance and freight

13.3 Description of INCOTERMS and Characteristics

- E Terms (EX-WORKS) - The only term where the seller makes the goods available to the buyer at the seller's own premises.
- F Terms (FCA, FAS, FOB)- Under the F terms the seller is obliged to deliver the goods to a carrier.
- C Terms (CFR, CIF, CPT, CIP)- Under the C Terms the seller has to contract for carriage but without assuming the risk of loss or damage to the goods or additional cost, due to an event occurring after shipment and dispatch.
- D Terms (DAT, DAP, DDP)- The seller under the D Terms has to bear all costs and risks needed to bring the goods to the country of destination.

A detailed description of INCOTERMS and their characteristics are presented in **Table 2** below:

Table 2: Description of INCOTERMS and Characteristics

Term	Description	Seller's Obligations Fulfilled When	Costs & Risks	Transport
EXW	Ex-Works (named place)	Goods are made available to the buyer at the seller's premises	Seller not responsible for loading or export clearance. Buyer bears costs and risks of transportation	Any mode
FCA	Free Carrier(named place)	Goods are cleared for export and handed to the carrier at the place named by the buyer	If buyer does not name precise point, seller can choose within the range or place stipulated. Seller may be responsible for clearing the goods for export. Buyer bears cost and risk from when the goods are handed to the carrier.	Any mode
FAS	Free Alongside Ship (named port of shipment)	Goods are placed alongside the vessel at the named port	Buyer bears costs and risks of loss or damage from quayside. The export clearance obligation rests with the seller.	Sea or inland waterway
FOB	Free on Board (named point of shipment)	Goods cleared for export, passed over the ship's rail at named port of shipment	Buyer bears cost and risks after goods have been delivered on board the ship by seller	Sea or inland waterway
CFR	Cost and Freight (named port of destination)	Goods are cleared for export and transported to the	Risk of loss or damage and any other cost is transferred to the	Sea or inland waterway

Term	Description	Seller's Obligations Fulfilled When	Costs & Risks	Transport
		named port of destination.	buyer when the goods have been delivered on board the ship by the seller.	
CIF	Cost, Insurance and Freight (named port of destination)	Cost, insurance and freight paid to named port of destination. The marine insurance is against the buyer's risk of loss or damage during carriage	Risk passes to the buyer when the goods are delivered on board the ship.	Sea or inland waterway
CPT	Carriage paid to (place of destination)	Goods are cleared for export and delivered into the custody of the carrier	Buyer bears risks after the goods have been delivered to the carrier. However, seller must pay for carriage to the named place of destination	Any mode
CIP	Carriage and Insurance Paid To named place of destination.	Same as CPT but seller has to contract and pay for cargo insurance against the buyer's risk of loss or damage during carriage	Seller only required to obtain insurance on minimum coverage. Risk shifts to buyer when seller delivers goods to carrier at an agreed place.	Any mode
DAT	Delivered At terminal	Goods are made available at named terminal at port or place of destination	Seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or	Any mode

Term	Description	Seller's Obligations Fulfilled When	Costs & Risks	Transport
			place of destination	
DAP	Delivered At Place(named place of destination)	The seller delivers when the goods are placed at the buyer's disposal on the arriving means of transport ready for unloading at the named place of destination	Seller bears all risks involved in bringing the goods to the named place.	Any mode
DDP	Delivered Duty Paid(named place of destination)	Goods are transported and duty paid at named place in country of importation	Seller bears all risks and costs including duties, taxes, etc. Buyer is responsible for unloading at place of destination.	Any mode

INCOTERMS DO NOT...

- Determine ownership or transfer title to the goods, nor evoke payment terms.
- Apply to service contracts, nor define contractual rights or obligations (except for delivery) or breach of contract remedies.
- Protect parties from their own risk or loss, nor cover the goods before or after delivery.
- Specify details of the transfer, transport, and delivery of the goods. Container loading is NOT considered packaging, and must be addressed in the sales contract.
- Remember, INCOTERMS are not law and there is NO default INCOTERM!

13.4 Advantages of INCOTERMS

- They determine the stage during carriage when responsibility passes from seller to buyer.
- They determine who is responsible for the cargo when same is lost or damaged
- They oblige the seller to pack goods in such manner as is required for transport
- They define the role of Carrier

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APPENDIX 1: TEMPLATES

I. CONTRACT MILESTONE CHECKLIST TEMPLATE

Task	Original Target Date	Revised Target Date	Actual Date

II. CONTRACT PAYMENT RECORD

Contract Reference No:				
	Particulars	Currency	Amount	Cumulative amount
	Original Contract Total			0.00
	Amendment no 1 amount (+ increase or - decrease)			0.00
	Amendment no 2 amount (+ increase or - decrease)			0.00
	Amendment no 3 amount (+ increase or - decrease)			0.00
A	Total Contract amount		0.00	0.00
	Payments made			
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
	Invoice No			0.00
B	Total Payments made		0.00	0.00
C	Maximum balance payable			0.00
	Total in line B should not exceed total in line A. If balance shown in line C is negative, then payments exceed contract total.		0.00	0.00

III. CONTRACT ADMINISTRATOR CONTRACT STATUS REPORT

Contract Ref	Consultant / Contractor / Supplier	Source Funding	Contractual Dates				Physical progress %		Financial Progress				
			(Subject)	Contract signature Date	Commence Date	Original completion Date	Revised Completion Date	During month	Cumulative	Currency	Original Contract sum	Revised contract sum	Payments in month

APPENDIX 2

General Conditions of Contract (GCC) & Special Conditions of Contract(SCC) for International Competitive Tendering

Section VII. General Conditions of Contract

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Section VII. General Conditions of Contract

- 1. Definitions**
- 2.1 The following words and expressions shall have the meanings hereby assigned to them:
- (a) “Contract” means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
 - (b) “Contract Documents” means the documents listed in the Agreement, including any amendments thereto.
 - (c) “Contract Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
 - (d) “Day” means calendar day.
 - (e) “Delivery” means the transfer of ownership of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.
 - (f) “Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
 - (g) “Eligible Countries” means the countries and territories eligible as listed in Section V.
 - (h) “GCC” means the General Conditions of Contract.
 - (i) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
 - (j) “Purchaser” means the entity purchasing the Goods and Related Services, as specified in the SCC.
 - (k) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract.

- (l) “SCC” means the Special Conditions of Contract.
 - (m) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
 - (n) “Supplier” means the natural person, private or government entity, or a combination of the above, whose Tender to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.
 - (o) “The Site,” where applicable, means the place named in the SCC.
- 2. Contract Documents**
- 2.1 Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.
- 3. Corrupt Practices**
- 3.1 The Government of Ghana (GOG) requires that all Procurement Entities as well as Tenderers, Suppliers, Contractors and Consultants participating in contracts financed from the public funds of the Republic of Ghana, adhere to the highest ethical standards, both during the tendering process and throughout the execution of such contracts. The list of definitions set forth below involves the most common types of corrupt practices, but is not exhaustive. For this reason, the Public Procurement Authority will also consider claims of similar nature involving alleged acts of corruption, in accordance with the established procedure.
- (a). “Bribery” means the act of unduly offering, giving, receiving or soliciting anything of value to influence the process of procuring goods or services, selecting consultants, or executing contracts.
 - (b). “Extortion” or “Coercion” means the act attempting to influence the process of procuring goods or services, selecting consultants, or executing contracts by means of threats of injury to person, property or reputation.
 - (c). “Fraud” means the misrepresentation of information or facts for the purpose of influencing the process of procuring goods or services, selecting consultants, or executing

contracts, to the detriment of the Procurement Entity/Purchaser or other participants.

- (d) “Collusion” means an agreement between tenderers designed to influence the outcome of a tender or for the purpose of fixing by Tenderers of non-competitive prices of a tender.

3.2 If, in accordance with the administrative procedures of the Public Procurement Authority, it is demonstrated that a government/public official, or anyone acting on his or her behalf, and/or a Tenderer in a procurement process or supplier/contractor during the execution of the contract carried out in connection with a project financed from the public funds of the Republic of Ghana has committed corrupt practices, the Public Procurement Authority or the appropriate Tender review Board will:

- (a) reject a proposal to award a contract in connection with the respective procurement process; and/or
- (b) declare a firm and/or its personnel directly involved in corrupt practices, temporarily or permanently ineligible to be awarded future contracts financed from the public funds of the Republic of Ghana.

3.3 The Tenderer shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the tendering process or execution of the contract. The information disclosed must include at the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee. The information must be included in the Tender Submission Sheet. Furthermore, Tenderers shall be aware of the provision stated in Sub-Clause 3.2 and Sub-Clause 35.1 (c) of the General Conditions of Contract.

3.4 Any communications between the Tenderer and the Purchaser related to matters of alleged fraud or corruption must be made in writing

4. Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Incoterms

- (a) Unless otherwise specified in the SCC, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

- (b) The terms EXW, FOB, FCA, CIF, CIP, and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Tenders or as specified in the SCC.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

4.5 Non-waiver

- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

5. Language

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the

Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the SCC, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

6. Joint Venture, Consortium or Association

6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

7. Eligibility

7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country, in accordance with Section V, Eligible Countries. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

7.2 All Goods and Related Services to be supplied under the Contract and financed from the public funds of the Republic of Ghana shall have their origin in Eligible Countries.

7.3 For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components

8. Notices

8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term "in writing" means communicated in written form with proof of receipt.

8.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

9. Applicable Law

9.1 the Contract shall be governed by and interpreted in accordance with the laws of Ghana, unless otherwise specified in the SCC.

10. Settlement of Disputes

10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

10.2 If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may require that

the dispute be referred for resolution to the formal mechanisms specified in the SCC. These mechanisms may include, but are not restricted to, conciliation mediated by a third party, adjudication in an agreed national or international forum, and/or international arbitration.

- 11. Scope of Supply**
- 11.1 Subject to the SCC, the Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.
- 11.2 Unless otherwise stipulated in the Contract, the Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.
- 12. Delivery and Documents**
- 12.1 Subject to GCC Sub-Clause 32.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.
- 13. Supplier's Responsibilities**
- 13.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.
- 14. Contract Price**
- 14.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.
- 14.2 Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorized in the SCC.
- 15. Terms of Payment**
- 15.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.
- 15.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfillment of all the obligations stipulated in the Contract.
- 15.3 Payments shall be made promptly by the Purchaser, no later than sixty (60) days after submission of an invoice or request for

payment by the Supplier, and the Purchaser has accepted it.

- 15.4 The currency in which payments shall be made to the Supplier under this Contract shall be those in which the Tender price is expressed.
- 15.5 The Purchaser shall pay to the Supplier interest on any outstanding amount at the prevailing interbank rate where the Purchaser has received an accepted invoice or certificate from the Supplier but has failed to make payment within the number of days stated in the Data Sheet and where such period is not stated payment remains outstanding for more than ... days after the agreed due date

16. Taxes and Duties

- 16.1 For goods supplied from outside Ghana, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside Ghana.
- 16.2 For goods supplied from within Ghana, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.
- 16.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Ghana, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

17. Performance Security

- 17.1 The Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the due performance of the Contract in the amount specified in the SCC.
- 17.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 17.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable located in Ghana or abroad, acceptable to the Purchaser, in using the form included in Section IX Contract Forms; or
 - (b) a cashier's certified check.
- 17.4 The performance security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days

following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

18. Copyright

18.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party

19. Confidential Information

19.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 19.

19.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.

19.3 The obligation of a party under GCC Sub-Clauses 19.1 and 19.2 above, however, shall not apply to information that:

- (a) the Purchaser or Supplier need to share with the Public Procurement Authority of the Republic of Ghana or other institutions participating in the financing of the Contract;
- (b) now or hereafter enters the public domain through no fault of that party;
- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) otherwise lawfully becomes available to that party from a

third party that has no obligation of confidentiality.

19.4 The above provisions of GCC Clause 19 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

19.5 The provisions of GCC Clause 19 shall survive completion or termination, for whatever reason, of the Contract.

20. Subcontracting

20.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

20.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

21. Specifications and Standards

21.1 Technical Specifications and Drawings

(a) The Supplier shall ensure that the Goods and Related Services comply with technical specifications and other provisions of the Contract.

(b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

(c) The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the goods' country of origin.

(d) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 32.

22. Packing and

22.1 The Supplier shall provide such packing of the goods as is

- Documents** required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 22.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Purchaser.
- 23. Insurance** 23.1 Unless otherwise specified in the SCC, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.
- 24. Transportation** 24.1 Unless otherwise specified in the SCC, responsibility for arranging transportation of the Goods shall be in accordance with the Incoterms specified in the Schedule of Requirements.
- 25. Inspections and Tests** 25.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the Schedule of Requirements.
- 25.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in Ghana as specified in the SCC. Subject to GCC Sub-Clause 25.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 25.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 25.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 25.4 Whenever the Supplier is ready to carry out any such test and

inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

- 25.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 25.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 25.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 25.4.
- 25.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 25.6, shall release the Supplier from any warranties or other obligations under the Contract.

26. Liquidated Damages

- 26.1 Except as provided under GCC Clause 31, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 34.

27. Warranty

- 27.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 27.2 Subject to GCC Sub-Clause 21.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 27.3 Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for eighteen (18) months after the date of shipment or loading in the country of origin, whichever period concludes earlier.
- 27.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 27.5 Upon receipt of such notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 27.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

**28. Patent
Indemnity**

- 28.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 28.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- (a) the installation of the Goods by the Supplier or the use of

- the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 28.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub- Clause 28.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 28.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 28.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 28.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

29. Limitation of Liability

- 29.1 Except in cases of criminal negligence or willful misconduct,
- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the

Supplier to pay liquidated damages to the Purchaser and

- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the purchaser with respect to patent infringement

30. Change in Laws and Regulations

- 30.1 Unless otherwise specified in the Contract, if after the date of the Invitation to Tender, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated, or changed in the particular area of Ghana where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 14.

31. Force Majeure

- 31.1 The Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 31.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 31.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

32. Change Orders

- 32.1 The Purchaser may at any time order the Supplier through notice

**and Contract
Amendments**

in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

32.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

32.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

**33. Extensions of
Time**

33.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 12, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

33.2 Except in case of Force Majeure, as provided under GCC Clause 31, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 33.1.

34. Termination

34.1 Termination for Default

- (a) The Purchaser, without prejudice to any other remedy for

breach of Contract, by notice of default sent to the Supplier, may terminate the Contract in whole or in part:

- (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 33; or
 - (ii) if the Supplier fails to perform any other obligation under the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 34.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- (c) if the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent practices, as defined in GCC Clause 3, in competing for or in executing the Contract.

34.2 Termination for Insolvency.

- (a) The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser

34.3 Termination for Convenience.

- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the

Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

- (i) to have any portion completed and delivered at the Contract terms and prices; and/or
- (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

35. Assignment

35.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

Section VIII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The corresponding clause number of the GCC is indicated in the left hand column.

GCC 1.1(j)	The Purchaser is: _____
GCC 1.1 (o)	The Site is: _____
GCC 4.2 (a)	The meaning of the trade terms shall be as prescribed by Incoterms. If the meaning of any trade term and the rights and obligations of the parties thereunder shall not be as prescribed by Incoterms, they shall be as prescribed by:
GCC 4.2 (b)	The version edition of Incoterms shall be: _____
GCC 5.1	The language shall be: _____
GCC 8.1	For notices , the Purchaser's address shall be: Attention: _____ Street Address: _____ Floor/ Room number: _____ City: Region: _____ Country: Telephone: _____ Facsimile number: _____ Electronic mail address:
GCC 9.1	The applicable law shall be the laws of Ghana

GCC 10.2	<p>The formal mechanism for the resolution of disputes shall be as follows:</p> <p><i>(a). For contracts entered into with Foreign Suppliers:</i></p> <p>In case of a dispute between the Purchaser and the supplier, the dispute shall be settled by arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration Rules.</p> <p><i>(b). For contracts entered into with suppliers from Ghana</i></p> <p>In the case of a dispute between the Purchaser and a Supplier from Ghana, the dispute shall be referred to adjudication or arbitration in accordance with the Alternative Dispute Resolution Act 2010 (Act 798)</p>
GCC 11.1	<p>The scope of supply for the Goods and Related Services to be supplied shall be as specified in: _____</p>

GCC 12.1	<p>Delivery and Documents</p> <p>For Goods supplied from abroad:</p> <p><i>Sample provision (CIF terms)</i></p> <p>Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by cable the full details of the shipment, including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Supplier shall mail the following documents to the Purchaser, with a copy to the Insurance Company:</p> <ul style="list-style-type: none">(i) copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;(ii) original and _____ copies of the negotiable, clean, on-board bill of lading marked "freight prepaid" and ___ copies of nonnegotiable bill of lading;(iii) copies of the packing list identifying contents of each package;(iv) insurance certificate;(v) Manufacturer's or Supplier's warranty certificate;(vi) inspection certificate, issued by the nominated inspection agency, and the Supplier's factory inspection report; and(vii) certificate of origin. <p>The above documents shall be received by the Purchaser at least one week before arrival of the Goods at the port or place of arrival and, if not received, the Supplier will be responsible for any consequent expenses.</p> <p style="text-align: center;"><i>[Other similar documents should be listed, depending upon the Incoterm retained.]</i></p> <p>For Goods from within the Purchaser's country:</p> <p><i>Sample Provision (EXW term)</i></p> <p>Upon delivery of the Goods to the transporter, the Supplier shall notify the Purchaser and mail the following documents to the Purchaser:</p> <ul style="list-style-type: none">(i) Copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;(ii) Delivery note acceptable to the Purchaser such as railway receipt, or truck receipt;(iii) Manufacturer's or Supplier's warranty certificate;(iv) Inspection certificate issued by the nominated inspection agency, and the Supplier's factory inspection report; and(v) Certificate of origin. <p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
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GCC 14.2	The prices charged for the Goods delivered and the related Services performed _____ be adjustable. If prices are adjustable, the method specified in the attachment to the SCC shall be used to calculate the price adjustment.
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