



**PUBLIC PROCUREMENT AUTHORITY (PPA)**

**ACCRA, GHANA**

**CONTRACT ADMINISTRATION MANUAL FOR  
WORKS**

**MANUAL 2**

*PREPARED BY*

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**FEBRUARY, 2018**

## FOREWORD

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

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

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

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

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

Public Procurement Authority

Accra, Ghana

January, 2018

## ACKNOWLEDGEMENT

The Public Procurement Authority (PPA) extends profound gratitude and appreciation to the Donors: Department for International Development (DFID), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) who initially funded the preliminary development of the Procurement Manuals and the Guidelines. Special appreciation goes to the African Development Bank (AfDB) through its Ghana Institutional Support Project, which funded the development of the current Contract Administration Training Modules and Manuals for Goods, Works, Consulting Services and Technical Services together with the cost of facilitation and logistics involved in the training of some Procurement Stakeholders across the country.

Special acknowledgement goes to the PPA Technical Working Group (TWG) that reviewed the initial Manuals and Guidelines which were prepared by Crown Agents, UK. Special mention is made of A. B. Adjei Chief Executive of PPA, Eric V. Appiah, Director, Benchmarking, Monitoring & Evaluation (BM & E) of PPA, Lesley Dodoo, Director Legal, PPA, Carl Lokko, Director, Policy & Strategy (P&S), Emelia Nortey, Director, MIS, Vidal Creppy, Director Capacity Development and the External Consultants namely Messrs. Godfrey Ewool, Stephen Tackie, Nii Amasa Kotey and Jacqueline Angate.

Our special appreciation also goes to the PPA Team and the External Consultants that reviewed the draft Contract Administration Manuals and Modules prepared by Ghana Institute of Management and Public Administration (GIMPA), namely: Yvonne Quansah, Minawara Adams, Andrew Baafi, Rhoda E. Appiah, Thomas K. Bondzi, Abraham Ablorh Mensah, Joseph Kuruk, Faustina A. Okuadjo, Hilda A. Agyemang, Prince Agyemang-Badu, Edwina Safee-Boafo and Miriam Osei; and External Reviewer, John Benson. Additionally, the Authority wishes to recognize the valuable contributions of participants of the Training of Trainers/Validation Workshop which enhanced the final output of this document.

It is worthy to acknowledge the pioneering role of Hon. Samuel Sallas-Mensah, former Chief Executive Officer of PPA and David Bennin, former Director, Capacity Development of PPA in the development of these Manuals.

Finally, the Authority wishes to thank the GIMPA Consulting Team of Messrs. N.S.K. Appiah, K.H Osei-Asante, Michael Kofi Quashie and Paul Nartey, who eventually developed the final Contract Administration Manuals and the accompanying Training Modules. Appreciation also goes to the following personnel of the GIMPA Consultancy Services, who assisted in finalizing the Manuals: Dr. Kofi Fred Asiedu, former Managing Consultant, Julius Hawkson-Aikins, Ag. Managing Consultant, Fred Appiah and Asafo Adjei, both Consultants.

The Public Procurement Authority (PPA) wishes to record its appreciation for the time and effort devoted by all the above-mentioned persons and organizations in the development of these documents.

However, the ultimate responsibility for the form and content of the Manuals rest with PPA and GIMPA.

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## LIST OF ABBREVIATIONS/ACRONYMS

AD	Advance Payment
AGD	Auditor-General’s Department
APS	Advance Payment Security
AR	Authorized representative
BOLF	Build, Operate, Lease and Finance
BOQ	Bills of Quantities
BOO	Build, Operate and Own
BOOT	Build, Operate, Own and Transfer
BOT	Build Operate and Transfer
CA	Contract Administrators
CC	Commencement Certificate
CD	Contract Data
CE	Contracting Entity
CGGL	Central Government General Ledger
CAGD	Controller & Accountant –General’s Department
CM	Contract Modification
CO	Cost Over-runs
COI	Conflicts of Interest
CAS	Contract Agreement and Securities
CAM	Contract Administration Manual
CAP	Contract Administration Plan
CM	Commencement Meetings
COPA	Conditions of Particular Application
CP	Cost Plus
CPM	Critical Path Method
CRPF	Cost Reimbursable Plus Fee
CT	Contract Termination
DA	Donor Agencies
DANIDA	Danish International Development Agency
DBFO	Design, Build, Finance, Operate
DBMF	Design, Build, Maintain and Finance
DBOM	Design, Build, Operate and Maintain
DBOMF	Design, Build, Operate, Maintain and Finance
DB	Design and Build
DC	Design and Construct
DFID	Department for International Development
DNP	Defects Notification Period
DR	Disputes Resolution
ECP	Evaluation of Contract Performance
EMW	Electrical and Mechanical Works
EOI	Expression of Interest

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ERMS	Electronic Record Management Systems/Strategy
ERP	Enterprise Resource Planning
ERW	Employment Records of Workers
ETC	Entity Tender Committees
EVM	Earned Value Management
FA	Force Account
FCA	Fraudulent Contract Administration
FCCI	Fraud and Corruption in Contract Implementation
FIDIC	International Federation of Consulting Engineers
FP	Fraudulent Practice
FTC	Final Target Cost
GC	Gantt Chart
GCC	General Conditions of Contract
GoG	Government of Ghana
HSS	Health & Safety Specialists
IC	International Contracts
ICT	International Competitive Tendering
<b>ICT</b>	Information & Communication Technology
IFAML	Interest-Free Advance Mobilization Loan
IFIs	International Financing Institutions
IPPD	Integrated Personnel and Payroll Database
ISO	International Organization for Standardization
ITC	Initial Target Cost
ITT	Instructions to Tenderers
IVMC	Interface for Validation of Metadata Capture
JV	Joint Ventures
LAP	Law Applicable to a Contract
LC	Lease contract
LCWC	Large Civil Works Contract
LIC	Labour Intensive Contracts
LOA	Letter of Acceptance
LS	Lump Sum
MA	Manufacturers' Authorization
MCC	Management of Contract Changes
MCPR	Monitoring Contract Performance and Reporting
MDBHE	Multilateral Development Bank Harmonized Edition
MI	Municipal Infrastructure
MIS	Management Information System
MJAGD	Ministry of Justice & Attorney-General's Department
MoF	Ministry of Finance
MWC	Major Works Contracts
NGO	Non-Governmental Organizations
NCT	National Competitive Tendering
NITA	National Information Technology Agency

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OA	Offer and Acceptance
OAP	Oracle Accounts Payable
OCM	Oracle Cash Management
OPO	Oracle Purchase Ordering
OP	Obstructive Practice
PAM	Price Adjustment Mechanism
PAPT	Post-Award Preliminary Task
PBB	Programme Based Budgeting
PBQ	Priced Bill of Quantities
PCC	Particular Conditions of Contract
PE	Procurement/Procuring Entity
PERT	Program Evaluation and Review Technique
PIT	Post Implementation Task
PM	Project Manager
PMF	Public Financial Management
PO	Purchase Order
PP	Prohibited Practice
PPA	Public Procurement Authority
PPP	Public-Private Partnership
PQT	Pre-Qualified Tenderers
PRAAD	Public Records and Archives Administration Department
PS	Performance Security
PUFMARF	Public Financial Management Reform Programme
PV	Payment Voucher
QA	Quality Assurance
RFQ	Request for Quotations
RM	Records Management
RMG	Retention Money Guarantee
SCC	Special Conditions of Contract
SD	Securing Declaration
SD	Dispute Resolution
SE	Supply and Erect
SEWC	Selection and Employment of Works Contractors
SFC	Short Form of Contract
SI	Supply and Installation
SR	Schedule of Rates
SRA	Stores Receipt Advice
STD	Standard Tender Documents
SWC	Smaller Works Contracts
TD	Tender Documents
TE	Tender Evaluation
TC	Turnkey Contracting
TDPW	Tender Document for Procurement of Works
TIN	Tax Payer Identification Numbering

TFC	Termination for Convenience
TO	Time Over-runs
TOC	Taking Over Certificate
TOPC	Taking-Over and Performance Certificates
TP	Tender Price
TRC	Tender Review Committee
TS	Technical Specifications
UD	User Departments
UR	Unit Rate
VC	Valid Contract
VGf	Viability Gap Funding
WB	World Bank
WBS	Work Breakdown Structure
WC	Works Contracts

## GLOSSARY OF TERMS

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

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

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

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



## INTRODUCTION

### **Background**

Since the establishment of the Public Procurement Authority (PPA) as a result of the promulgation of the Public Procurement Act, 2003 (Act 663) 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 Works-2**

The Manual covers contract administration for works for the post-award phase. The period commences from signing of the contract agreement by both Employer and Contractor 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**

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

- ❖ Introduction
- ❖ 1.0: Contract Principles
- ❖ 2.0: Basics of Contract Administration
- ❖ 3.0: Forms and Conditions of Standard Works Contracts
- ❖ 4.0: Contract Administration Process: Post-Award Preliminary Tasks
- ❖ 5.0: Monitoring Contract Performance & Reporting
- ❖ 6.0: Contract Modification
- ❖ 7.0: Payment & Cost Controls
- ❖ 8.0: Claims and Disputes Resolution
- ❖ 9.0: Termination of Contract
- ❖ 10.0: Contract Records Management
- ❖ 11.0: Evaluation of Contract Performance
- ❖ 12.0: Post Implementation Tasks

## **Exceptions to the Training Module**

The contract administration principles and procedures contained in this training module, 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 the **Appendices**.

## 1.0 CONTRACT PRINCIPLES

### 1.1 Contract –Definition

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

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

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

### 1.2 Essential Elements of a Valid Contract

For contracts to be valid to be legally enforceable, the following must be present:

- a) **Capacity to contract** – The parties to the contract must have legal right and 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 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 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.

### 1.3 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. Interested contractors then submit tenders or offers; in more simple forms of procurement they are called quotations.

In public procurement, when offers are to be 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.

A Tenderer may withdraw, substitute or modify its Tender after it has been submitted by giving notice in writing before the deadline for Tender submission as prescribed, duly signed by an authorized representative and shall include a copy of the authorization in accordance with the

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

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

relevant Clause of the Instructions. Each Tenderer's withdrawal, substitution or modification notice shall be prepared, sealed, marked and delivered, except that withdrawal notices do not require copies), but appropriately marked. Tenders requested to be withdrawn shall be returned unopened to the Tenderer. No Tender may be withdrawn, substituted or modified after the deadline for submission of Tenders. Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders, by submitting Tender modifications or included in the initial Tender.

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.

Normally, a Procurement Entity should be able to rely on the validity of an offer which is made in writing. However, many contracting agencies demand as an extra precaution that security in the form of a Guarantee, a Bond or a Securing Declaration is submitted along with the offer in order to reinforce the tenderers' promise to keep the offer binding for a specific period of time.

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. The effect of attaching reservations to an acceptance is generally to constitute a counter-offer. In most legal systems, a counter-offer counts as a rejection of an offer.

#### **1.4 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 contracts are free to choose the law applicable to their relationship. This rule, like 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 in gaps in the contract where no contractual provisions exist.

Under the various Standard Tender Documents of the Public Procurement Act, 2003, Act 663 as Amended, the Law Applicable to a Contract is that of Ghana.

The documents forming Works Contract are taken as mutually explanatory of one another and for the purposes of interpretation, the composition and priority of the documents in many conditions are to be in accordance with the following sequence:

- Contract Agreement (if any),
- Letter of Acceptance,
- Letter of Tender
- Particular Conditions,
- General Conditions,

- Specification,
- Drawings, and
- Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Engineer/Project Manager shall issue any necessary clarification or instruction.

## 1.5 The Nature of Works Contracts

Works contracts are among the most complex contracts under Ghanaian projects, as they are generally throughout the globe. They are therefore the most challenging in terms of contract administration. To begin with, there is a very large variety of types of works with various degrees of complexity and risks and even more various types of expertise required for their administration.

Each project that has a works component deals with one general type of works – large infrastructure projects (highways, bridges, roads, irrigation systems, dams etc.), smaller scale municipal infrastructure projects (rehabilitation of buildings, roads, sewage, water or power utilities), environmental rehabilitation projects (earthworks, planting, seeding, water management etc.). Essentially, the Procurement Entities should have experience in those types of works and possess the necessary in-house technical expertise.

Unfortunately, most Procurement Entities do not have the same level of experience or expertise when it comes to the particular forms of contracts used in Standard Tender Documents, particularly FIDIC Conditions of Contract and used for major works. While this type of contract has been extensively used in the developed countries, its use in most of the developing countries has been extremely limited. Experience and expertise in the use of these Conditions of Contract are therefore not very easily available.

Technical expertise alone is rarely a success factor by itself and a thorough understanding of the contract documents often proves more valuable than technical expertise.

## 1.6 Challenges Posed by Works Contracts

The challenges posed by large works contracts derive from many factors that have to do with:

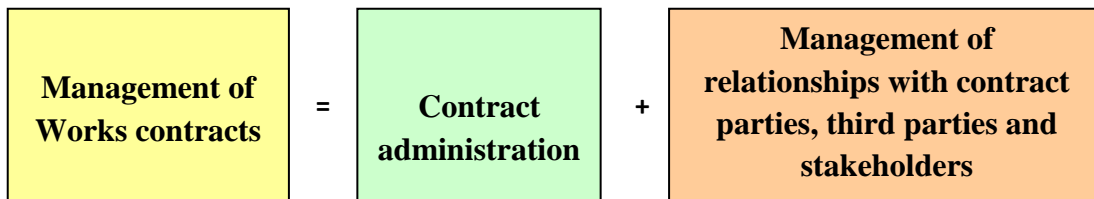
- a) The scope of the works itself:
  - i. Large scale of material movement e.g. massive excavations, earthworks;
  - ii. Wide variety of activities i.e. varied and interconnected activities of excavations earthworks, concrete works, road works, bridges, large structures, etc.;
  - iii. High technical complexity e.g. highly specialized equipment and/or technologies incorporated in the works;
  - iv. Significant duration i.e. lengthier times for completion.
- b) The variety of resources required:
  - i. Labour in terms of the deployment of workforce;
  - ii. Financial, works being capital intensive;
  - iii. Material, incorporation of complex plant, equipment, materials and massive use of fuel;
- c) The variety of expertise involved:

- 
- i. Technical (engineering);
  - ii. Financial (cost control, earned value management);
  - iii. Legal/Commercial/Contractual and use and understanding of the Conditions of Contract, issues of claims/remedies;
- d) The large number of various parties directly or indirectly involved:
- i. Employer;
  - ii. Designer;
  - iii. Contractor;
  - iv. Subcontractors, nominated, approved, designated/assigned or otherwise;
  - v. Engineer for major/medium works and/or Project Manager in Micro/Small Works contracts and Consultants;
  - vi. Statutory agencies with responsibilities in works inspection, environmental protection, financial and technical audit etc.;
  - vii. Local communities and stakeholders;
  - viii. End-users/beneficiaries, other than the Employer or the local communities and other stakeholders as mentioned above;
  - ix. Insurers;
  - x. Dispute Boards/Adjudicators/Arbitral Courts/Arbitration Centres;
  - xi. Manufacturers, Merchants and Suppliers of plant, equipment, material, labor etc.
- e) Potential impact:
- i. Economic value to the economy - particularly in the case of major infrastructure works and on locally for the labor market and the horizontal industries of construction materials, related services etc.
  - ii. Social, especially direct and indirect benefits for the local communities, particularly in the case of local infrastructure, employment opportunities and also negative effects like involuntary resettlement;
  - iii. Technological, complex projects and transfer of technologies and know-how to local contractors or subcontractors;
  - iv. Environmental, direct impact on the environment, hence the concerns regarding the preparation and adherence to comprehensive Environmental, Health, Social, Safety and Security and need for Management Plans;
  - v. Political, most works/projects are politically sensitive at various levels – local, regional, national or even international.

Each and every one of these factors may and often have a direct impact on the successful implementation of the works projects in terms of quality, timeliness, efficiency and effectiveness of money spent etc.

All these are important reasons why the management of the works contracts is among the most important challenges faced by the procurement entities, because proper management of works contracts means not only an adequate contract administration, that is knowing and enforcing contract conditions, clauses and remedies with supervisory roles over the contractor and the consultant, with the assistance of the Engineer/Project Manager and more importantly, managing the intricate relationships among all parties and stakeholders together with a thorough understanding of risk management and their effect on project's outcome and delivery.

In the form of an equation with a multitude of variables this would translate as:



### 1.7 End User involvement in the Management of Works Contracts

Some of the most successful Works contracts in terms of the quality of the supervision are those where the end users of the works are actively involved throughout the entire procurement process. Among the best examples are the contracts for municipal infrastructure where real representatives of the community - not only the politically appointed representatives, but direct beneficiaries of the works i.e. people living along the streets that are being asphalted or in the neighborhoods where a borehole is being sunk. When they are involved from the earliest stages of the procurement process, starting with feasibility and needs identification and assessment, design and all the way through formal taking over of the works.

The involvement of the community can be either formal or informal:

- a) Formal involvement – representatives of the community co-sign the contract together with the Employer, as the ultimate beneficiaries of the works; consequently the community enjoys the same contractual rights as the Employer by checking the quality and the progress of the works; endorsing Contractor's monthly statements; taking over the works etc.
- b) Informal involvement – the community acts as a watchdog to the contract, but its role is limited to signal to the Employer or the Engineer any delays and deviations in the scope of the works or in the quality of the works.

Involving the community whenever this is possible and practical has many advantages:

- a) Better control on the Contractor and on the outcome of the contract;
- b) Reduces the possibility of fraud and corruption;
- c) Increases community ownership and sustainability.

### 1.8 Types of Works Contracts

There are four (4) main types of Works contracts used under the Public Procurement Act, 2003 (Act 663) as amended, grouped according to their estimated value:

- a) **Major works contracts** – estimated to cost above GHS5 million equivalent; contract duration of over 18 months; these are the most complex contracts and are based on the General Conditions of Contract of the 2010 Multilateral Development Bank Harmonized Edition of the International Federation of Consulting Engineers (FIDIC) Conditions of Contract. These are normally used only under International Competitive Tendering (ICT) procedure, although some procurement entities have been using it successfully for National Competitive Tendering (NCT) contracts as well;
- b) **Medium works contracts** - estimated to cost between GHS50,000 and GHS5,000,000 equivalent, contract duration up to 18 months, and where the magnitude of the potential

risks involved is moderate for both the Employer and the Contractor and are based on the General Conditions of Contract of the 2010 Multilateral Development Bank Harmonized Edition of the International Federation of Consulting Engineers (FIDIC) Conditions of Contract. These are normally used only for National Competitive Tendering (NCT).

- c) **Minor works contracts** - estimated to cost between GHS15,000 and GHS50,000), short contract duration of less than 4 months and where the magnitude of the potential risks involved is small for both the Employer and the Contractor, the General Conditions of Contract based on the 1999 edition of the International Federation of Consulting Engineers' (FIDIC) "Conditions of Contract for Short Form of Contract". A particular feature of the Tender Document for Procurement of Works – Small Contracts (TDW-SC) is the single form of Agreement containing Offer and Acceptance, which, together with the documents listed in the accompanying Appendix, constitute the Contract. These are normally used only for National Competitive Tendering (NCT) and Request for Quotations (RFQs)
- d) **Micro works contracts** – estimated to cost to GHS15,000, short contract duration (less than 4 months), and where the magnitude of the potential risks involved is small for both the Employer and the Contractor. The General Conditions of Contract are based on the 1999 edition of the International Federation of Consulting Engineers' (FIDIC) "Conditions of Contract for Short Form of Contract". These are normally used only for Request for Quotations (RFQs)

### 1.8.1 Basic Types of Works Contracts

There are three basic and broad types of works contract, from which other variations have been derived to suit particular circumstances. The circumstances under which the basic types of contract and some of the common derivatives are used, the documentation required and the advantages and disadvantages of the different types are explained.

The basic types of works contracts, broadly defined and classified in accordance with the method of payment, are:

- i. Lump Sum
- ii. Unit Rate (Admeasurement or Re-measurement)
- iii. Cost Reimbursable plus Fee.

#### a) Lump Sum (LS)

Lump sum contracts with Activity Schedules, more rarely used with the assumption that the risk of variation in quantities is minimal. The contract is split in milestones or activity schedules and payments are made on the basis of percentage completion of each activity. Lump sum or all-inclusive price contracts are normally used for small, short duration of one or two years, well defined, detailed works and building construction, which are not subject to large quantity variations or conditions of high risk; in such cases, contract prices would normally be fixed, except in conditions of high inflation. Smaller works contracts are used whenever this option is chosen. Typical LS contracts are culverts and small bridges, rural schools, health clinics, housing, bus shelters, etc.



Lump sum tenders may also be called for larger works of longer duration, such as industrial process plants, normally following a two-step tendering procedures with designs prepared by the successful tenderers; fixed price tenders could be requested if payment is in a steady/stable currency.

Two adaptations of the fixed price LS contract to cope with these uncertainties during implementation relate to:

- Quantity variations, where the quantities of a few work items are subject to variation and can be estimated in advance by tenderers, including provisional quantities for possible increases over the basic lump sum to be priced competitively by tenderers and carried forward to the total amount of tender with the removal of the risk of possible quantity increases, and
- Price adjustment, for long duration contracts or in conditions of high risk and inflation, the price of inputs which may be difficult to predict at the time of tendering, can be made the subject of a price adjustment mechanism to track future price fluctuation and avoid further speculation in tendering.

#### **b) Unit Rate (UR) – Admeasurement or Re-measurement**

Unit Rate (UR) or Admeasurement or Re-measurement contracts with Bills of Quantities and/or Price Schedules, which represent the vast majority of Works contracts. FIDIC Conditions of Contract used for Major works contracts are prepared under the assumption of admeasurement, i.e. a contract where progress is determined by measuring the quantities of works actually performed; payments are based on these measured quantities multiplied by the respective contract unit rates as quoted by the Contractor in the priced Bills of Quantities.

The Unit Rate (UR) type of contract is the most common in general use internationally in the public sector for the construction of infrastructure projects, both large and small, under conditions of moderate perceivable risk in sectors such as transportation, power, irrigation, water supply and sewerage, etc. Tenderers are invited to quote unit rates for carrying out the Employer's estimated quantities of different classes of work to be performed. The unit rates are inclusive of all related inputs of labour, materials, equipment usage and a proportion of overheads and profit. The Tender Price comprises the summation of estimated quantities multiplied by the respective unit rate for all items of work. During contract execution, quantities of work completed satisfactorily are measured periodically as a basis for payment. The unit rates may be fixed for short duration contracts of 18 months or adjustments for variations in the indexed price of inputs over longer duration contracts.

#### **c) Cost Reimbursable plus Fee**

Commonly referred to as Cost Plus (CP), this type of contract provides for the periodic reimbursement of the contractor's actual costs for measurable inputs to the works, such as labor, materials, equipment, spare parts, fuel, etc., together with a fee to cover associated overheads, management and profit.

The fee may be either a:

- i. Fixed fee, i.e. independent of total measured costs, or
- ii. Percentage of measured costs, or
- iii. Variable (incentive) fee, which increases when savings materialize in an agreed estimate of total contract payments or which reduces with cost over-runs.

Cost reimbursable contracts are appropriate in:

- i. Open-ended emergency situations such as structural collapse or damage,
- ii. Circumstances where works are exposed to conditions of great uncertainty or unquantifiable risks, such as unstable political situations, war, unknown ground conditions (tunneling),
- iii. Large unforeseeable price fluctuations,
- iv. The private sector, usually on a negotiated basis with a selected contractor, and
- v. Cases when an early start is required on projects which are not completely defined or designed but are expected to be highly remunerative, such as hotels, casinos, innovative technical processing and manufacturing plants, etc.

## **1.8.2 Characteristics, Merits and Demerits of Basic Types of Works Contracts**

### **a) Lump Sum (LS)**

The characteristics are reflected as the basic LS tender document for small works and building normally consists of Instructions to Tenderers (ITT), Conditions of Contract, Technical Specifications, well detailed drawings, and Forms of Tender, Contract Agreement and Securities. Quantities are not normally given for micro works below GHS15,000, but major quantities are sometimes indicated for the convenience of tenderers on major works. The payment schedule is normally a pre-specified proportion of the contract price related to progressive stages of completion as per Schedule of Activities.

Some of the advantages of LS contract from the Employer's viewpoint are:

- Advance knowledge of the fixed contract amount for budget forecasting, with relatively minimal variations due to quantities and price adjustment,
- Relatively easy to administer for payment purposes with no or little measurement of works performed, and
- Requires less documentation, normally no detailed Bills of Quantities.

Some disadvantages are:

- Inflexible to design changes, major variations are difficult to price,
- Not suitable where potential future risks and changes are difficult to forecast
- Tenderers may inflate their prices to cover expected costs which do not materialize, and
- Designs for smaller works must normally be complete and drawings prepared in detail by the Employer, as a basis for tendering.

### **b) Unit Rate (UR) – Admeasurement or Re-measurement**

The characteristics of UR is reflected in tender documents which consist of ITT, General Conditions of Contract (GCC) and Particular Conditions, Technical Specifications, a detailed BOQ for different classes of work, Drawings in sufficient detail for quantities to be estimated, Form of tender, Contract Agreement and Securities. This use of the FIDIC GCC provides for the incorporation of custom-designed specialized plant in a major works contract e.g., the ventilation and/or lighting systems in a tunnel contract, through nominated subcontractors, while still maintaining the merit of a single responsibility contract under the prime contractor. Some of the advantages of UR contract are:

- Tenderers are competing on the most equitable basis, against same quantities of work and complete designs,

- The comparison and evaluation of tenders are straightforward and objective,
- The provision of flexibility for the contracting parties in handling variations and extra works,
- Regular accurate cost payments for work completed assist the contractor's cash flow,
- Reasonably accurate cost estimates can be made for planning purposes and, under normal circumstances, the Employer can expect only minor discrepancies between the estimated cost and the lowest tender, and between contract price and the final basic cost; and
- A firm cost estimate is available in advance for determining the appropriate budget amounts.

Some of the disadvantages of UR contract are:

- Tenders containing unbalanced unit rates and “front-end loading” create problems in tender comparison and evaluation;
- Higher cost of documentation than LS in preparing the detailed BOQ;
- Higher supervisory costs, due mainly to the re-measurement of work performed.
- Known to encourage corruption in re-measurement
- Serious audits with adverse effects on beneficiary agency

### c) Cost Reimbursable plus Fee

The characteristics of CP is reflected in the tender document which includes the normal basic elements, tailored to the particular contract circumstances and method of payment. In cases where special end-product is needed, specifications should prescribe functional and performance requirements, in addition to technical requirements. A provision may also be included for conversion to a more appropriate form of contract such as target cost or Unit Rate, as the work progresses and uncertainties are resolved and designs completed.

The advantages of CP contracts are:

- Early mobilization of construction resources is possible in emergency situations, and on works that are poorly defined, involve high risk or high returns, and
- The contractor is reimbursed all expenditures and assumes little or no risk.

The disadvantages of CP contracts are the:

- Circumstances favoring cost plus contracts are more conducive to sole source negotiations with a selected contractor than to competitive tendering, which is normally required in the public sector,
- Contractor has little incentive to produce quality or timely work if the CP fee is fixed,
- Contractor benefits from higher costs and consequently has limited incentive to be cost effective with a CP percentage fee, and
- Employer needs additional supervisory staff to monitor and verify actual costs.

### 1.8.3 Factors Affecting the Choice of Contract Type

In the preliminary stages of procurement, procurement entities may have a choice of procurement method and/or the type of works contract to be used, depending on prevailing circumstances. The type of contract chosen will affect the subsequent stages of procurement, also the content of the tender documents and, to some extent, the degree of influence which the

Employer can exert during contract implementation. It is important, therefore, at an early stage in the planning process, to consider carefully the types of contract that might be suitable for use, and the factors affecting the choice of type.

Some of the general factors which may affect or influence the choice of contract type by an Employer or Procurement Entity are the:

- a) Nature and complexity of the works e.g. building, highway, industrial plant, etc.,
- b) size and duration of the contract e.g. minor health clinic or major hospital, feeder/trunk road or Highway, urban water supply, etc.,
- c) Degree of definition of the works and the element of risk/uncertainty,
- d) Status of design for both preliminary or final,
- e) Technical capacity, design and supervisory resources of the Employer,
- f) Financial resources available and/or budget constraints,
- g) Previous experience of the Employer in a particular type of contract, and
- h) Practices and procedures of the associated funding agencies and the degree of compliance required with their Standard Tender Documents (STDs).

#### **1.8.4 Adaptations of the Basic Types of Works Contract**

The three (3) basic types of works contract of LS, UR and CP, can be adapted or combined to suit particular contracting requirements and payment provisions. A few of the more common adaptations and their particular uses are:

- a) Supply and Erect/Install
- b) Design and Build/Construct
- c) Turnkey
- d) Target Cost
- e) Public-Private Partnerships (PPPs)

##### **a) Supply and Erect/Install**

This type of contract provides for the supply of major items of manufactured or prefabricated plant/equipment/goods such as turbines, pumps, generators, transmission towers, pipelines, boilers, etc., including relatively minor works involved in their erection and/or installation and commissioning at a site or various sites. The plant/equipment/goods would be the subject of performance specifications or fabricated to the design of the Employer/Purchaser on a LS basis. Minor/Micro works might be quoted on LS based on the design of the supplier, but major works should be undertaken to the design of the Employer/Purchaser on a UR basis. Commissioning or testing of the completed project is a requirement before acceptance.

The tender documents and subsequent contract should emphasize a single responsibility for the supply of plant/equipment/goods and the execution of related works in order to avoid conflicts and delays in the event of non-compatibility. According to the relative predominance of goods or works, the tender documents for minor/micro projects e.g. the fabrication and erection of bus shelters, small grain silos, etc. For major projects with a predominance of installed plant and equipment, the documents should incorporate the FIDIC GCC for “Electrical and Mechanical Works including Erection on Site” 1999, the Yellow Book or the World Bank’s trial STD, 1999 for the Supply and Installation of Plant and Equipment.

## **b) Design and Build/Construct**

This type of contract is used for important buildings, major works and other infrastructure when an Employer wishes to explore, on a competitive basis, the most innovative designs and the special expertise and technology of individual contractors, which may not be available to the Employer's own Engineer/Architect, such as works superstructures and buildings might using a variety of configurations in steel, reinforced or pre-stressed concrete, etc., to provide a common structural equivalence, while substructures using wells, caissons, conventional or proprietary piling, etc. might equally provide foundations. Expression of Interest for consulting services and Prequalification for works contractors are essential features of the tender process in order to select qualified combinations of engineer/architect/contractor.

A comprehensive site and subsoil survey is provided by the Employer as part of the tender documentation which should also include the parameters of structural design and loading. Competitive designs and lump sum tenders are called from qualified tenderers who provide comprehensive design calculations, quantities and drawings. Tender evaluation includes:

- Design checks and quantification of design errors,
- Times of completions,
- Payment schedules, and
- Assessment of the aesthetics of the different proposals.

Tenderers and Applicants are sometimes compensated, on a sliding scale according to merit, for the preparation of responsive proposals.

## **c) Turnkey**

Turnkey contracting is used for the procurement of complex industrial process facilities and plants such as steel mills, food processing, petroleum refineries, etc. when alternative systems and processes could not provide satisfactory end product requirements, and it would therefore be undesirable or impractical to prepare definitive designs and complete technical specifications in advance. A two-step tender procedure is normally followed, first inviting unpriced technical proposals and outline designs which are subject to clarification and adjustment by the Employer, followed by the submission of detailed technical proposals and priced tender in the second step.

The turnkey contractor undertakes to provide detailed designs, production process plant and equipment, manufacturers' authorization, related construction, procurement licenses, guarantees, recruitment and training of operating staff, commissioning, start-up, initial operation and maintenance and final handover of the "key" to the Employer for him to "turn". The contract price is normally quoted LS with periodic payments against specified stages of partial completion. Price adjustment clauses may be provided for contracts of longer duration than about two years and contractors may be encouraged to tender on a fixed price basis and absorb the risk of future price fluctuation with payment in a hard foreign currency. FIDIC has prepared GCCs (1999) for Design-Build and Turnkey Contracts.

## **d) Target Cost**

This type of contract may be used in conditions of high uncertainty and unquantifiable risk which make it difficult to define the value and scope of the works precisely before inviting

tenders. It is essentially a cost reimbursable plus incentive fee type of contract, where the initial fee is adjusted with a bonus or penalty according to whether the final contract cost is less or greater than an agreed Target Cost.

This form of contracting is more suited to single source procurement, where an Initial Target Cost (ITC) can be the subject of competitive tender on a UR basis against provisionally estimated quantities of work, with overheads and fee priced separately but competitively. As the work progresses, the scope of the project and the target cost can be more precisely defined. The ITC is updated periodically to include agreed variations, extra works, actual and estimated quantities of work and price adjustment, if any, which becomes the Final Target Cost (FTC) upon completion. Payment to the Contractor is made on a cost reimbursable basis against actual inputs to the contract and upon completion, total payments are compared with the FTC to determine the amount of final fee.

### **e) Public-Private Partnerships (PPPs)**

A Public Private Partnership is a partnership between the public sector and the private sector for the purpose of delivering a project or a service traditionally provided by the public sector. PPPs come in a variety of different forms, but at the heart of every successful project is the concept that better value for money may be achieved through the exploitation of private sector competencies and the allocation of risk to the party best able to manage it. It is important to note that PPPs acknowledge the constraints to investment in physical infrastructure and make efforts to promote effective public sector spending and private sector investment and to interpret investment trends.

In effect, PPPs therefore have long term, contractual partnerships between the public and private sector agencies, specially targeted towards financing, designing, implementing, and operating infrastructure facilities and services that were traditionally provided by the Government and/or its agencies.

These collaborative ventures are built around the expertise and capacity of the project partners and are based on a contractual agreement, which ensures appropriate and mutually agreed allocation of resources, risks, and returns. PPP is the approach of developing and operating public utilities and infrastructure by the private sector under terms and conditions agreeable to both the government and the private sector.

### **PPP Models**

#### **i. Service Contract**

- Government/public authority hires a private company or entity to carry out one or more specified tasks or services for a period, typically 1–3 years,
- Public authority remains the primary provider of the infrastructure service and only contracts out portions of its operation to the private partner,
- Private partner must perform the service at the agreed cost and must typically meet performance standards set by the public sector, and

- Government/public authority pays the private partner a predetermined fee for the service, which may be a one-time fee, based on unit cost or some other basis.

## **ii. Management Contract**

- Management contract expands the services to be contracted out to include some or all of the management and operation of the public service i.e. utility, hospital, port authority, telecommunication etc.,
- Daily management control and authority is assigned to the private partner or contractor, even though ultimate obligation for service provision remains in the public sector and in most cases, the private partner provides working capital but no financing for investment,
- Private contractor is paid a predetermined rate for labour and other anticipated operating costs, and
- Management contract variants include supply and service contract, maintenance management and operational management.

## **iii. Lease Contract**

Private partner is responsible for the service in its entirety and undertakes obligations relating to quality and service standards,

- New and replacement investments remain the responsibility of the public authority and the operator provides the service at his expense and risk,
- Duration of the leasing contract is typically for 10 years and may be renewed for up to 20 years.
- Responsibility for service provision is transferred from the public sector to the private sector and the financial risk for operation and maintenance is borne entirely by the private sector operator.
- The operator is particularly responsible for losses and for unpaid consumers' debts, and
- Leases do not involve any sale of assets to the private sector.

## **iv. Joint Ventures (JVs) and Partnerships**

- Alternatives to full privatization in which the infrastructure is co-owned and operated by the public sector and private operators,
- Public and private sector partners can either form a new company (SPV) or assume joint ownership of an existing company through a sale of shares to one or several private investors,
- Good corporate governance is a key requirement of this structure and in particular the ability of the company to maintain independence from the government, because the Government is both part owner and regulator,
- Government from its position as shareholder has an interest in the profitability and sustainability of the company and can work to smoothen political hurdles,

- Involves the common sharing of risks, responsibilities and rewards of providing a public service by a private sector entity and government,
- Entails a sharing of expenditures as well, on a pro-rata basis as specified in either the joint venture or partnership agreement,
- No typical duration as it would depend upon the objective of the joint venture or partnership,
- Not common and in some cases only one out of about one hundred,
- For the refurbishment, maintenance and operation of generating plants, and
- Generates revenues through the sale, profit from such sale becomes the source of revenue to reimburse both parties, in accordance with the joint venture agreement.

#### v. **Concessions and BOT**

- Concession makes the private sector operator (concessionaire) responsible for the full delivery of services in a specified area, including operation, maintenance, collection, Management and construction and rehabilitation of the system,
- Operator is responsible for all capital investment and for providing the assets, and such assets are publicly-owned even during the concession period,
- Public sector is responsible for establishing performance standards and ensuring that the concessionaire meets them and in essence, the public sector's role shifts from being the service provider to regulating the price and quality of service,
- Concessionaire collects the tariff directly from the system users,
- Tariff is typically established by the concession contract, which also includes provisions on how it may be changed over time,
- Government may choose to provide financing support to help the concessionaire fund its capital expenditures in some cases,
- Concessionaire is responsible for any capital investments required to build, upgrade or expand the system and for financing those investments out of its resources and from the tariffs paid by the system users,
- Concession contract is typically valid for 25–30 years so that the operator has sufficient time to recover the capital invested and earn an appropriate return over the life of the concession,
- Government may contribute to the capital investment cost by way of subsidy under Viability Gap Funding (VGF) to enhance commercial viability of the concession, and
- Concessions are effective contracts to provide investment for creation of new facilities or rehabilitation facilities.

A BOT type of contract may be considered when an Employer/Owner has limited budget and/or borrowing capacity, or otherwise wishes to involve the private sector in financing a typical public sector project. It is essentially a concessionary turnkey type of contract, which includes financing in addition to the design, construction, operation and maintenance of public and private revenue earning projects such as power generation and distribution, toll roads and bridges, water supply, etc. Total costs and risks are borne by the private BOT investors over the concession period, which may be some 20-30 years.

The BOT type of contract is one of a growing family of concessionary contracts involving private sector financial participation, each of different features.



The drafting of the Concession Agreement by the responsible public authority is an important element in this type of contracting and should cover amongst others:

- Use of land, existing property and utilities,
- Design and performance standards,
- Environmental requirements,
- Risk sharing by the contracting parties,
- Regulation of tariffs,
- Subsidies, if any, and other public-sector financing,
- Operating and maintenance requirements,
- Conditions of facilities at transfer and transfer price, and
- Provisions for possible extension of concession period.

#### vi. **BOO and Divestiture**

- Arrangements are similar to concessions and BOTs,
- Transfers responsibility for operations, maintenance and capital investment to the private sector and link the operator's remuneration with the tariff or user fee,
- Key difference is that BOOs and divestiture do not have any limits on their duration, whereas concessions and BOTs last between twenty to thirty years,
- BOOs and divestiture are what are termed privatization, with a distinct difference between a PPP and privatization,
- Analogy of steering versus rowing,
- Privatization entails the disposal of the services infrastructure to the private sector, and with it, the responsibility for service provision.
- Ownership and the responsibility for providing services reside with the private sector,
- Private sector service provider owns the facility, pays property taxes and levies, another source of revenue to government,
- Many governments around the world have their own definitions for PPP to include privatization or divestiture, and
- Permanent sale of shares in or the assets of infrastructure companies.

### **Types of Partnerships**

#### a) **Build, Operate and Transfer (BOT)**

- Arrangements are a kind of specialized concession in which a private operator or consortium finances and develops a new infrastructure project or a major component according to performance standards set by the government,
- The private partner provides the capital required to Build the new facility, Operate & Maintain (O&M) for the contract period and then return the facility to Government as per agreed terms,
- Private operator now owns the assets for a period set by contract—sufficient to allow the developer time to recover investment costs through user charges,
- Require complicated financing packages to achieve the large financing amounts and long repayment periods required, and

- 
- Public sector assumes ownership but can opt to assume operating responsibility, contract out the operations responsibility to the private operator or award a new contract to a new partner.
- b) Build, Operate and Own (BOO)**
- Contractual arrangement whereby a private operator is authorized to finance, construct, own, operate and maintain an Infrastructure or Development facility from which the private operator is allowed to recover his total investment by collecting user levies from facility users.
  - Private operator owns the assets of the facility and may choose to assign its operation and maintenance to a facility operator,
  - Transfer of the facility to the Government, Government Agency or the Local Authority is not envisaged in this structure, and
  - Government, may terminate its obligations after specified time period.
- c) Build, Operate, Own and Transfer (BOOT)**
- Contractual arrangement whereby a private operator is authorized to finance, construct, own, operate and maintain an Infrastructure or Development facility from which the private operator is allowed to recover his total investment by collecting user levies from facility users.
  - Private operator owns the assets of the facility and may choose to assign its operation and maintenance to a facility operator,
  - Transfer of the facility to the Government, Government Agency or the Local Authority is envisaged in this structure, and
  - Government, may terminate its obligations after specified time period.
- d) Design, Build, Finance, Operate (DBFO)**
- Responsibilities for designing, building, financing, and operating & maintaining, are bundled together and transferred to private sector partners
  - Arrangements vary greatly in terms of the degree of financial responsibility that is transferred to the private partner
- e) Design, Build, Operate and Maintain (DBOM)**
- Integrated partnership that combines the design and construction responsibilities of design-build procurements with operations and maintenance,
  - Project components are procured from the private sector in a single contract with financing secured by the public sector, and
  - Public agency maintains ownership and retains a significant level of oversight of the operations through terms defined in the contract.
- f) Design, Build, Maintain and Finance (DBMF)**
- Responsibilities for designing, building, financing and maintaining are bundled together and transferred to private sector partners,

- Great deal of variety in DBMF arrangements in the United States,
- Degree to which financial responsibilities are actually transferred to the private sector,
- One commonality that cuts across is either partly or wholly financed by debt leveraging revenue streams dedicated to the project,
- Direct user fees (tolls) are the most common revenue source,
- Others range from lease payments to shadow tolls and vehicle registration fees,
- Future revenues are leveraged to issue of bonds or other debts that provide funds for capital and project development costs,
- Supplemented by public sector grants in the form of money or contributions in kind, such as right-of-way,
- Private partners may be required to make equity investments, and
- Value for money can be attained through life-cycle costing.

**g) Design, Build, Operate, Maintain and Finance (DBOMF)**

- Responsibilities for designing, building, operating, financing and maintaining are bundled together and transferred to private sector partners,
- Great deal of variety in DBOMF arrangements in the United States,
- Degree to which financial responsibilities are actually transferred to the private sector,
- Partly or wholly financed by debt leveraging revenue streams dedicated to the project,
- Direct user fees (tolls) are the most common revenue source,
- Others range from lease payments to shadow tolls and vehicle registration fees,
- Future revenues are leveraged to issue of bonds or other debts that provide funds for capital and project development costs,
- Supplemented by public sector grants in the form of money or contributions in kind, such as right-of-way,
- Private partners may be required to make equity investments, and
- Value for money can be attained through life-cycle costing.

**h) Build, Operate, Lease and Finance (BOLF)**

- Private party leases or buys an existing facility from a public agency,
- Invests its own capital to renovate, modernize, and/or expand the facility,
- Operates it under a contract with the public agency, and
- Different types of municipal transit facilities could be leased and developed under such arrangements.

The method of procurement and type of contract chosen will affect the degree of influence to which the Employer or Owner can exert on:

- Initial project design,
- Variations during implementation, and
- Financing arrangements,
- Consequent implications on risk sharing with the Contractor.

The highest influence can be exerted with force-account (direct labor) procurement, where all aspects of design, construction, supervision and financing are normally borne by the public authority, which then has full exposure to all risks. The lowest influence/risk results from BOT

procurement (presuming a sound concession agreement) where design, construction, financing, operation and maintenance are normally the responsibility of the private investor group.

In summary, the degree of influence and risk sharing by the Employer/Owner will generally decrease in relation to the method of procurement and type of contract, as follows:

### **High**

- Force Account (Direct Labour)
- Cost Reimbursable
- Admeasurement
- Supply and Install
- Design and Construct
- Turnkey
- BOT

### **Low**

#### **1.8.5 Labour Intensive Contracts**

A contract that requires a large amount of labour to produce its goods and/or services. The degree of labour intensity is typically measured in proportion to the amount of capital required to execute the contract with the production of goods and/or services.

The higher the proportion of labour costs required, the more labour intensive the business. Construction activities in Ghana are by their very nature labour intensive and support a large reservoir of skilled and unskilled labour that produce to contribute to the gross domestic product.

Labour intensive contracts are very common with the Road Sector in Ghana, where there are clear Guidelines for the Implementation of Labour Intensive Projects. International and local experiences have shown that with well-trained supervisory staff and an appropriate employment framework, labour intensive methods can be used successfully for infrastructure projects involving low-volume roads and sidewalks, storm water drains and trenches. On the basis of this experience and in the context of high levels of unemployment, the government has decided to require that these infrastructure projects must be carried out in a labor-intensive manner.

## 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”<sup>3</sup>.

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

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

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

<b>Contract Management</b>	<b>Contract Administration</b>
Relationship focus	Operational focus
Strategic	Tactical
Process development	Process compliance
Longer term time frame	Short-term/transactional
Holistic 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 requirements 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, construction works and services of the required quantity and standards of quality within the time frame and cost parameters stipulated in the contract in order to satisfy the needs of the end-user on a sustainable basis and also minimize disputes.

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

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

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

Contract Administration requires multi-disciplinary skills which must be adequately coordinated and discharged to have a positive and progressive effect on the outcome of an impeccable tendering process. A flawed Contract Administration process will undoubtedly lead to increased costs and delay in contract completion and may also expose the contracting authority and entity to legal complications with unpredictable results.

## 2.4 The Benefits of Good Contract Administration

Effective contract administration will provide the following benefits:

- a) **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,
- b) **Performance to the required standard** with the full use made of contractor's own management information and performance measurement systems and the contractor reporting progress through agreed procedures.
- c) **Compliance with contract terms and conditions** in managing them to help ensure that they are met and when not provide remedies to be applied properly and promptly,
- d) **Clear and documented records** which are essential in the event of invoking default procedures for seeking correction of failures to perform,
- e) **Management of change** as 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, and
- f) **Value for Money** as a balance of cost, risk, delivery and quality which should be managed in a sustainable manner to:
  - i. Record costs;
  - ii. Ensure no change in the balance of risks;
  - iii. Ensure timely delivery; and
  - iv. Ensure quality.
- g) **Performance rating**: the performance of the Contractor would be evaluated and rated at the end of the contract by the Contract Administrator. The Contractor would be informed of the result and this will help him/her to improve upon future performance

## 2.5 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:

- a) Scope of contract is not achieved, where the end product is either not delivered or is of a very poor quality,
- b) Delays or time over-runs, or
- c) Cost over-runs.

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

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

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

**Poor capacity** is dangerous for the contract implementation but can be remedied through:

- Continuous and intensive training, both formal and on-the-job,
- Hiring staff with the appropriate expertise and experience, and
- Close supervision.

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, different from an ethical perspective, but can be equally damaging to the success of contract implementation:

- lack of motivation of the staff, more benign and potentially less harmful due to amongst others:
  - Dissatisfaction with the level of remuneration,
  - Lack of professional challenges,
  - Eroding routine,
  - Lack of recognition from the superiors, and
  - Sense of futility

These symptoms must be identified early in the implementation stage and properly addressed through appropriate administrative and relationship decisions such as incentives, motivation, correct allocation of tasks and responsibilities, correlation between responsibilities and rewards, increased ownership of the process etc.

- Staff inactivity has its roots in fraud and corruption and is the most dangerous risk during contract implementation and connotes a high degree of certainty that the proper execution of the contract is compromised.

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

## 2.6 Fraud and Corruption in Contract Implementation

Contract implementation stage is the most prone to fraudulent and corrupt practices. It is a common-sense conclusion because at the implementation phase, money enters into the equation of relations between the two parties – Employer and contractor. Fraud and corruption undermine the very foundation of contractual relations, which should be based on responsibility in achieving the scope of the contract efficiently and accountability for every action. Irrespective of the measures taken by international and public agencies, the extent of corruption is staggering.

The most frequent cases of fraud and corruption involve:

- Scope of the contract is not achieved as works are not completed, goods and services are not delivered, although the money has been spent,
- Unjustified variations and change requests granted by the Employer,
- Contract specifications are not met with poor quality of the works, goods or services delivered,
- Products are substituted by inferior, less expensive and lower quality products than specified in the contracts, and



- The Employer is billed for work done by senior consultants or non-existing consultants, while the actual services are delivered by a limited number of less qualified staff.

### 2.6.1 Possible Indicators of Corruption

Often these are clues that something may go wrong in the future and therefore requires attention now. Literally, it is a warning of danger.

- Front-loading – the contractor performs more expensive activities at the beginning of the contract, thus putting the contract at risk of incompleteness as a significant part of the contract amount will be disbursed at early stage,
- Frequent issue of change /variation orders especially with regard to items with high rates and prices,
- Requests for subcontracting, especially to firms that took part in the tendering process and were rejected or those who offered higher prices at that stage,
- Deliberate use of unqualified supervisors by the Engineer or Project Manager as the case may be,
- Failure to report any deviations from the contract,
- Substitution of consultants by less qualified and inexperienced replacements,
- Failure to use proper project management tools – Project Managers might avoid using standard and modern project management tools and technology-based approaches in order to hide cost over-runs, time over-runs and make actual progress of works impossible to determine,
- Poor filing and record keeping, missing invoices, timesheets, logs, deliverables, supporting documents etc.

### 2.6.2 Remedial and Pro-Active Actions

- Maintain close control on the Project Manager/Engineer with permanent contact, spot checks, site visits, issues log, inspection and control of 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 versus planned progress, both quantity and quality, timeliness of deliverables, quality of inputs and outputs etc.,
- Enforce internal audit procedures, based on accepted principles particularly with regard to the actual verification of invoices and supporting documents,
- The person approving the payment should not be involved in the verification of payment documents,
- Penalize promptly any failure to report delays, cost over-runs, time over-runs, variation orders, use of substandard materials and workmanship, deviations from the technical specifications and any leniency towards the contractors, and
- Enforce all applicable and reasonable contract remedies including liquidated damages for delays or for non-compliance, remedies against the insurance policies and performance securities, etc.

All these precautionary measures should not be interpreted as instigations to abuse the contract mechanisms and remedies against the contractors. 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 contractor into agreeing to kickbacks or other kinds of informal payments.

### 2.6.3 Policy on Preventing, Detecting and Remediating Fraud and Corruption

Employer, suppliers, contractors, consultants and sub-consultants must observe the highest standards of ethics during the execution of works contracts. A Policy on Preventing, Detecting and Remediating Fraud and Corruption in works contracts needs to be put in place.

In pursuance of this policy, the following provisions will apply and for the purposes of these provisions, the terms set forth below are defined as follows:

- 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.

### **2.6.4 Conflicts of Interest**

The Contractor shall not have a conflict of interest. All Contractors 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 Employer. The Employer requires that Contractors hold the Employer's 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 Contractor, including all parties constituting the Contractor and any subcontractors and 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 Conflicting activities, Conflicting assignments and Conflicting relationships and in the case of a Contractor, the Contract may be terminated.

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

## **2.7 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 Dispute Resolution,
- Contract Termination,
- Managing Contract Records
- Evaluation of Contract Performance, and
- Contract Close-out.

## **2.8 Important Parties in a Works Contract**

The FIDIC Conditions unite in one single document the roles and responsibilities of the three most important parties in a works contract, namely the:

- a) Employer,
- b) Engineer. and
- c) Contractor.

Given the very sensitive nature of works contracts, which are inherently prone to variations more than any other types of contracts, the Engineer/Project Manager is the central figure of the contract and the main party to which contract administration is formally assigned. This derives from the fact that the Engineer/Project Manager is invested with the authority to act on behalf of the Employer in making sure that the works would be completed successfully in terms of quality, time and cost.

One of the biggest mistakes in the administration of works contracts is the belief that once you hire a competent Engineer all your troubles are over. But this is only true in exceptionally rare

cases because an effective contract administration requires a high degree of involvement from the implementing agency/entity and there can never be a full and complete outsourcing of contract administration, since the implementing agency/entity must retain critical key functions within the process, at least final verification of documents and payment.

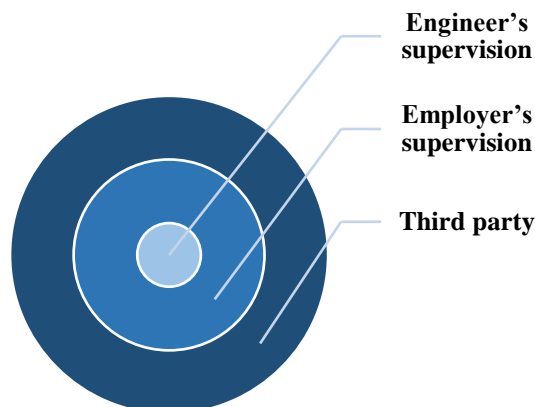
In large works contracts as well as in projects with many contracts with a wide geographical spread the implementing agency/entity might also benefit from the expertise and experience of third party technical auditors. These can be hired as an additional layer of supervision responsible with checking how the contract parties, Contractor and Employer, including the Engineer, are fulfilling their duties and responsibilities toward the successful completion of the contract.

The Layers of supervision in the administration of works contracts below shows the different layers of oversight responsibilities that should be interpreted as complementary to each other. The presence of an additional layer of supervision represented by an outer circle should by no means be interpreted as a superior hierarchical position of a subordination nature; it merely indicates a greater scope of the supervision function.

In simpler words the:

- (i) Engineer supervises the Contractor,
- (ii) Employer supervises the Engineer and the Contractor, and
- (iii) Auditor supervises the Employer, the Engineer and the Contractor.

**Figure 1: Layers of supervision in the administration of works contracts**



The involvement of so many layers of supervision in the case of major works contracts is by no means an exaggeration or a whim. It must be fully understood that the administration of these types of contracts is not a part time job and not a task to be entrusted to one single party. Now the purpose, roles and responsibilities of each of these layers could suffice.

### **2.8.1 The Employer**

#### ***What does the Employer do?***

As mentioned throughout this section, a proper and thorough management of a works contract should not in any way be limited to the roles and responsibilities of the Engineer. The Employer

must retain very specific responsibilities throughout the implementation of the contract. In other words, there are two key aspects of Employer's involvement in contract management:

- (a) Knowing what to request from the Engineer, and
- (b) Knowing what to do by itself.

We have briefly seen what the Engineer should do. It's more important however to see what are the specific responsibilities that should be retained by the Employer throughout the implementation of a works contract.

Some of these attributes derive from limitations to Engineer's authority expressly mentioned in the contract documents; others (most of them, in fact) are unwritten rules that must be followed for successful contract implementation.

### ***Specific contractual responsibilities of the Employer***

Apparently, Employer's actions in the FIDIC Contract are rather few, since the day-to-day aspects of the contract supervision are delegated to the Engineer. Employer's rights and responsibilities as stipulated in the General Conditions of Contract are limited to the following:

- Gives the Contractor right of access to and possession of the Site (Sub-Clause 2.1).
- Facilitates obtaining of approvals and permits (Sub-Clause 2.2.).
- Ensures that its own staff or other Contractors comply with the contractual safety and environmental rules (Sub-Clause 2.3).
- Submits to the Contractor reasonable evidence of the financial arrangements that would enable the Employer to pay for the works (Sub-Clause 2.4).
- Approves the Performance Security (Sub-Clause 14.6).
- Pays to the Contractor the Advance Payment (Sub-Clause 14.2), all subsequent Interim Payment Certificates (Sub-Clause 14.7), Retention Money (Sub-Clause 14.9) and Final Payment (Sub-Clause 14.13).
- Pays penalties for delayed payment (Sub-Clause 14.8).
- Takes over the works (Clause 10).
- Terminates the Contract (Clause 15).

In addition to these, the Employer may and in some circumstances should retain specific contract administration responsibilities through the Particular Conditions of Contract (PCC):

- The Employer establishes if the scope of the works would be divided in Sections (PCC 1.1.5.6) that would enable separate taking over of parts of the Works. This is important when the:
  - a) Employer has a direct interest, financial or operational, to have certain sections of the works completed in a sequential manner i.e. sections of highways/trunk/feeder roads, units of buildings, sections of utilities etc.;
  - b) Employer wishes to exert a closer time control on the intermediate milestones, instead of having one Time for Completion for the whole of works, the Employer sets separate Times for Completion of Sections.
- The Employer can put a limit on the authority of the Engineer (PCC 3.1):
  - a) By setting a maximum level of authority to approve variations, or
  - b) When approving any extensions of the Time for Completion, or

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c) When approving of any subcontractor.

This is often done whenever the Employer wants to maintain a close control on the time and costs.

- In order to prevent the dilution of responsibility for the execution of the works, the Employer can set maximum thresholds for subcontracting (PCC 4.4.) or limit the possibility to subcontract only to specific, non-essential activities.
- FIDIC Conditions of Contract allow the Engineer to approve payment of plant and materials brought on site prior to their incorporation in the Works. This is advisable whenever the Contractor should deliver expensive Plant, equipment or materials on site, that are to be later incorporated in the Works and for which the Contractor could normally seek reimbursement only in the first Interim Payment Certificate after their incorporation in the works. PCC 14.5 can limit this practice by specifying the exact nature of plant or materials for which the payment on delivery would be acceptable or by denying this altogether.
- The Employer may also set high thresholds for the minimum amount of Interim Payment Certificates (PCC 14.6), with a double purpose:
  - a) To avoid situations when it would be flooded with Interim Payment Certificates of small amounts, where and when the Employer need to manage a large portfolio of contracts with limited payment processing capacity, and
  - b) To stimulate the Contractor to speed up the progress of works, so its monthly statements would exceed the minimum threshold, noting that excessive thresholds could backfire by forcing the Contractor to seek payment for inexistent works.

***Actions and responsibilities to be assumed at the contract administration stage***

Regardless of the level of outsourcing of the contract supervision, the Employer must retain high degrees of involvement and ownership in the contract administration process.

The following summarizes the main stages and events in the contract administration cycle where the Employer should be present and steer the process towards successful implementation:

***Internal arrangements:***

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

- Assigning detailed tasks to the individual or the team responsible with the specific duties during the contract administration process. This would be equivalent to creating job descriptions for everyone involved. The tasks assigned to each individual should be precise and realistic, taking into account the specific experience, expertise and workload of each staff, i.e. the procurement specialist should be responsible for keeping track of the main contract milestones of commencement date, possession of site, submission of securities, bank guarantees and insurance policies, advance payment, time for completion etc., with the technical expert responsible for the tracking of the conditions of contract and accurate recordkeeping of volumes of work, main technical milestones etc.,

- Establishing internal procedures of hierarchy, communication, level of authority, flow of documents, verification and acceptance procedures, payment procedures, internal audit etc.,
- Evaluation of main risks associated with the implementation of the contract and identification of the main remedies or mitigation measures, as well as the parties responsible with their enforcement,
- Coordination arrangements with third parties including other agencies, contractors, end users, beneficiaries etc. The implementation of large works contracts requires close co-operation, collaboration and co-ordination with many other parties with responsibilities or interests in the project. The proper agreements and arrangements should be put in place at the very outset of the project including:
  - ✓ Which agency would be involved at which stage of the works with state inspection in construction, environmental agency, labour inspection, end users of the works etc.,
  - ✓ Who are the contact persons on both sides,
  - ✓ Which are the reporting or notification obligations, and
  - ✓ Are there any fees to be paid and by whom, Contractor, Employer etc.

## 2.8.2 The Engineer

### *Who is the Engineer?*

In the very strict understanding of the Conditions of Contract, the Engineer is a person. However, “person” should not be automatically deemed to designate an individual, a physical person but rather a party. This means that the Engineer may be and frequently is a company invested by the Employer with the roles and responsibilities of the Engineer.

There are rather few, statistically FIDIC Contracts where all the responsibilities of the Engineer are entrusted to one single individual. This should only happen in the case of simpler contracts with straightforward bills of quantities where variations are very unlikely.

Usually the Engineer is a specialized consulting company that can mobilize various technical expertise where there are many different skills that are required in the implementation of a large works contract. Consequently, more than one single individual would be exercising various supervision functions at any given time – quantity surveyors, land surveyors/topographical engineers, structural engineers, roads/bridges engineers, electronic and electro-mechanical engineers, hydrogeological and hydrological engineers, environmental specialists, health & safety specialists, Quality Assurance/Control specialists etc.

The Engineer may designate a number of staff some of them full time, others part time experts, depending on the size, complexity or geographical spread of the works.

In the case of these supervising companies, the contractual term “Engineer” designates the single individual person that has been delegated with the ultimate authority of supervision, the team leader, leading engineer, site engineer, resident engineer, coordinating engineer or whatever job title the respective person might have. All other personnel involved in the

supervision of works are assistants for the purposes of the Contract and specific tasks are usually delegated to them, according to their particular area of expertise.

### ***Why do we need an independent Engineer?***

The immediate inclination of most Employers would be to entrust the contract supervision to someone, individual or department from their own organizations. This usually happens for the following reasons:

- Money factor with a false sense of saving money, usually with the refrain of why pay A Consultant to do the work that can be done free by us,
- Ownership factor with the assumption that internal people are the most interested to get a positive outcome, usually with the refrain of who else would guard our interests better than ourselves, and
- Pride factor with the belief that the internal people know better what to do with the refrain of who knows what we want to get done better than ourselves.

While this may be true for most minor and micro works supervision, it is definitely counter-productive in the case of major works supervision because of the reasons mentioned above:

- Manpower and workload, where proper and adequate contract administration is not a part-time job,
- Expertise, where hard skills like technical or financial background, contractual literacy, managerial skills, administrative skills, fluency in the language of the contract or of the contractor are of particular importance,
- Adequacy, where the right number of available and qualified people do possess the requisite soft skills needed for a smooth and successful contract administration like people skills, communication abilities, team spirit, cooperation, leadership, facilitation, conflict mitigation, planning, coaching, motivation, innovative drive, perseverance etc.,
- Experience where many similar contracts of comparable scale have been successfully managed or supervised.

In addressing these issues raised usually lead to the conclusion that the most effective and efficient use of resources of money, time and people would be the selection and employment of external persons to assist in the form of a Consultant/Consulting firm.

With all these arguments, the ultimate evidence is for the Employer to appoint a third party as the Engineer to confirm the very spirit of the FIDIC Conditions of Contract, which is that the Engineer should act impartially when exercising its duties and authority.

### ***Who should act as Engineer?***

It should be noted that an Employer's staff should not act as an Engineer to works contracts and everything presented up to this point indicates that a consulting company should be selected to act as Engineer on behalf of the Employer. While this is certainly the case for most large works projects, it does not however limit the potential searching area to consulting engineers only. As much as FIDIC, which is the professional body of consulting engineers, would like to see its members enjoying a de facto monopoly on this specific activity, practice has proven that other kinds of parties could also play the role of Engineer.



The specific functions of these parties vary greatly in Ghana and similar organizations may or may not be adequate or appropriate, so this should be read on an applicable-only basis:

- (i) Departments of technical universities or research institutes,
- (ii) Specialized departments or Government agencies, but only those without a potential conflict of interest, with state control or works inspection of any kind, and
- (iii) Non-governmental organizations.

Since cases where these kinds of Engineers are employed instead of actual consulting firms are and should be fairly rare, this manual focuses on the practice that represents the rule rather than the exception, i.e. a consulting company being selected to act as Engineer.

***Should the Engineer have done the design/engineering?***

Another very important issue, once it is established who the Engineer should be, is whether it is recommended or not that the Engineer be the same as the designer of the works. Many financial institutions or professional bodies, FIDIC included, have consistently recommended that engineering and detailed designs should go hand in hand with the supervision of the works and there are many positive arguments to have the same consulting engineer responsible with all these activities because of:

- (i) Knowledge, the party responsible with the engineering and detailed designs of the works would naturally be the most knowledgeable to do the supervision, and
- (ii) Accountability so as to avoid any doubts about the responsibility for the engineering and detailed designs.

These are two very powerful and valid arguments particularly in countries where professional liability in works as well as professional prestige are very serious matters, as well as in countries with very well-developed body of knowledge and experience in engineering.

In the real world of less-than-perfect engineering or weaker professional liability records, it may prove damaging to have the same consulting engineer to do the designs and the supervision of the works. There are many situations where the designer/engineer is more preoccupied to hide or to mitigate the effects of its own potential design errors than to enforce an adequate and cost-effective contract administration for its Employer, which happens for two reasons, the:

- (i) Engineer is not willing to admit any design errors, including grossly mistaken quantities, unreasonable technological requirements etc. for fear of professional liability/remedies from the Employer, or
- (ii) Engineer is so dedicated to its own design that it rules out any alternative solutions that would actually bring more value for money to the Employer.

Drawing a line and making a decision whether the Employer should consider an integrated engineering/supervision solution or separate activities are not easy to decide.

Some countries have solved this dilemma by explicitly forbidding that the design and the supervision be done by the same party, for fear of potential conflict of interest. Other countries like Ghana has left this matter in a grey area by ruling that representatives of the designer and the Engineer should sign off the works, but without specifically stipulating that the two must actually be different parties. Most of the developed world does not impose any restrictions,

explicit or implicit and it is up to the Employer to decide which option better suits the nature of the project.

### ***How should the Engineer be selected?***

It is now established that, at least in the case of large CW contracts, the Engineer should be a consulting firm and this means that the Engineer should be selected using the appropriate method for the selection and employment of consultants. It is common sense that this selection process is one of the most important decisions that an Employer would make because the professional quality of the Engineer would greatly impact on the successful implementation of the project.

For the selection of the Engineer, the issue then becomes which type of selection would be the most appropriate, whether the focus should be only on price - least cost selection, only on quality - quality-based selection, or should be a quality and cost-based selection. There is no obvious or universal answer to this and it greatly depends on the scale and on the specific nature of the assignment. Where large scale contracts that involve relatively simple activities of the nature of earthworks with minimal highly specialized expertise, least cost selection may be prudent. Whenever more specialized technical skills are required, the professional quality of the Consultant should be the most important, if not the only factor for selection.

The tendency of the Employers to place a heavier weight on cost, as a premise for efficient use of funds, is understandable. But it should borne in mind that any compromise in the quality of the Engineer for the sake of savings may result in much higher costs for the Employer, coming out of costly delays, unjustified variations, higher operation and maintenance costs due to poor quality of materials or workmanship etc.

FIDIC always advocates the prevalence of quality over price in the selection of the Engineer as a first premise of a successful implementation of a works project. It is recommended that the Employer should be guided by the following principles when selecting the Engineer:

1. Professional competence,
2. Managerial ability,
3. Availability of resources,
4. Impartiality,
5. Fairness of fee structure,
6. Professional integrity, and
7. Quality assurance system.

### ***Independence of the Engineer***

There are many important virtues that the Engineer should possess, but from both Employer's and Contractor's perspective, few are more critical than his independence, impartiality and integrity. The Employer can more or less easily assess areas like the professional quality, resources or experience of an Engineer, but it is virtually impossible to have any sort of assurances that the selected Engineer would act impartially and would maintain its integrity.

It is obvious how these two closely inter-related conditions affect the contract administration. Most Employers think that the success of the project resides in having the Engineer acting

indiscriminately in the Employer's favor and thus being unjust towards the Contractor. This is rarely a good solution in itself because an antagonized Contractor would try and succeed to identify alternative means to mitigate Engineer's hostility through kickbacks and informal payments or to cut corners with regard to the quality of works.

The reverse of having the Engineer biased towards the Contractor is so obviously catastrophic for the administration of the contract that it does not need further explanations.

Most Employers seem to disregard the issue that the Contractor is always at least one step ahead when it comes to finding ways to make the most profit out of any situation or circumstance. Instead of trying to beat the Contractors at their own game the Employers should ensure that the right safeguards are put in place that would avoid an unbalanced contract implementation.

Most Employers must note that Contractor's first moves with regard to the Engineer usually start at tender preparation stage. This does not mean that the Contractor would plainly load its rates so as to leave room for later kickbacks. This is too unrefined and dangerous as the Contractor cannot afford to have a high tender for the sake of later kickbacks, but an experienced Contractor would include in his price calculation an adjustment factor for the way he expects the Engineer to act. The actual weight of this factor is determined by a number of considerations like how an Engineer maintains a strict cost and time control, how efficiently he/she deals with monthly payments, what is his/her attitude towards variations and how fast it processes variations etc.

### ***What does the Engineer do?***

The Engineer has a multitude of roles and responsibilities in the FIDIC Conditions of Contract, virtually every contractual sub-clause refers to the Engineer in one way or another. However, out of the many contract supervision responsibilities, the most important would be the following:

- The Engineer must notify the Commencement date (Sub-Clause 8.1).
- The Engineer may reject any program submitted by the Contractor (Sub-clause 8.3).
- The Engineer participates at the tests and is allowed to reject any Plant, Materials or workmanship (Sub-Clause 7.5).
- The Engineer inspects the Works (Sub-Clause 7.3).
- The Engineers measures the Works (Sub-Clause 12.1).
- The Engineer determines new rates (Sub-Clause 12.3).
- The Engineer evaluates and determines variations (Sub-Clause 13.3).
- The Engineer determines extensions of Time for Completion (Sub-Clause 8.4).
- The Engineer certifies payments (Clause 14).
- The Engineer approves or disapproves and determines claims (Sub-Clause 3.5).
- The Engineer gives instructions (Sub-Clause 3.1, 1.5, 13.1).
- The Engineer issues the Taking-Over and Performance Certificates (Sub-clauses 10.1, 11.9).

Since all the above as well as other responsibilities of the Engineer can easily be inferred from the actual contract clauses, we would focus on those contract administration responsibilities

that are not expressly stipulated in any standard documents, conditions of contract or procurement guidelines.

### ***Administration of Small Works Contracts***

Micro/Minor Works Contracts, estimated to cost less than GHS15,000 equivalent raise some paradoxical contract administration issues: while they should be simpler contracts and presumably simpler to manage, the lack of very detailed Conditions of Contract, as may be the case for major works contracts, often makes them actually harder to manage.

This dichotomy stems from the fact that simpler Conditions of Contract do not go into the level of detail as the FIDIC Conditions of Contract presented above.

### ***The Project Manager***

In Micro/Minor Works contracts, the Engineer is replaced by a Project Manager who usually is appointed from the technical staff of the Employer. The major difference is that the Project Manager does not work under the same assumptions of independence and impartiality as the Engineer in the FIDIC contract, which may automatically place the Project Manager in an apparent conflicting position versus the Contractor.

A second, and more important shortcoming of this type of contract, is that the Project Manager does not seem to have the same level of authority or leverage in the relations with the Contractor, because the conditions of contract are less generous in giving specific particulars of its roles and responsibilities.

Consequently, the Employer's own role in managing Micro/Minor Works contracts may become more complicated than in the case of major works under FIDIC contracts.

The Project Manager should retain most, if not all roles and responsibilities assigned to the Engineer in the FIDIC contract, while the Employer should continue to exercise its contract supervision role exactly along the same lines as described above.

### **2.8.3 The Contractor**

A contractor as the main or prime contractor is responsible for the day-to-day oversight of a construction site, management of vendors and trades, and communication of information to involved parties throughout the course of a project.

The contractor is a manager and possibly a tradesman, employed by the Employer as an outcome of a tender process or on the advice of the architect, engineer or the quantity surveyor or by the Employer him/herself.

A contractor is responsible for the overall coordination of a project and must first assess the project-specific documents, referred to as tender. Depending on the project delivery method, the contractor will submit a fixed price tender, cost plus price or an estimate with unit rates. The contractor must consider the cost of home office overhead, general and special conditions, specifications for materials and equipment as well as the cost of labour to provide the employer with a price for the project.

Contract documents include drawings, project manual including general, supplementary and/or special conditions and specifications, addendum or modifications issued prior to tender and prepared by a design professional.

***Responsibilities***

A contractor is responsible for providing all of the material, labour, equipment and services necessary for the construction of the project. The contractor may hire specialist contractors and specialized subcontractors to perform all or portions of the construction work.

Responsibilities may include applying for permits, securing the property, providing temporary utilities on site, managing personnel on site, providing site surveying and engineering, disposing or recycling of construction waste, monitoring schedules and cash flows, and maintaining accurate records.

***Licensing Requirements and Qualifications***

Licensing requirements to work legally on construction projects must be observed for all businesses or individuals who work on any building, highway, road, parking facility, railroad, excavation or other structure in Ghana and must be licensed by the Ministry of Water Resources, Works and Housing and the Ministry of Roads and Highways with categories and classifications thresholds set based on costs.

There are no set educational qualifications to become a contractor, though many employers now prefer contractors who are educated. However, requisite technical qualifications are needed for the personnel of the Contractor.

Experience in the construction industry as well as references from Employers, business partners or former employers are demanded. In the Ghanaian jurisdiction, it is a requirement that the contractor provides proof of financing to own their own contracting firm. Contractors often run their own business by hiring subcontractors to complete specialized construction work and may manage a team of tradesmen and other specialists.

However, out of the many contract responsibilities, the most important would be the following:

Sub-Clause 4.1	Contractor's General Obligations
Sub-Clause 4.2	Performance Security
Sub-Clause 4.3	Contractor's Representative
Sub-Clause 4.4	Subcontractors
Sub-Clause 4.8	Safety Procedures
Sub-Clause 4.18	Protection of the Environment
Sub-Clause 4.21	Progress Reports
Sub-Clause 5.2	Objections to Nomination
Sub-Clause 6.7	Health and Safety
Sub-Clause 6.8	Contractor's Superintendence
Sub-Clause 6.10	Records of Contractor's Personnel and Equipment
Sub-Clause 6.12	Foreign Personnel
Sub-Clause 6.13	Prohibition of Harmful Child Labor
Sub-Clause 6.14	Employment Records of Workers

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## **2.9 Organization for Contract Administration**

### **a) Legal and Institutional Arrangements for Contract Administration in Ghana**

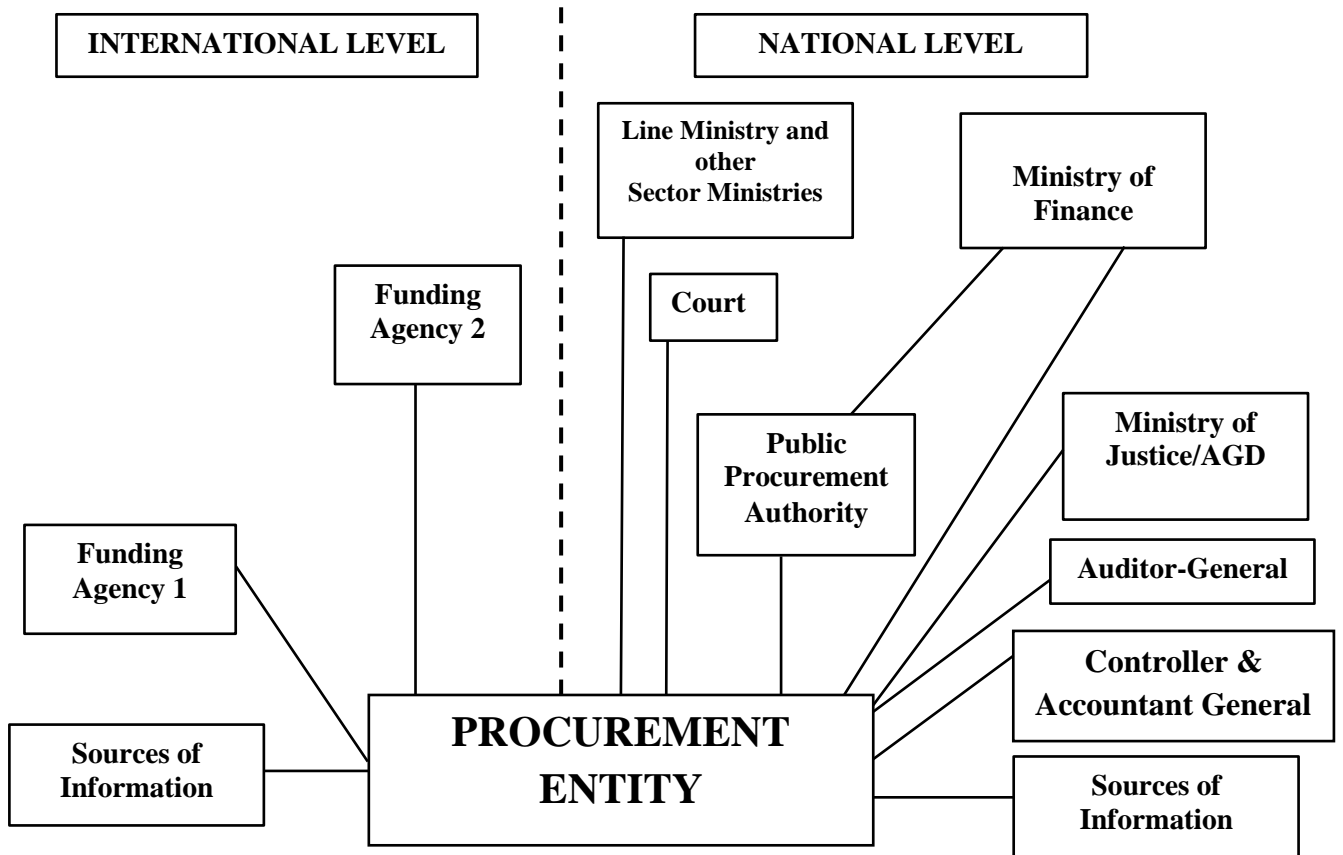
The Figure below illustrates the current legal and institutional arrangements for Contract Administration in Ghana. The figure displays the coordination and reporting obligations of the Procurement Entity on the national and international levels (depending on whether foreign financing is involved). The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

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

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

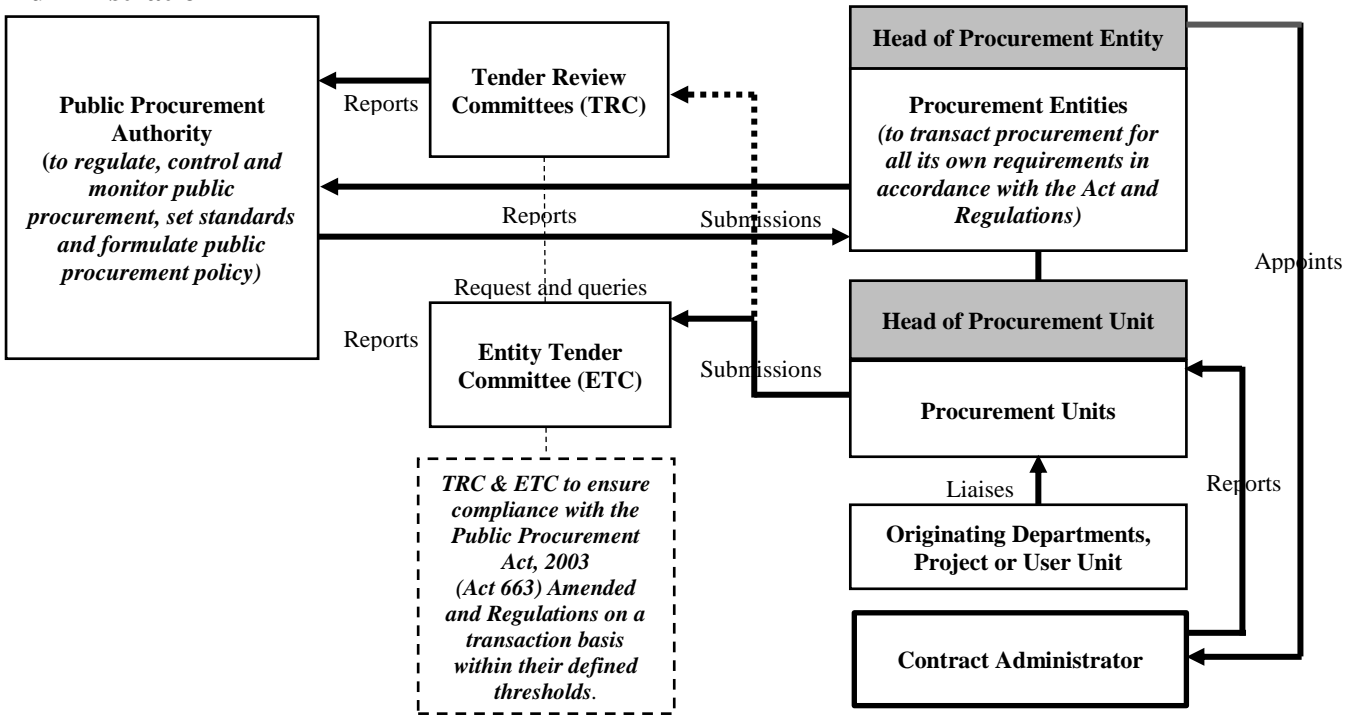
**Figure 2: Institutional Arrangements for Contract Administration in Ghana**

[Reporting & Coordination Obligations of the Procurement Entity]



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

**Figure 3: 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 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.

**2.9.1 Contract Administration Organization for Works**

There must be one person who will serve as the primary contact in the Procurement Entity for administering works contracts, and that person is called the Contract Administrator or Engineer or Project Manager. It is important that the Contractor gets direction or instructions from only one person for day-to-day matters involving execution of the contract, so as to avoid conflicting directions/instructions 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 assignment 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 participants or staff in the contract administration process will vary in number from one to many depending on the size, level of risk and complexity of the contract. Early in the procurement process, there is the need to identify the contract administrator and those who are to assist him/her; this will allow for roles and responsibilities to be assigned.

It is worth noting that in most simple works contracts, the Engineer or Project Manager, acting as the Contract Administrator can handle all responsibilities with the support of a few Assistants. The full organizational structure for large works contracts is shown in Figure 5.

**2.10 Responsibilities of the Contract Administrator**

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 Contractor's performance to ensure that delivery conforms to the contract requirements.
- Authorizing payments consistent with the contract terms.
- Exercising remedies, as appropriate, where a Contractor's performance is deficient.
- Resolving disputes in a timely manner.
- Meeting with the Contractor 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.

### ***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 and Regulations at the transaction level by reviewing and accepting or rejecting submissions received from or via the Procurement Entity's Procurement Unit. 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 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 Procurement Entity.

### ***Finance/Accounts Department***

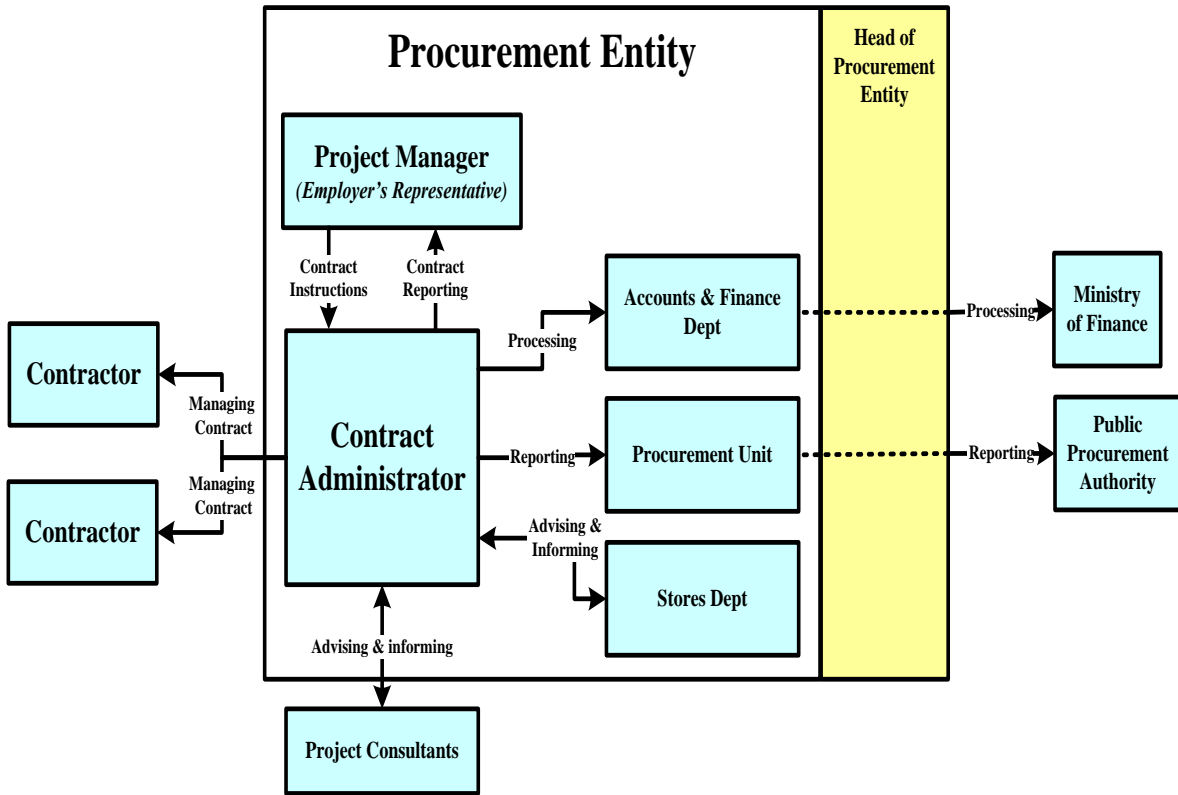
The Department within the Procurement Entity responsible for the financial affairs of the Entity and the control of the Entity's budget.

**Section 2** of the Public Procurement Act 2003, Act 663 as amended and the Public procurement Regulations define the Structures and organizations that govern all public procurements in Ghana. The role of the Public Procurement Authority is to monitor, control and regulate public procurement conducted by Procurement Entities, set standards and formulate public procurement policy.

The role of the Tender Review Committees and the Entity Tender Committees is to ensure procurement transactions conducted by the Procurement Entities are in compliance with the legislation. The responsibility of the Procurement Entities, Procurement Units, Tender Evaluation Panels and the Originating Departments, Projects or User Departments is to conduct that

procurement in accordance with the legislation. These relationships and responsibilities are summarized below:

**Figure 4: Contract Administration Organization for Works**



### Procurement Entity

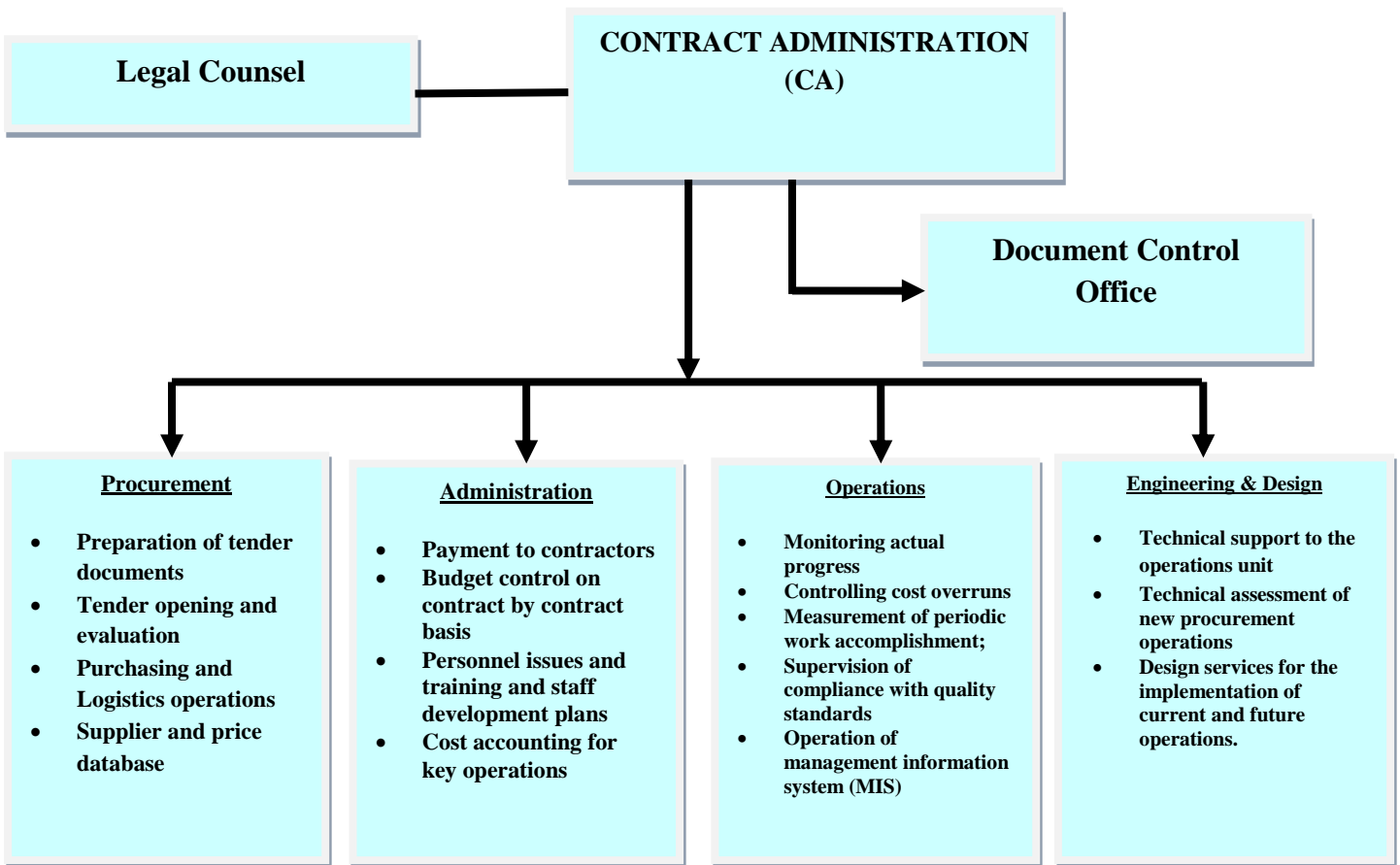
Procurement Entity is the term used in this module to refer to a central, local and regional government authority and other bodies governed by public law and delegated with the task of discharging Contract Administration functions.

The overall size and structure of the Procurement Entity is governed by the mandate of its establishment.

Contract Administration is an element of project management and both will significantly overlap or even coincide in the context of a Procurement Entity administering a project. In this case, the term Contract Administrator (CA) or Project Manager may become equivalent if the whole project involves one major contract. On the other hand, it is more usual that the Procurement Entity is entrusted with many contracts whereby one or more contracts are allocated to each Contract Administrator (CA) and all of the latter will report to the Head of the Procurement Entity. It is worthwhile mentioning here that not every Procurement Entity necessarily needs to have all these disciplines but the schematic serves to highlight what sort of set skills may be called upon for effective Contract Administration.

The diagram below displays the Contract Administration disciplines involved in complex contracts:

**Figure 5: Contract Administration Responsibilities**



The volume and repetitive nature of activities and the corresponding annual procurement turnover determine the optimum size of the Procurement Entity's operational staff levels and skills.

The Contract Administration function is entrusted to the Contract Administrator (CA) who assumes the ultimate responsibility for all Contract Administration tasks and is in charge of mobilizing the Contract Administration team.

Depending on the mandate of the Procurement Entity, the CA may be in charge of one or more contracts thus necessitating the presence of an efficient document control set-up.

The broad lines of responsibility for each of the disciplines of Contract Administration may be summarized as follows:

### **I. Procurement**

This discipline primarily deals with:

- a) Preparation of the invitation to tender documents, inclusive of determining the contract type and the general and particular conditions of contract in consultation with concerned end-users, consultants and other disciplines within the Entity,
- b) Tender opening and evaluation,
- c) Purchasing and logistics operations for the requirements of the Procurement Entity on assignments directly implemented by the Entity, and
- d) Maintaining databases on market prices and sources of supply/vendors.

### **I. Administration**

This discipline primarily deals with:

- a) Payment to contractors,
- b) Budget control on contract by contract basis,
- c) Personnel issues and implementation of training and staff development plans, and
- d) Cost accounting for key operations.

### **II. Operations**

This discipline supervises the physical implementation of each contract:

- a) Monitoring actual progress versus contract work plan/schedule,
- b) Controlling cost overruns due to increased volume of operations or costs growth due to variation orders,
- c) Measurement of periodic work accomplishment,
- d) Supervision of compliance with quality standards of inspection, testing, etc., and
- e) Operation of management information system (MIS) for optimum coordination and access to information amongst all disciplines.

### **III. Engineering and design**

This discipline primarily deals with:

- a) Providing technical support to the operations unit,
- b) Technical assessment of new procurement operations, and
- c) Provision of design services as needed for the implementation of current and future operations.

#### IV. Document control office

This office is in charge of:

- a) Orderly operation of the Procurement Entity's filing set-up i.e. maintains chronologically sorted originals of all external correspondence on contract by contract basis plus records of relevant internal correspondence and minutes of meetings, and
- b) Registry operations i.e. receipt, filing and distribution of correspondence to all concerned disciplines.

The responsibilities of the document control office are developed within the internal operational procedure of the Procurement Entity.

#### 2.11 Contract Administrator Responsibilities

The primary responsibilities of the contract administrator are:

- Participating, as necessary, in developing the solicitation and writing the draft documents. Contract administration must be considered during this process.
- Monitoring the contractor's progress and performance to ensure goods and services conform to the contract requirements.
- Managing any state property used in contract performance.
- Authorizing payments consistent with the contract terms.
- Exercising state remedies, as appropriate, where a contractor's performance is deficient.
- Resolving disputes in a timely manner.
- Documenting significant events.
- Maintaining appropriate records.

The number of participants in the contract administration process will vary in number from one to many depending on the size, level of risk and complexity of the contract. Early in the procurement process, identify staff to participate in contract administration. Identify a single Contract Administrator and others to assist him/her. Assign roles and responsibilities which may include:

- Determining the sequence of activities, dependencies, required or desired outcomes, and acceptable performance levels.
- Developing a timetable and start and end date for each performance component. Include milestones with accompanying timeframes, and monitoring and reporting requirements.
- Monitoring contractor activity on a specified frequency to identify problem areas.
- Meeting with the contractor on a regular basis to review progress, discuss problems and consider necessary changes.
- Providing access to state facilities, equipment, data, staff, materials and information.
- Contacting other staff as necessary to provide equipment and data.
- Establishing scope of authority, clear lines of communication and reporting and specific individuals who will interact directly with the contractor.
- Establishing control of correspondence, data and reports.
- Identifying potential problems and solutions.
- Defining terms or conditions of default.

- Establishing a procedure, identifying a responsible person and establishing a timeframe for handling noncompliance.
- Establishing a procedure, identifying a responsible person and establishing a timeline for making necessary contract decisions or modifications.

## **2.12 Skills of the Contract Administrator**

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

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

## 3.0 FORMS AND CONDITIONS OF STANDARD WORKS CONTRACTS

### 3.1 Introduction

The FIDIC Conditions of Contract for Construction have become the prevailing international standard for works contracts because they present a multitude of advantages over other forms and conditions of contract to:

- Cover in a clear and precise manner a lot of circumstances and events that may and often occur during the implementation of a works contract, and
- Provide a clear image on the roles and responsibilities of each party.

This is why Employers may favour the use of this type of contract even for Micro/Minor works that would not normally qualify for this.

### 3.2 Basic Documentation for Works Contract

The ultimate responsibility for the method of procurement and the choice of contract types rests with the Employer and in some cases subject to the agreement of funding institutions. The types of contract most commonly financed give an indication of their suitability and acceptability for the range of circumstances confronting Employers in the implementation of their infrastructure development Programmes. No detailed analysis of different contract types is currently available in Ghana, but the consensus of procurement entities is that for both International Competitive Tendering (ICT) and National Competitive Tendering (NCT), the UR (Admeasurement) contract is the most popular and widely used in almost all sectors for Major, Micro and Minor works of moderate and/or complexity and risk

The LS turnkey contract is ranked second in importance for ICT projects, particularly in the industry, power/energy/petroleum and telecommunications sectors where projects are usually large although few in number. Supply and Install contracts are also frequently used in these sectors for projects involving the installation of major items of permanent plant, machinery, equipment or apparatus and the like with relatively minor amounts of works involved.

Micro/Minor LS works contracts are common for NCT procurement in sectors of rural development, education, water supply, populations, health and nutrition, etc.

The Cost Plus and Target Cost types of contract are rarely used in Ghanaian projects, primarily because the conditions for which they are most suited of poor initial project definition and design and the lack of firm cost estimates do not provide a proper basis for appraisal at that preliminary stage of the project cycle. Further design and cost estimation is normally recommended with a view to adopting a more acceptable type of contract at a later stage.

BOT contracting is a relatively new field for the public sector in Ghana and raises questions regarding priorities in financing applications, acceptable prequalification and competitive tendering procedures, tender and tariff evaluation, risk allocation and guarantees.

The conditions of contract spell out in detail the legally enforceable contractual obligations of the parties, the law applicable to the contract, the mode and the forum for setting disputes, and the procedures for inspection, measurement, insurance, payment, bonding (securities), and



alterations. In a competitive tender situation, all participants must tender on the basis of identical terms in order to make their tender prices comparable. For this reason, conditions of contract form part of the tender documents.

The contract documents usually comprise:

- The Letter of Acceptance (and any minutes of final contract negotiations, if any and/or clarifications),
- The Tender,
- The Agreement (Form of contract)
- The Particular Conditions of Contract (Special conditions),
- The General Conditions of contract,
- The Drawings,
- The Priced Bill of Quantities and the Day work schedule included therein,
- The Schedule of Rates and process (if any), and
- Other relevant documents or reference materials forming part of the Contract.

All the above-mentioned documents should be physically incorporated and bound into one original contract version (or two originals, each party taking his own copy) in which the parties have initialed each constituent page. The only exception might be that General Conditions of Contract are incorporated by reference to a well-known and easily accessible set of General Conditions of Contract.

### **3.3 Standard Forms of Works Contracts/Standard Tender Documents Available and Proposed**

The frequency of use of the UR type of works contract in Ghana encouraged the PPA to redesign its Standard Tender Documents (STDs) for Works in 2014 for the guidance of Employers. A simpler Standard Tender Documents intended for use on Micro and Minor works contracts was also prepared.

A Standard Prequalification Document (SPD) has been also prepared.

A list of STDs already issued by the PPA include those for:

- i. Procurement of Micro Contracts
- ii. Procurement of Minor Contracts
- iii. Procurement of Medium Contracts-Ad-measurement
- iv. Procurement of Medium Contracts - Lump Sum
- v. Procurement of Major Contract

### **3.4 General Conditions of Contract**

The Form of Contract to be entered into by Procurement Entities for the construction of Works which are the General Conditions of Contract that are used with the Standard Tender Documents (STDs) are the FIDIC Conditions of Contract (GCC) of various Editions and dates prepared and copyrighted by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*, or “FIDIC”) and licensed to the Public Procurement Authority for its exclusive use and adoption into its various STDs.

Consequently, no part of this publication may be reproduced, translated, adapted, stored in a retrieval system or communicated, in any form or by any means, whether mechanical, electronic, magnetic, photocopying, recording or otherwise, without prior permission in writing from FIDIC, except by PPA and the Employer and only for the exclusive purpose of preparing these Tender Documents. Copies of these FIDIC Conditions of Contract for Construction can be obtained from the Employer.

The text of the Clauses in the GCC are not to be modified but are only subject to the variations and additions set out under Conditions of Particular Application. The General Conditions of Contract shall be provided to Pre-Qualified Tenderers as part of the Tender Documents to be made available by the Employer.

### **3.5 Conditions of Particular Application (COPA)/Special Conditions of Contract (SCC)/Contract Data**

These particular/special conditions of contract that have been developed by the Employer to supplement the GCC and that shall be used in contracting for Works and includes provisions that are a part of the Government's and Procurement Entity's obligations and policies. Whenever there is a conflict, the provisions in the COPA/SCC/Contract Data shall prevail over the General Conditions of Contract.

There is usually an Annex to the Conditions of Particular Application which contain the Contract Forms, which once completed, become part of the Contract. The forms for Letter of Acceptance, Contract Agreement, Performance Security, Advance Payment Security and Retention Money Guarantee, when required, shall be completed only by the successful Tenderer after Contract award.

## 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)

Contract Administration Plan should be established within the schedules of the Contract, with details negotiated and agreed with the contractor prior to contract execution. This Contract Administration Plan should be developed of and approved with reference to the Contract. The Contract Administration Plan is to be implemented and used throughout the contract as agreed. It should be reviewed as required at least annually.

Anyone involved in a procurement project should sign a declaration of interest statement and a non-disclosure agreement.

In dealing with Contract Administration Planning therefore, policies, systems and procedures must concentrate on the following amongst others:

- Assignment of individual/team responsibility for contract administration process.
- Establishment of internal procedures (hierarchy, communication, level of authority, flow of documents, verification and acceptance procedures, payment procedures, internal audit etc.);
- Evaluation of main risks and identification of mitigation measures.
- Coordination of arrangements with third parties (other agencies, contractors, end users, beneficiaries etc.).
- Development of contract administration plan and milestones
- Development of procedure for keeping track of the contract's price adjustment mechanism

### 4.3 Initial Meeting(s)

A kick-off meeting with the Contractor is absolutely necessary at the start of the project. The Engineer should also be present, since it would take over much of Employer's contract supervision responsibilities.

In particular issues associated with Commencement Certificate, agenda for Pre-Commencement and Commencement Meetings, establish the need for Initial Meeting(s), Timings and Critical Issues to be established.

It is also recommended to hold separate meetings with all other stakeholders – the parties responsible with the design and engineering (if different from the Engineer); local authorities; state agencies (works inspection, environmental, labor etc.); end users and beneficiaries etc.

The kick-off meeting between the Employer, Engineer and Contractor should normally take place as soon as the Letter of Acceptance is issued and should also include a site visit, if practicable.

Critical issues to be established during the kick-off meeting(s):

- Introducing the parties, their roles and responsibilities - this applies equally to Contractor's representatives and key staff; Employer's staff in charge with the contract management; and the Engineer and the staff of the supervising consultant;
- Establishing the communication procedures - (mechanisms, frequency etc.). The parties should agree at the start of the project on the communication mechanisms between the Contractor and the Engineer and the Employer (where applicable) as well as on the frequency of the formal site meetings between the Contractor's and Engineer's representatives (e.g. site representatives of the Engineer and the Contractor should have at least weekly progress meetings and the minutes of these meetings should be promptly shared with the Employer);
- Review of contract documents - priority and inter-correlation of contract documents; conditions of contract; technical specifications; payment schedules and covenants; implementation milestones, etc.;
- Review of applicable legislation and any obligations deriving in connection to the execution of the contract in the Employer's country (e.g. contract registration; fiscal registration of Contractor in the Employer's country; applicable tax regime, reporting obligations to other Government agencies; permits and licenses etc.);
- Establish a comprehensive reporting system between the parties (level, frequency, templates for reports for each party involved);
- Define escalation procedures to unblock critical situations or bottlenecks (delays in performance or in obtaining permits and approvals; abuses of power from the Engineer; non-performance of Contractor's staff 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.
- Setting the circumstances of the Employer giving the Contractor right of access to and possession of the Site;
- Establishing a tentative 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.)

#### 4.4 Access to and Possession of Site

As soon as practicable and usually after

- Signing of the Contract Agreement; and
- Submission by the Contractor of the performance security and advance payment guarantee,

The Employer, the Contractor and the Engineer shall have another formal meeting (on Site) by which the Employer gives the Contractor access to and possession of the Site.

All conditions precedent fulfilled and depending on the status of the Site (property of the Employer, of the local community or of third parties), the protocol for the hand-over of the Site should be signed by the relevant parties as well (if the owners had not already transferred the appropriate rights to the Employer).

#### 4.5 Verification of Securities

Practice has shown that many Employers are mere depositories of securities submitted by the Contractor and no actual verification is done. There have been sufficient incidents involving forged or unenforceable securities (due to unacceptable conditions or improper wording) where the Employers did not properly protect their own interests.

Some of these incidents occurred when bonds issued by insurance companies, rather than securities issued by banks, were involved. Agreeing that bonds are acceptable instruments should happen if the Employer has the capacity to actually verify the issuers of the respective bonds)

An often forgotten issue is the extension of the performance security whenever an extension of time is awarded and/or the Contract Price is increased. The performance security should always cover the stated percentage of the Contract Price (and its subsequent increases) and the period of time stipulated in the Contract (usually 28 days after the issuance of Taking Over Certificate).

Tips for verifying bank securities and deciding which deviations/conditions are acceptable may include:

- The guarantee contains a condition that any claims should be accompanied by a written confirmation of the authenticity of Employer's signatures – acceptable deviation as it is actually a safeguard measure for the bank to avoid fraudulent claims on the guarantee,
- The guarantee contains a condition that any claims should be forwarded through a corresponding bank of the issuer – acceptable deviation and a rather normal and implicit condition - we need to make sure that the claim actually reaches the issuer, so we should instruct our bank to make sure that the correct channels are used to forward the claim,
- The guarantee contains a condition that all payments due to the Contractor should be made to Contractor's account at the bank that issued the guarantee – not acceptable because the guarantee must be enforceable regardless of any payment arrangement between parties,

- The guarantee contains a condition that the Employer should notify the Bank whenever a variation is approved or whenever there is any modification to the contract clauses and provisions – not acceptable as the guarantee should be enforceable without the Employer having the burden of notifying any modifications of the contract to the bank.

#### **4.6 Verification of Insurance Policies**

The importance of insurance policies is very often overlooked by Employers because they seem like just another item to tick off a checklist. However, insurance policies become important only when an incident happens and this is why Employers should pay extra attention to them.

Like in the case of securities, insurance policies need to be checked because they are even more prone to deviations and conditions that can render them useless.

Consequently, the Employers should carefully check the following:

- Issuing company – is the issuer of the policies a properly established and reputable insurer in the Employer’s country or abroad? Even for foreign insurance companies information is usually available through the insurance market regulators in the home country.
- Amount – does the insured amount properly cover the whole of the Works as requested by the conditions of contract?
- Coverage – does the policy fully cover all general and specific risks that may occur on the site?
- Validity – is the policy valid for the entire period requested by the conditions of contract i.e. including Defects notification period? Did the Contractor submit the proof of actually paying the premiums to the insurance company?
- Insured parties – does the policy expressly name both the Employer and the Contractor as jointly insured? Policies where only the Contractor is insured are not acceptable as they transfer the entire risk on the Employer.
- Exclusions – maybe the most subtle and overlooked issue in an insurance policy. Exclusions are basically events (risks) that are not insured i.e. if the works are destroyed following the occurrence of an excluded event, the insurer does not pay for the damage. There are many cases when the Contractor gets very cheap insurance precisely because most events are excluded (usually through addenda to the insurance policy). This is why the Employer 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.
- Deductibles – these represent the amounts that the insured party has to cover from its own funds when an insured event occurs (e.g. for an insured value of \$100 with a deductible of \$10, the insured party recovers \$90 from the insurance company). Higher deductibles translate in cheaper insurance but also in higher risks, because the Contractor /Employer would need to cover more of the damage. The Employer should therefore check the adequacy of the deductibles and set a ceiling that the Contractor could reasonably cover from its own resources.

- Terms and conditions that may render the policies invalid under certain circumstances or events – the Employer 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 contract variations because most of the insurers would require to be notified whenever changes to the scope of works occur. The same applies to extensions of time for completion – the Employer should make sure that the policies are properly extended to cover the new reality of the contract.

In effect, note should be taken of Coverage, Validity, Amounts, Text and Format, Jointly insured parties (when applicable), Exclusions, Deductibles, Unacceptable Deviations and Conditions, Notification Requirements and Insurance Premiums.

#### **4.7 Interest-Free Advance Mobilization Loan**

It goes without saying that no payment should be made to the Contractor until valid and duly verified performance security and advance payment guarantee have been submitted. Then the Engineer should issue the appropriate Interim Payment Certificate certifying that all conditions for the advance payment have been met.

The Employer should supervise Contractor’s mobilization on site and use of the advance payment, because usually this is a fairly good indication on Contractor’s later performance. Any delays or deviations in site mobilization should be promptly notified to and remedied by the Contractor.

Contractor’s mobilization should be seen as comprising at least the following key aspects:

- Financial resources - if advance has been paid, than the Contractor should be able to timely complete the appropriate mobilization arrangements; or if advance has not been requested or paid, that means that the Contractor should have its own financing arrangements in place that would allow an adequate mobilization;
- Manpower - both in terms of Contractor’s key staff and sufficient labour to ensure proper and timely execution of the works;
- Plant, equipment, materials;
- Site facilities – starting with proper fencing and securing the site; adequate site accommodation facilities for the Contractor’s personnel and for Engineer’s staff (if requested under the Contract); acceptable sanitary and hygienic conditions for all personnel; proper storage facilities for the sensitive plant, equipment and materials brought on site etc.

There may be cases where the Contractor receives the advance payment but fails to mobilize up to the value of the advance payment or according to its own Mobilization Schedule, which should have been part of its tender. If it is obvious that the Contractor does not have the intention of making the adequate start up arrangements or uses the advance payment for other purposes than the mobilization costs, then the Employer would be entitled and should not hesitate to forfeit the advance payment guarantee, after due consultation with the Engineer, who should be in the best position to determine Contractor’s capacity or intentions.

If everything goes according to the contract and the advance payment is properly used, the next task of Employer's staff, particularly financial specialists, is to ensure that repayment of the advance is done correctly by the Engineer through the Interim Payment Certificates that follow certification. It should be noted that Key Mobilization Considerations of Financial resources, Manpower, Plant, equipment, materials, Site facilities and Mobilization Schedule must be fully appreciated.

#### **4.8 Development of Project Management Tools for Time and Cost Control**

Day-to-day supervision and follow-up on the progress of works are essential attributes of the Engineer, who should employ appropriate project management tools to ensure that critical issues such as time, actual progress of works against planned and money, how much has been paid versus how much has been done.

Many projects are badly managed simply because the supervisors are not familiar with basic project management tools and techniques that would allow them to hold a firm grip on the contract implementation. Employer's technical staff should equally be conversant with these tools. The following are the most widely used such instruments and have evolved in industry standards throughout the years:

- Work Breakdown Structure (WBS);
- Program Evaluation and Review Technique (PERT);
- Critical Path Method (CPM);
- Gantt Chart;
- Earned Value Management (EVM).

Engineer's records should always be reflected in these monitoring instruments which if correctly maintained would constitute a "mirror" of the project that can show at any given time the actual progress achieved as compared with the planned schedule (both in terms of physical output and money spent).

Another important aspect would be the desk control of Engineer's documents. The Engineer should maintain very accurate records of everything that happens on the Site.

The following documents should be the minimum required:

- Measurement logs – the cornerstone of FIDIC Contract is that all quantities should be re-measured by the Engineer and payment to the Contractor should be made only for the quantities actually measured, that often differ from the quantities in the Contract,
- Activity reports – daily, weekly, monthly; showing in tabular format quantities of work done, number of staff and equipment involved, consumption of materials, testing and samples etc. The reports should also mention any specific events, incidents, weather conditions etc.
- Issues Log – a record of all issues that occurred during the execution of works, with appropriate description and indication of the date, cause, remedial measures to be taken, responsible party, status of remediation etc.
- Variation Orders – critical documents that justify changes in quantities, prices and time for completion.
- Requests to Contractor.



- Correspondence with the Contractor and third parties (Government agencies, local authorities, controlling bodies, end users, beneficiaries etc.)
- Inspection and Control Logbook – a record of all inspections, audits and controls performed by any party starting with the Employer, but also any third party (environmental agency, financial control, local authorities etc.)

## 5.0 MONITORING CONTRACT PERFORMANCE & REPORTING

### 5.1 Introduction

The objective of monitoring contract performance is to ensure that the works are completed in terms of cost, time and in accordance with the drawings and specifications under the Contract. Where the Engineer exercises the desired supervision and control of the works, the Employer's investment is protected with a durable project obtained and prevents any resort to claims by the Contractor.

An effective contract supervision and control can be achieved if all the parties involved aim to work together. Co-operation, collaboration and coordination irrespective of any differences of opinion and personality are essential. The supervision organization must be provided with offices, laboratories, equipment and transport facilities to be operational. Supervision is the responsibility of the Engineer and his/her primary duties are to direct the execution, completion and maintenance of the Works and to test and examine materials and workmanship.

### 5.2 Time Control

The Programme is the basis for the time control for the works. Within the time stated in the COPA/SCC/Contract Data, after the date of the Letter of Acceptance, the Contractor shall submit to the Engineer/Project Manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works.

An update of the Programme shall be a Programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

The Contractor shall submit to the Engineer/Project Manager for approval an updated Programme at intervals as shall be prescribed. If the Contractor does not submit an updated Programme within this period, the Engineer/Project Manager may withhold the amount from the next Payment Certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted and approved by the Project Manager.

The Engineer/Project Manager's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Engineer/Project Manager for approval again at any time. A revised Program shall show the effect of any Variation and Compensation Events.

The Engineer/Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work in a manner that would cause the Contractor to incur additional cost. The

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Engineer/Project Manager shall also extend the Intended Completion Date if it determines an event of Force Majeure has occurred.

The Engineer/Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of (a) the Contractor asking him/her for a decision upon the effect of a Compensation Event or Variation or (b) the Contractor or the Employer asking the Engineer/Project Manager for a decision on the occurrence of an event of Force Majeure. In each case, such request is to be in writing and shall be supplemented by full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

When the Employer wants the Contractor to finish before the Intended Completion Date, the Engineer/Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor. If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

The Engineer/Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works. Either the Engineer/Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

The Engineer/Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

The Contractor shall warn the Engineer/Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

The Contractor shall cooperate with the Engineer/Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer/Project Manager.

The Contractor shall request the Engineer/Project Manager to issue a Certificate of Completion of the Works, and the Engineer/Project Manager shall do so upon deciding that the work is completed. Engineer/Project Manager shall take over the Site and the Works within seven days of the Engineer/Project Manager's issuing a Certificate of Completion.

### 5.3 Quality Control and Assurance

The Engineer/Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Engineer/Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer/Project Manager considers may have a Defect.

If the Project Manager instructs the Contractor to carry out a test not specified in the Specifications to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

The Engineer/Project Manager shall give notice to the Contractor of any Defects before the end of the Defects notification period, which begins at Completion. The Defects notification period shall be extended for as long as Defects remain to be corrected.

Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer/Project Manager's notice of Defect.

If the Contractor has not corrected a Defect within the time specified in the Engineer/Project Manager's notice of Defect, the Engineer/Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

### 5.4 Quantity Control

The quantities given in the Bills of Quantities (BOQs) are estimates only.

For payment purposes it is necessary to measure the works actually carried out. Quantity Control consists of the following the two activities of Measurement and Variations. Measurement or Re-measurement is carried out to ensure that the quantities set out in the Bills of Quantities (BOQ) are always monitored item by item. They are the theoretical quantities for the Works and considered provisional, derived from the drawings and not to be taken as the actual quantities of the Works executed by the Contractor.

Variations are directed by the Engineer/Project Manager and the Employer. The Engineer/Project Manager shall make any variation of the form, quality or quantity of the Works. There may be variations arising out of measurement and those arising out instructions. The Engineer/Project Manager shall have the authority to instruct the Contractor in writing to carry out, and the Contractor shall do so for any of the following:

- a) Increase or decrease the quantity of any work included in the Contract,
- b) Omit any such work,
- c) Change the character or quality or kind of any such work,
- d) Change the levels, lines, position and dimensions of any part of the works.
- e) Execute additional work of any kind necessary for the completion of the Works, and
- f) Change any specified sequence or timing of construction of any part of the Works.

Therefore, the SO should instruct the Quantity Surveyor to ensure that he should monitor all works executed by the Contractor and treat any variation instructed by the Engineer with all seriousness.

The Engineer/Project Manager could also instruct the Quantity Surveyor to carry out the following duties:

- a) Keep up to date quantity records including field measurements,
- b) Assist to review and comment on drawings for quantity estimates,
- c) Carry out quantity measurement at field,
- d) Assist in completing weekly and monthly reports,
- e) Evaluate variations and rates submitted by the Contractor,
- f) Evaluate monthly statement and claims, and
- g) Prepare the forecast of final construction cost and revise it from time to time.

## 5.5 Cost Control

Bills of Quantities are the basis for cost control mechanisms for works contracts.

The Bills of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor. The Bills of Quantities are used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bills of Quantities for each item. If the final quantity of the work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent, provided the change exceeds one percent of the Initial Contract Price, the Engineer/Project Manager shall adjust the rate to allow for the change.

The Engineer/Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer. If requested by the Engineer/Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bills of Quantities.

All Variations shall be included in updated Programmes produced by the Contractor. The Contractor shall provide the Engineer/Project Manager with a quotation for carrying out the Variation when requested to do so by the Engineer/Project Manager. The Engineer/Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Engineer/Project Manager and before the Variation is ordered.

If the work in the Variation corresponds with an item description in the Bills of Quantities and if, in the opinion of the Engineer/Project Manager, the quantity of work above the limit stated or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bills of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

If the Contractor's quotation is unreasonable, the Engineer/Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Engineer/Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

If the Engineer/Project Manager decides that the urgency of varying the work would prevent a quotation from being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event. The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

When the Programme is updated, the Contractor shall provide the Engineer/Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in this Contract, converted as necessary using the exchange rates provided for in this Contract.

## **5.6 Performance Approvals**

Performance Approval schemes are used in Monitoring to ensure that the quality of measurements meet a pre-defined standard which is acceptable to regulators. The requirements of these schemes converged with the adoption of the same performance standard. The focus of these performance standards is an independent assessment of the accuracy and reliability of the instrument in a typical application in the field trial and a separate set of laboratory tests. An expert committee approves the instrument according to the standard for a specified certification range and set of application conditions. In general, the lower the certification range the better the instrument performance since performance criteria are specified as a percentage of the certification range.

## **5.7 Performance Indicators and Resolution of Challenges**

Performance measurement indicates what a project is accomplishing and whether results are being achieved. It helps contract administrators by providing them information on how resources and efforts should be allocated to ensure effectiveness and programme partners focused on the key goals of a programme. It supports development and justification of budget proposals by indicating how taxpayers and others benefit.

Performance measurement must often be coupled with evaluation data to increase the understanding of why results occur and what value a program adds. Performance measurement cannot replace data on programme costs, political judgments about priorities, creativity about solutions or common sense. A major purpose of performance measurement is to raise fundamental questions; the measures seldom, by themselves, provide definitive answers. Performance measurement keeps a focus on results.

Key Definitions and Concepts involve:

- Strategic goals
- Performance goals
- Performance measures
- Targets and timeframes

Characteristics of such goals/measures include:

- Quality over quantity
- Importance to budget decisions
- Public clarity
- Feasibility
- Collaboration

## 5.8 Contract Remedies/Mitigation

The standard practice, rule and indeed the law is that recovery is lessened by the amount of damages that could be mitigated with reasonable efforts. If you did not expend the extra effort to find others, then your recovery would be limited to those damages which you could not mitigate by reasonable efforts. Automatic forfeiture would be unenforceable as a penalty.

## 5.9 Internal and External Communications

Internal communications (IC) is the function responsible for effective communications among participants within an organization. Many practitioners highlight that they are not responsible for the day to day intercourse between colleagues but rather in helping an organization achieve its goals by building understanding and engagement. Modern understanding of internal communications is a field of its own and draws on the theory and practice of related professions.

External communications, typically includes email, brochures, newsletters, posters, advertisements and other forms of multimedia marketing designed to attract customers, partners and Contractors to conduct profitable business transactions.

Unlike internal communications, directed at employees to explain policies and procedures, external communication devices promote sales and publicity, generate sponsorship, announce events, products or services and support branding. Marketing professionals use persuasive techniques to influence others in their external communication strategies.

## 5.10 Contract Reporting

In Contract Reporting, a lot dwells on:

- Role or Knowledge of the Project
- Satisfaction with the Quality of Service
- Contractor's Ability to Control Costs
- Timeliness of Contract Performance
- Quality of Relations with the Contractor during contract performance
- Contractor-met Customer Satisfaction
- Contractor's effectiveness of Key Personnel
- Subcontractors' Attitude

## 5.11 Site Visits and Regular Meetings

One of the key responsibilities of the Employer throughout the implementation of the contract is to maintain a close control on what actually happens on site. This cannot effectively be done without inspecting the Site as often as necessary. Employer's technical experts should be actively involved in the site visits that would facilitate better understanding of the progress of works.

Whenever visiting the Site, Employer's staff should bear in mind the following minimum aspects that relate to visual or physical inspection:

- Progress of works against planned; how much of the work has been done, compared to the planned progress?

- Quality of works; do all works comply with the quality requirements in the technical specifications?
- Deployment of staff/labour; is the number of people actually working on site sufficient to have the works completed on time?
- Contractor's mobilization of materials and equipment; does the Contractor have all necessary equipment and construction materials to complete the works according to the specifications and on time?
- Health and safety with regard not only to the Contractor's personnel, but also to the public safety; have all necessary health and safety measures been implemented?
- Environmental issues; is the Environmental Management Plan being enforced appropriately?

## 5.12 Management of Securities and Insurance

In the management of securities, the Employer should take these two main steps:

- Check the securities (performance security, advance payment guarantee) for the correct (i) amount; (ii) validity; (iii) text/format and wording and issuing authority. The text of the security should not contain any significant deviation from the sample forms included in the tender documents. The Employer should reject any additional texts introducing conditions that would render the security invalid or make it harder to forfeit constituting Unacceptable Deviations/Conditions. Safe Custody of verified securities must be respected.
- Submit the securities to its own bank (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 Employers should always request this verification. This is especially important in the case of (i) unknown contractors; and (ii) securities issued in questionable jurisdictions (e.g. offshore fiscal havens).

In the management of insurance, the Employer should note the following tips for verifying insurance policies out of some real life experiences concerning problems:

- In some countries there is a practice among certain contractors and insurance companies to have the insurance policy cancelled immediately after its signing. The policy is obviously no longer valid and the Contractor gets back most of the money paid as premium (the insurance company holds a percentage for agreeing to this scheme). This way the Contractor still has a policy to show to the Employer, but there is no real coverage, because the policy has been cancelled. The Employer should check the existence of proofs of payment of insurance premiums and officially request confirmation from time to time from the insurance company, at least twice a year that the respective policies are still valid.

A variation of this scheme involves the insurer and the Contractor agreeing to an amendment to the original policy, waiving most risks. The Employer is thus unaware that the policy is worthless.

- A similar mechanism applies to the payment of insurance premiums. The policy is issued and requires payment in monthly or quarterly installments. The Contractor



submits the policy to the Employer but does not make any subsequent payments. Consequently the policy is no longer valid. The same safety measure should be applied by requesting the Contractor to submit proof of paying the premiums and check with the insurer if the policy is still valid.

- Accepting a conditional insurance policy – similar to above with regard to conditional bank guarantees, most insurance companies request to be notified about any changes in the scope of works. Unlike the bank guarantee, this is usually a legitimate request and should be granted because, unlike the bank the insurer assumes a risk that is directly linked to the very nature of the works, not a general financial risk linked to the performance of the contract. If the scope of the contract changes, the insurer's risks may increase.

## 6.0 CONTRACT MODIFICATION

### 6.1 Introduction

Contract modifications are only normal in a works contract and very necessary to correct shortcomings in the design, to improve the proposed technologies, to allow for the use of newer or better materials etc. As long as they are carefully analyzed and duly justified from a technical and economical perspective, variations should not be regarded as attempts of the Contractor to get money in dubious ways.

### 6.2 Why Variation/Change Orders

Changes in quantities of works occur in virtually any works contracts for a variety of reasons - quantities could not be accurately measured at the time of design, modifications of the conditions on site etc.

Variations are therefore not only normal in a works contract, but also necessary to correct shortcomings in the design, to improve the proposed technologies, to allow for the use of newer or better materials etc. As long as they are carefully analyzed and duly justified from a technical and economical perspective, variations should not be regarded as attempts of the Contractor to get money in dubious ways.

The Engineer is again the most important player in this equation because it is the Engineer's duty to make sure that the variations requested by the Contractor are (i) necessary; and (ii) make technical and economic sense. The next step would be to evaluate the financial impact of the respective variations and duly inform the Employer about it. Depending on the limits of Engineer's authority established in the Particular Conditions, the Employer should approve the variations that exceed the respective threshold.

### 6.3 Types of Variations

A variation (sometimes referred to as a variation instruction, variation order or change order) is an alteration to the scope of works in a construction contract in the form of an addition, substitution or omission from the original scope of works.

Almost all construction projects vary from the original design, scope and definition. Whether small or large, construction projects will have inevitably depart from the original tender design, specifications and drawings prepared by the design team. This can be because of technological advancement, statutory changes or enforcement, change in conditions, geological anomalies, non-availability of specified materials, or simply because of the continued development of the design after the contract has been awarded. In large engineering projects variations can be very significant, whereas on small building contracts they may be relatively minor.

Variations may include:

- Alterations to the design.
- Alterations to quantities.
- Alterations to quality.
- Alterations to working conditions.
- Alterations to the sequence of work.

Variations may also be deemed to occur if the contract documents do not properly describe the works actually required.

Variations may not (without the contractors consent):

- Change the fundamental nature of the works.
- Omit work so that it can be carried out by another contractor.
- Be instructed after practical completion.
- Require the contractor to carry out work that was the subject of a prime cost sum.

In legal terms, a variation is an agreement supported by consideration to alter some terms of the contract. No power to order variation is implied. Hence there should be express terms in contracts which give the power to instruct variations. In the absence of express terms in the contract the contractor may reject instructions for variations without giving rise to any legal consequences.

Standard forms of contract generally make express provisions for the contract administrator, generally the architect or engineer, to instruct variations. Such provisions enable the continued, smooth administration of the works without the need for another contract. Variation instructions must be clear as to what is and is not included, and may propose the method of valuation.

## 6.4 Variation Analysis

The following main issues should be considered when analyzing a variation:

- Check if it is a variation or a mere change in quantities following re-measurement; according to FIDIC, changes in quantities are not necessarily variations,
- Verification of supporting documents; how appropriate or necessary are the proposed variations,
- Check how the variation was valued; existing contract rates were correctly used; new rates were correctly constructed based on fair market prices etc.,
- Check if a change in unit rates would be appropriate or required according to the Contract,
- Check if the time impact, extension of time for completion, was correctly assessed and is duly justified,
- Check the level of approval by Engineer or Employer),
- Check if the variation does not require an appropriate amendment to the Contract; all variations that determine changes in unit rates, bill items or in the scope of works should be included in contract amendments.

All the above represent a minimum checklist for Employer's technical and procurement staff.

## 6.5 Contract Amendment

A contract amendment is any change made to an active contract that alters the fundamental obligations and entitlements of the contract; that is, you are changing or adding to the contract, values that you specified in the Contract Entry component.



## 7.0 PAYMENT & COST CONTROLS

### 7.1 Introduction

Payment of the Interim Payment Certificates issued by the Engineer based on Contractor's monthly statements is one of Employer's key responsibilities and also the moment with the maximum involvement of its technical, procurement and financial staff. This chapter analyses the payment and cost control systems under contracts. Two modes of payment are discussed in this Session. The first is the traditional method of reviewing invoices for payment and the second is the new electronic system of payment in the public service called GIFMIS.

### 7.2 Review and Approval of Payment Applications/Invoices

The review and approval of payment applications should imply the following:

- Existence of a well-established mechanism for the verification and approval of payment documents – internal audit, four eyes principle etc.
- Verification of unit rates, prices and quantities;
- Verification of supporting documents (invoices; interim payment certificates; monthly statements; actual re-measurement; timesheets; proofs of actually incurred expenditures etc. as applicable);
- Existence of required approvals (duly certified monthly statements and interim payment certificates; signed timesheets; Engineer's approvals etc.);
- Price adjustment – applicability; verification of indexes (base values, correct reference to applicable indexes) and weightings (for materials, labor, equipment);
- Use of Provisional Sums and contingencies - check if their use was appropriate or necessary (requests and/or approval from the Engineer);
- 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;
- Check if the appropriate percentage recovery of the advance payment has been deducted;
- Availability of funds and applicable payment method (payment from Special Account; Direct Payment etc.)

### 7.3 Cost Control System

Cost control system or mechanism is put in place where the Contractor shall submit to the Engineer/Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

The Engineer/Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor which certified amount shall be set forth in a Payment Certificate issued by the Engineer/Project Manager.

The value of work executed shall be determined by the Engineer/Project Manager. The value of work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed. The value of work executed shall include the valuation of Variations and Compensation Events. The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

Payments shall be adjusted for deductions for advance payments and retention, if any. The Employer shall pay, or cause to be paid to, the Contractor the amounts certified by the Engineer/Project Manager within 28 days of the date of each Payment Certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the rate of interest for each of the relevant currencies of payment.

If an amount certified is increased in a later Payment Certificate or as a result of an award by the Adjudicator or in arbitration, the Contractor shall be paid interest on the delayed payment. Such interest shall be calculated from the date on which the increased amount would have been paid in the absence of dispute at the rate provided for under the contract.

Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

The following are considered Compensation Events:

- The Employer does not give access to a part of the Site by the Site Possession Date.
- The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under this Contract.
- The Engineer/Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- The Engineer/Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- The Engineer/Project Manager unreasonably does not approve a sub-contract to be let.
- Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers including the Site Investigation Reports, from information available publicly and from a visual inspection of the Site.
- The Engineer/Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- Other contractors other than Subcontractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in this Contract, and they cause delay or extra cost to the Contractor.
- The advance payment, if any, is delayed.

- The effects on the Contractor of any of the Employer's Risks.
- The Project Manager unreasonably delays issuing a Certificate of Completion.

If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Engineer/Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Engineer/Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Engineer/Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Engineer/Project Manager shall assume that the Contractor shall react competently and promptly to the event.

The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Engineer/Project Manager.

The Contractor, any Subcontractor and their respective personnel, and their eligible dependents, shall follow the usual customs procedures of the Employer's country in importing property into the Employer's country.

If the Contractor, any Subcontractor or any of their respective personnel, or any of their eligible dependents, do not withdraw but dispose of any property in the Employer's country upon which customs duties or other Taxes have been exempted, the Contractor, the Subcontractor or such personnel or eligible dependents, as the case may be, (a) shall bear such customs duties and other Taxes in conformity with Applicable Law, or (b) shall reimburse such customs duties and Taxes to the Employer if such customs duties and Taxes were paid by the Employer at the time the property in question was brought into the Employer's country.

Without prejudice to the rights of the Contractor under the contract, the Contractor, any Subcontractor and their respective Personnel will take reasonable steps as requested by the Employer or the Government with respect to the determination of the Tax status described in the contract.

If the Contractor, any Subcontractor, or any of their respective personnel, is required to pay Taxes that are exempt under the contract or a related agreement, the Contractor shall promptly notify the Employer (or such agent or representative designated by the Employer) of any such Taxes paid, and the Contractor shall cooperate with, and take such actions as may be requested by the Employer or their agents or representatives, in seeking the prompt and proper reimbursement of such Taxes.

The Employer shall use reasonable efforts to ensure that the Government provides the Contractor, any Subcontractor, and their respective personnel, the exemptions from taxation applicable to such persons or entities, in accordance with the terms of the contract or related agreement.

Where payments are made in currencies other than the currency of the Employer's country, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Tender.

Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the COPA/SCC/Contract Data. If so provided, the amounts certified in each Payment Certificate, before deducting for the advance payment, if any, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

Adjustment shall be made for the first time during the term of this Contract at the time specified in the COPA/SCC/Contract Data.

If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next Payment Certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

The Employer shall retain from each payment due to the Contractor the proportion stated in the COPA/SCC/Contract Data until completion of the whole of the Works.

On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects notification period has passed and the Project Manager has certified that all Defects notified by the Engineer/Project Manager to the Contractor before the end of the Defects notification period have been corrected.

On completion of the whole Works, the Contractor may substitute retention money with an "on demand" bank guarantee in a form and issued by a bank acceptable to the Employer.

The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the COPA/SCC/Contract Data for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the COPA/SCC/Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer/Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next Payment Certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified.

The Employer shall make an advance payment to the Contractor of the amounts stated in the COPA/SCC/Contract Data by the date stated in the COPA/SCC/Contract Data, against provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. Such unconditional bank guarantee shall remain effective until the advance payment has been repaid, but the amount of such guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.



The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of this Contract. The Contractor shall demonstrate that the advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer/Project Manager in form and substance acceptable to the Engineer/Project Manager.

The advance payment shall be repaid by deducting amounts stated in the COPA/SCC/Contract Data from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, bonuses, if any, or liquidated damages.

The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in the amount specified in the COPA/SCC/Contract Data, in a form and by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

If applicable, the Day work rates in the Contractor's Tender shall be used for small additional amounts of work only when the Engineer/Project Manager has given written instructions in advance for additional work to be paid for in that way.

All work to be paid for as Day work shall be recorded by the Contractor on forms approved by the Engineer/Project Manager. Each completed form shall be verified and signed by the Engineer/Project Manager within two days of the work being done.

The Contractor shall be paid for Day work subject to obtaining signed Day work forms.

Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects notification periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

The Contractor shall supply the Engineer/Project Manager with a detailed account of the total amount that the Contractor considers payable under this Contract before the end of the Defects notification period. The Engineer/Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer/Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Engineer/Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate.

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

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

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

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

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

### What is PFM System?

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

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

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

### What Is GIFMIS?

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

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

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

“Ghana Integrated Financial Management Information System (GIFMIS)” 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**

Purchasing - for Purchase Requisition, PO, SRA

- **Accounts Payable** - for preparing PVs, accounting (i.e. Dr. & Cr. ) and tracking liabilities.
- **Cash Management**- for making Payments, Bank Reconciliation, cash forecasting, etc.
- **Accounts Receivable**- for recording & tracking of revenues
- **Fixed Assets Module**- for managing fixed assets register through recording, tracking and accounting for fixed assets
- **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**

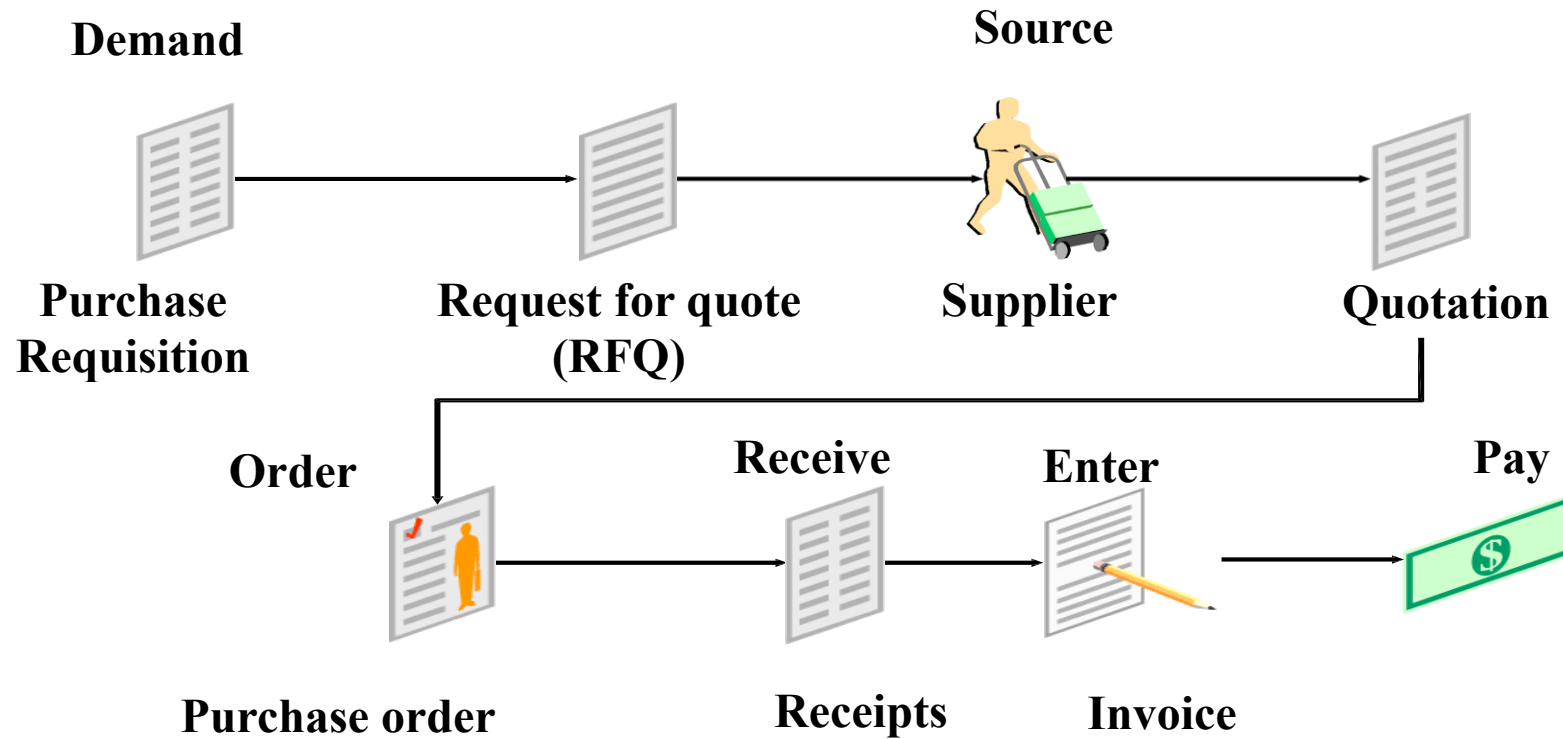
The budget preparation steps include:

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 6: 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 Contractor 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 Contractor is selected, the Procurement Department **prepare PO**
7. The **PO is routed for Approval on GIFMIS** once its approved budget is encumbered.
8. **Print PO on GIFMIS**

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

### Expenditure Process (P2P)

#### Type of Purchase Orders on GIFMIS

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

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

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 AND DISPUTES RESOLUTION

### 8.1 Introduction

Disputes arise out of works contracts due to the complexity of operations on site with wide and divergent views leading to claims that might lead to disputes. This chapter analyzes resolution of claims, settlement of disputes and draws up their relationship.

### 8.2 Remedies Against Non-Performing Contractors

#### 8.2.1 Performance Security

The performance security is perhaps the most important and powerful contractual tool available in works and goods contracts (there is no performance security in consulting contracts). Despite having access to this powerful instrument, practice shows that the contract administration teams are rather hesitant when deciding to enforce remedies against the performance security. This happens because of two main reasons:

- (i) The forfeiture of the performance security is (rightfully) perceived as an extreme remedy (almost as drastic as the termination of contract);
- (ii) The conditions of contract provide very little guidance on the exact situations and mechanisms to enforce a claim on the security.

The FIDIC Conditions of Contract only state that “*The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract*”, which leaves the Employer to discern and make a judgment.

Since no other specific details are provided, we should look at other contract clauses to find clues and information on the situations when the Employer is entitled to make a claim under the performance security. These situations are:

- Failure of the Contractor to remedy a default after receiving the Employer’s notice requiring the default to be remedied,
- Failure of the Contractor to pay an amount due to, claimed by, or determined in the favour of the Employer, following Employer’s claims, arbitration etc.,
- Failure of the Contractor to adequately extend the validity or increase the amount of the security as may be requested under the Contract as in the case of amendments,
- Occurrence of an event that entitles the Employer to terminate the Contract.

#### 8.2.2 Delay or liquidated damages

Another important instrument that the contract administration team has access to are the delay damages or liquidated damages for delay. These are penalties that are much easier to enforce because they are strictly quantifiable - all contracts provide a percentage or an amount to be deducted from the payments due to the Contractor if it fails to deliver the works within the

stipulated time. The Employer should just multiply the number of days/weeks of delay by the said percentage or amount and deduct the product of this multiplication from the next payment due to the Contractor. There is usually a limit on this amount mostly at 10% of the Contract Price, and sometimes there is also a contract termination condition once the penalty has reached this limit.

It is important therefore to have a payment schedule that would allow this deduction of penalties.

Claim on the performance security or delay damages – which one to use?

Which one of these two contractual tools should the contract administration team use in the case of delays in the contract implementation delays in the completion of the works?

Most contracts have an explicit or implied provision stating that you cannot impose two different penalties for the same breach of Contractor's obligations. Consequently, only one of these penalties should apply. But which one?

Normally the employer prefers quite correctly to use the delay damages because they are the obvious and most straightforward choice particularly when it comes to justifying and calculating the actual damage/loss.

However, situations may occur when we should also apply for remedies under the performance security. One of these situations is described supra, when most of the contract price has already been paid and the outstanding payments are less than the amount of the delay damages, the delay damages have reached the 10% limit, but we only have 5% left to pay to the Contractor. In this situation, we are entitled to claim the difference of 5% from the proceeds of the performance security without breaching in any way the contract provisions.

Another situation is when the delay is linked or has been caused by some other breach of contract on the part of the Contractor, as listed above. In such cases, the employer is entitled to apply both types of remedies, delay damages and claim under the performance security, if it can adequately prove and justify the respective damages.

Even if the Government agrees to an extension of the contract, it may still recommend the Procurement Entity to impose delay damages or forfeiture of the performance security, if the said extension was not 100% caused by the Employer of Force Majeure. Consequently, agreeing to an extension of time for various reasons on the extension does not prejudice Employer's rights to impose remedies.

### **8.3 Relationship between Claims and Disputes Resolution**

The Problem is that the subject of "Claims" is often so emotive issue which stigmatizes and tends to polarize the two sides. Contracts prepared in haste affects cash flow with outstanding Claims, which can best be resolved with better understanding of basis and principles of Contracts. Professional representatives should understand the business side of industry and rather appreciate the circumstances of tendering by Contractors, their attitudes and tactics referred to as "Loophole Engineering"

Disputes in Contract Administration are categorized into three (3):

- What is to be done?
- The time in which it is, or has had to be done,
- What is to be paid?

“Claims” is used in connection with “what is to be paid” and what constitutes a claim can be a matter of a pointless dispute. The simplest course is to accept that claim is anything not agreed upon between the Contractor and the Project Manager and additional payments as entitlements and/or considerations.

The key issue is to understand and establish the nature of Claims because it determines:

- Where to look for grounds
- Whether the Project Manager has powers to deal with it
- Basis of evaluation

There are three (3) Categories of Claims:

- Contractual, where there is a provision in the Contract within the Project Manager’s powers.
- Extra-Contractual, where the Contract does not make express provision – resort to Common Law - Project Manager has no powers except authority is given by the Employer to examine and make recommendations.
- Ex-gratia, basically an award since such claims have no grounds and either party cannot successfully sue; an “act of grace” and acknowledgement of moral obligation.

Disputes on the other hand arise when negotiation fails, over variations in scope of works, unforeseen physical conditions and delay and disruption of the works. There is a Breach of Contract when one party fails to fulfill his part or one party states that he will not perform the Contract or alternately puts himself in such a position that he will be unable to perform.

Breach by Employer when he/she fails to pay appropriate consideration, delays payment beyond the stipulated period and fails and/or delays in executing work he is bound.

Breach by Contractor when he/she fails to perform and delays beyond agreed period

Disputes Caused by Employer include:

- Failure to give early possession of Site,
- Delays in payment,
- Failure to execute work to supplement completion
- Disagreement over payment and compensation for direct loss and/or expense -

Disputes caused by Contractor:

- suspension or abandonment of work,
- Delay in Completion,
- Defective Work

## 8.4 Resolution of Claims

### **8.4.1 Time for completion**

Project completion time is normally specified by the Employer, but where it is made an object of completion, it is specified by a Contractor. In either case, it is expected that a contractor will complete the whole of the works within the agreed time. However, at times, Contractors fail to complete projects on time and deny Employers early use of their developments.

A defaulting Contractor may attribute overrun on the contract Programme to:

- a) Failure of Employer to give possession of site timely as specified and/or agreed,
- b) Lack of construction information from the architect/engineer at the appropriate time,
- c) Late issue of construction information and /or variations by the architect/engineer,
- d) Disruption of construction Programme by either numerous variations or artisans employed directly by the Employer, and
- e) Inequitable extension of time for project completion by architect/engineer.

In the case of architect's/engineer's failure to grant extension of time when a delay has been caused by the Employer, a Contractor may, sometimes, argue defensively that time is at large which, in simple terms, means that completion date is no longer applicable and, therefore, his/her contractual obligation is reduced to completion of the project within a reasonable time. A Contractor may also put forward the above defense either to avoid payment of penalty for non-completion and/or claim for reimbursement for loss and expense.

To prevent conflict under this heading, construction information, instructions and variations should be adequate and made available in good time. Extension of time, when necessary, should be granted equitably to enable Contractors to completion the works.

### **8.4.2 Quality of workmanship**

In construction contracts, Contractors covenant to undertake and complete construction works to a standard of quality specified at a price Employers expected to pay. Therefore, a Contractor will only have a satisfied Employer if he/she is able to provide a finished product of good quality on time. It is, therefore, incumbent on a contractor to execute the works diligently and exhibit good workmanship at all times. However, there are occasions when contractors have achieved speed of construction at the expense of quality. On such occasions, quantity of output is regarded more important than quality and when substandard work is challenged, in defense; a contractor may put forward the following:

- a) Standard of required quality lacks clarity in contract documentation,
- b) Inadequate communication at site level on issues concerning quality standards,
- c) Design details do not promote billability on which quality depends, and
- d) Standard of quality envisaged by the Employer is not included in contract documentation.

The above conflicts may be avoided if the design and detailing facilitate buildability, reflect the skill of readily available operatives, and ensure good selection of materials and components, standard of quality required clearly shown in contract documentation, work inspected constantly for quality and communication on quality issues improved on site.

### 8.4.3 Payment

Contractors expect to be paid for work done, and in construction contracts, contractors are entitled to payment for work properly executed. Depending on the size and duration of contract, payment may be made either at the end of contract (e.g., jobbing works) or intermittently through interim valuation certificates (e.g., large projects).

Generally, a contractor, who operates a systematic planning and cost control, is able to compare at any point in time, what is happening in relation to what was budgeted to happen and can reconcile cost and value. Moreover, a contractor's own internal valuation enables him/her to determine interim valuation levels – an important data for planning cash flow requirements. While it is recognized that maintenance of good cash flow is the life-blood of a contractors' business, a contractor may experience the following process of payment which disrupts his/her efforts to maintain good cash flow:-

- a) Interim certificates which do not reflect the true value of work properly executed,
- b) Interim certificates issue at irregular periods,
- c) Failure of Employer to honour interim certificates on time, and
- d) Late settlements of final account and contractual claims for loss and/or expense.

Factors contributing to the foregoing domain of conflict are many and may include the following:

- a) Interim valuation prepared by over-cautious Quantity Surveyor or Engineer who is in fear of over payment a contractor,
- b) Extent of works under-measured by the Quantity Surveyor or Engineer in the contract bills of quantities,
- c) Quantity Surveyor or Engineer failing to prepare an interim valuation statement in good time to enable the architect to issue an interim certificate,
- d) Architect's failure to process the interim certificate in good time,
- e) Failure of Quantity Surveyor and the contractor to value and agree on variations executed for inclusion in the current interim valuation,
- f) Quantity Surveyor failure to prepare and settle final account in good time,
- g) Delays by the contractor in submitting contractual claims for loss and /or expense,
- h) Delays by the contractor in submitting details of claim for fluctuations of wages and materials,
- i) Poor performances by contractor employing an unplanned or unspecified method, untrained or incompetent operatives or planning with inaccurate data, and
- j) Under-priced items in bills of quantities by the contractor – estimating error.

The foregoing shows that care and attention are required if conflicts under this heading are to be avoided. Employer's professional advisers should ensure that accuracy of the bills of quantities, reasonably accurate interim valuations and prompt payment of interim certificates, prompt settlement of final accounts and contractual claims. Also, adequate time should be given to contractors for tender action to effect preparation of reasonable accurate estimates and/or tenders.



Contractors, on the other hand, should ensure reasonably accurate estimate, proved timely information for interim variations, final accounts and contractual claims and improve productively on site.

#### **8.4.4 Adequate contract documentation**

Contract documentation is the recording in formal documents the content, terms and conditions of the contract. In construction contracts it embodies the entire written and drawn construction information, and contract conditions constitute the core of the agreement between Employer and contractor.

In construction projects, contract documentation comprises articles of agreement, conditions of contract, drawings, and bills of quantities and/or specification. To safeguard Employer's interest, the contract documentation should explain the full bargain between Employer and contractor, adequately describe the scope, quantity, quality and position of the work and define rights and obligations of parties. Moreover, a carefully-drafted contract documentation promotes the smooth running and successful completion of projects. However, despite their important legal significance, a common source of complaints and disputes is the inability of contract documentation to treat project information requirements adequately. There is a generally widespread misunderstanding of the contractor's information needs; hence contract documentation is issued in various states, including the following:

- a) Drawn or written project information inadequate to convey clearly what is required and/or incapable of realization,
- b) Construction method, specification and the required quality standard to not reflect the materials/components plant and Labour readily available,
- c) Contract documentation failing to disclose complex nature of project or obligations and restrictions imposed on contractor such as:
  - i) Accessibility, position and use of site,
  - ii) Limitation of working space and working hours,
  - iii) Maintenance of existing services, and
  - iv) Order or phases of completion works.
- d) Discrepancy between contract documents, e.g., between drawings and specifications, and between standard conditions and specially – written statements in the preliminaries section of the bills of quantities,
- e) Inappropriate insertion or alteration of clauses in standard forms of contract without due consideration of the effects on other contract clauses,
- f) Inclusion of specific items in bills of quantities aimed at opting out of the current standard method of measurement,
- g) Bills of quantities prepared in rush and on inadequate pre-tender information, hence lacking clarity of description and accuracy of quantities,
- h) Large items of work covered by either prime cost sums, provisional sums or provisional quantities, and
- i) Inclusion of clauses in bills of quantities to override those contained in the form of contract in use.

To prevent such disputes from arising, contract documentation should be carefully, adequately and accurately prepared and be consistent throughout. This is important as post-contract project information should not impose any additional obligations beyond those contained within the contract conditions, rather, it should clarify or supplement existing project information.

#### **8.4.5 Construction information**

On commencement of site operations, further construction information is issued to clarify or supplement that which was made available at the pre-contract stage. Also, project architect/engineer may consider varying sections of work to suit Employer's requirement or to rectify

design error and may present this information in various forms (e.g., architect's/engineer's instructions, descriptive schedules and additional revised drawings and details) to clarify those already supplied.

Conflicts, however, arise from the issue of this information caused by the following:

- a) Architect's/Engineer's instruction lacking preciseness in wording,
- b) Architect's/Engineer's instructions do not indicate its purpose (i.e., whether new work is being ordered, alteration is required to work already executed or clearance of discrepancy),
- c) Architect's/Engineer's instruction effected merely by issue of revised drawings without any explaining of the nature and extent of variations on the drawings, and
- d) Architect's /Engineer's instruction and/or information issued late (e.g., after an item of work for which the variation is intended has been executed).

The above practices do not promote smooth running of projects. Rather, they create difficult working conditions, complicate purchasing and administration and upset financial arrangements. Timely, clear and adequately worded instruction or information have a positive effect on site operations and productively.

#### **8.4.6 Supervision**

Close supervision on site is essential to achieve the specified standard relating to quality of work. Those in charge of day-to-day supervision on site are the contractor's site supervision team (i.e., site agent and trade foremen). The clerk of works, who acts for the Employer, is responsible for inspecting the quality of materials and workmanship and ensuring that a good working practice is adopted.

On construction projects, conflicts arise where contractors fail to supervise the works properly. A bad working practice, if not corrected, may create the following complications:

- a) Production of sub-standard work,
- b) Condemnation and non-payment for defective work and additional remedial costs, and

- 
- c) Failure of clerk of works and /or project architect /engineer to pass comment on sub-standard work until completed.

Conflicts may be reduced, if quality levels are clearly specified, contractors are made aware of them and works are supervised properly and regularly inspected for quality.

## 8.5 Dispute Resolution

Methods of Dispute Resolution and Settlement in Ghana include:

- **Arbitration**

Arbitration is a proceeding in which a dispute is resolved by an impartial arbitrator or panel whose decision the parties to the dispute have agreed, or legislation has decreed, will be final and binding with limited rights of review and appeal of arbitration awards.

- **Mediation**

Mediation refers to any instance in which a third party helps others reach agreement. More specifically, mediation has a structure, timetable and dynamics that ordinary negotiation lacks. The process is private and confidential, enforced by law in Ghana with participation typically voluntary. The mediator acts as a neutral third party and facilitates rather than directs the process.

- **Dispute Review Board**

Dispute Review Board (DRB) in the construction industry works with an aim at assisting construction project managers predict and handle potential problems and challenges before they occur. The Board provides advisory opinions on questionable or disputed matters and provide an alternate dispute resolution process to settle any disputes that cannot be settled between the parties to the construction contract.

- **Mini trial**

The mini trial is an alternative dispute resolution (ADR) procedure that is used by businesses to resolve legal issues without incurring the expense and delay associated with court litigation. The mini-trial does not result in a formal adjudication but is a vehicle for the parties to arrive at a solution through a structured settlement process. It is used most effectively when complex issues are at stake and the parties need or wish to maintain an amicable relationship.

- **Negotiation**

Negotiation is a method by which people settle differences and a process by which compromise or agreement is reached while avoiding argument and dispute. In any disagreement, individuals or organisations understandably aim to achieve the best possible outcome for their position with principles of fairness, seeking mutual benefit and maintaining a relationship as keys to a successful outcome.

- **Litigation**

A lawsuit may involve dispute resolution of private law issues between individuals, business entities or non-profit organizations. A lawsuit may also enable the state to be treated as if it were

a private party in a civil case as plaintiff or defendant regarding an injury or may provide the state with a civil cause of action to enforce certain laws. The conduct of a lawsuit is called litigation. The plaintiffs and defendants are called litigants and the attorneys representing them are called litigators. The term litigation may also refer to criminal trial.

- **Other dispute resolution methods as follows:**

- ✓ **Adjudication**

Adjudication is a process by which an adjudicator reviews evidence and argumentation, including legal reasoning set forth by opposing parties to come to a decision which determines rights and obligations between the parties involved.

- ✓ **Conciliation**

**Conciliation** is an ADR process whereby the parties to a dispute use a conciliator, who meets with the parties both separately and together in an attempt to resolve their differences. They do this by lowering tensions, improving communications, interpreting issues, encouraging parties to explore potential solutions and assisting parties in finding a mutually acceptable outcome.

- ✓ **Dispute resolution advisor**

An innovative dispute resolution system that has been designed and used in Hong Kong to meet the challenge of resolving disputes speedily at construction site level with rigid response time requirements, involvement of nominated subcontractors and good faith negotiation.

- ✓ **Expert resolution**

Expert resolution is a flexible alternative procedure for the resolution of disputes based upon the decision of an independent third party, the expert. The participants agree beforehand to be bound by the decisions of an independent expert. It is often the quickest and most effective way of resolving disputes which are relatively simple in content or are essentially technical in nature.

- ✓ **Third party neutrals**

Impartial third-party that has no financial, official or personal interest in a controversy, dispute or issue in which it is requested to mediate. If it has or develops during proceedings any such interest, it is duty bound to fully disclose it to the involved parties.

- ✓ **Med/Arb**

This is a combination of mediation and arbitration. A form of arbitration in which the arbitrators starts as a mediator but in the event of a failure of mediation, the arbitrator imposes a binding decision.

- ✓ **Court appointed Masters**

Masters are a unique brand of dispute-resolver relatively unknown to many mediators, facilitators and public officials. A master is appointed by a judge to oversee one or more aspects of litigation at pre-trial, during trial or post-trial. Despite their relative anonymity, such masters have been

credited with some of the most creative and innovative conflict resolution within the history of the US legal system.

✓ **Ombudsman**

An ombudsman, or public advocate is an official who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or a violation of rights. The ombudsman is usually appointed by the government or by parliament but with a significant degree of independence.

✓ **Diwan Al-Madhalim**

Diwan al-Madhalim as the Ombudsman's Office set up in keeping with the cultural values of solidarity of some Moslem societies with the administrative courts and institutions which receive and resolve complaints from individuals and groups about violations of any kind in principle and assists many poor families and a number of vulnerable groups.

✓ **Executive tribunal**

Executive Tribunals operate formal processes to adjudicate disputes in a similar way to courts of law, but have different rules and procedures; and only operate in a specialized area. In theory, their procedures may be better suited for particular types of disputes, cheaper to administer and require less-qualified officials.

✓ **Shadow Mediation**

In this type of ADR, the parties have a negotiation or arbitration or even litigation and a mediator is present but does not participate. At some juncture, the mediator then works with the parties to attempt to move toward settlement. It operates similar to Arb-Med in that the parties get to move well into the case and then have a neutral, who has also seen and heard everything step in.

In mediation that occurs as a part of the litigation process the attorneys for the parties and the parties themselves must appear. At times, however, resolution may be hard to reach if there is someone else upon whom an individual relies for support or decision making. These individuals are referred to as “shadow parties.”

✓ **Rent-a-judge/Private judge**

Rent-a-judge blossomed early in Los Angeles where a sitting judge, for example, would assign lengthy debates over accounting to a retired judge and then incorporate his report into the final decision. The broader application spread rapidly when the law enabled a retired judge to handle an entire case. They got the approval of the court's presiding judge and created the modern rent-a-judge system. The descriptive term "rent-a-judge," which caught on with lawyers and litigants, was originally disdained by the retired judges. But the tag has now won even the judges' grudging acceptance.

Limitation of the Public Procurement Law, Act 663 as amended in the Procurement Cycle of Ghana

With the coming into force of the Alternative Dispute Resolution Act 2010, Act 798, that wholly repeals and replaces the Act 38 of 1961,

A legal framework to govern the commencement and conduct of ADR proceedings in Ghana and enforcement of both domestic and foreign awards and decisions has been born.

## 9.0 TERMINATION OF CONTRACT

### 9.1 Introduction

This chapter seeks to draw readers' attention to those matters that could lead to termination of contract by the parties to a contract. When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under the contract, the Project Manager shall decide whether the breach is fundamental or not, which upon his/her determination could lead to termination on either way.

### 9.2 Suspension of the works

The Contracting Officer may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government and if the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by:

- a) An act of the Contracting Officer in the administration of this contract, or
- b) The Contracting Officer's failure to act within the time specified in the contract, or within a reasonable time if not specified, then an adjustment shall be made for any increase in the cost of performance of the contract, excluding profit necessarily caused by the unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which an equitable adjustment is provided for or excluded under any other term or condition of the contract.

### 9.3 Termination by Employer/Contractor

The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Project Manager,
- b) The Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days,
- c) The Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation,
- d) A payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate,
- e) The Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager,

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- f) The Contractor does not maintain a Security, which is required, and
  - g) The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Special Conditions of Contract,
  - h) If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, for which it is understood as:
    - i) “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 includes inter alia, bribery and extortion or coercion which involves threats of injury to person, property or reputation, and.
    - ii) “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practice among Tenderers (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed as above, the Project Manager shall decide whether the breach is fundamental or not.

#### **9.4 Termination for Convenience**

Notwithstanding 10.2, the Employer may terminate the Contract for convenience. If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

#### **9.5 Payment upon Termination**

If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Special Conditions of Contract. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works and the Contractor’s costs of protecting and securing the Works and less advance payments received up to the date of the certificate.

All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor’s default.



## **9.6 Termination Checklist**

Check the exact provisions of the Contract with regard to the Termination by the Employer;

- Assess Contractor’s claims and remedies;
- Ensure that all Contractor’s reasonable claims have been properly addressed and all due amounts have been paid;
- Contingency planning.
- Claims and Dispute Resolution
- Check the exact provisions of the Contract with regard to the Dispute Resolution and costs incurred (in terms of time, money and resources);
- Check if the contract management team has consistently and correctly enforced the conditions of contract;
- Duly document any deviations from the specifications and conditions of contract.

## **9.7 Contingency Planning**

Activity undertaken to ensure that proper and immediate follow-up steps will be taken by a management and employees in an emergency. Its major objectives are to ensure:

- a) Containment of damage or injury to, or loss of, personnel and property, and
- b) Continuity of the key operations of the organization.

## 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.

### **10.1.7 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.

### **10.1.8 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.

### **10.1.9 File Movement Controls**

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

- To monitor access to records by users
- To ensure a particular matter is dealt with by the responsible officer
- To ensure that the location of a file is known at all times

- 
- Files are returned promptly to the registry once they have been seen by the indicated officers
  - Files do not go missing; and
  - Officers do not overstay with files issued to them.

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

A file movement register should have the following format:

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

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

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

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

#### **10.1.10 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.

#### **10.1.11 Records Accommodation/Space**

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

### **10.1.12 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.

### **10.1.13 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 should encompass the overall performance of the contract and of the Contracting 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 contractor performance and can assist in future stakeholder decision-making.

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

### 11.2 Evaluation of Contractor Performance

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

Performance evaluation of contractors can be done in two ways:

- In stages as the assignment progresses
- At the end of the assignment.

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

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

#### *Time management*

In assessing the contractor's time management performance the following should be considered:

- Ability to meet programmed milestones;
- Timely allocation of appropriate resources to critical activities;
- Updating of the work program to account for delays;
- Overall progress of the work;
- Timely submission of progress reports; and
- Delays by the contracting entity or other parties, outside the contractor's control.

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

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

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

***Standard of service***

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

- Compliance with brief/scope of work;
- Quality of work including conformance with specified performance criteria, if applicable;
- Adherence to budget;
- Achievement of expected value for money;
- Reviews and reports delivered in accordance with the brief;
- Amount of rework required from the contractor;
- Need to engage another contractor to undertake additional or remedial work; and
- Extent of involvement required from the contracting entity to achieve the desired standard of work.

***Co-operative relationships***

Assessment items include:

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

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

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

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

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

- Discharging Employer’s obligations in accordance with the terms and conditions of the contract.
- Collaborative relationship.
- Providing Employer’s inputs, for instance data, as and when required.
- Reviewing Contractor’s deliverables and providing feedback on time.
- Maintaining regular contacts with Contractor to keep track of progress and any challenges in executing the assignment.
- 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;
- 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 contractor; this should not be done as part of another procurement process;
- Report to stakeholders; and
- Identify lessons learned.

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

#### ***Feedback to the contractor***

Where a contractor may have a continuing or future relationship with the contracting entity, relevant findings from the evaluation should be discussed with the contractor. This can assist the

parties to better understand what is required and give the contractor an opportunity to comment on the findings.

### ***Lessons learned***

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

### ***Report to stakeholders.***

An evaluation report should be provided to relevant stakeholders, for example, senior management of the contracting 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 works 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 contractor provided all the required works 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 contracting entity facilitate achievement of contract outcomes?***

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

## **11.6 Contract Review**

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

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

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

This chapter describes post implementation tasks and provide requisite contractual procedures towards contract close-out.

### 12.2 Taking Over of the Works and Sections

Except failure to Pass Tests on Completion, the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters connected with Time for Completion and except as allowed, and (ii) a Taking-Over Certificate for the Works has been issued or is deemed to have been issued.

The Contractor may apply by notice to the Engineer for a Taking-over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for Taking-Over Certificate for each Section. The Engineer shall, within 28 days after receiving the Contractor's application:

- a) Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- b) Reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section, as the case may be, are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Employer shall not use any part of the Works, other than as a temporary measure which is either specified in the Contract or agreed by both Parties unless and until the Engineer has issued A Taking-Over Certificate for this part. However, if the Employer does use any part of the Works before the Taking-Over Certificate is issued:

- a) The part which is used shall be deemed to have been taken over as from the date on which it is used,
- b) The Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and

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- c) If requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earlier opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) been titled subject to Contractor's Claims to payment of any such Cost plus reasonable profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Determinations to agree or determine this Cost and profit.

If a Taking-Over Certificate has been issued for a part of the Works other than a Section, the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section if any in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section as the case may be as a whole. The Engineer shall proceed in accordance with Determinations agree to or determine these proportions. These provisions shall only apply to the daily rate of delay damages under Delay Damaged, and shall not affect the maximum amount of these damages.

### **12.3 Performance Certificate**

Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

### **12.4 Defects Notification Period**

This means the period for notifying defects in the Works or a Section, as the case may be under Completion of Outstanding Work and Remedying Defects, as stated in the Appendix to Tender with any extension under Extension of Defects Notification Period, calculated from the date on which the Works or Section is completed as certified under Taking Over of the Works and Sections.

If the Employer considers himself to be entitled to any payment under any Clause of the Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer or the Engineer shall give notice and particulars to the Contractor. However, notice is not required for payments due under Electricity, Water and Gas, under Employer's Equipment and Free-Issue Material, or for other services requested by the Contractor.

The notice shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Determinations to agree or determine (i) the amount, if any, which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension, if any, of the Defects Notification Period in accordance Extension of Defects Notification Period.

## **12.5 Statement at Completion/Final Accounts**

Within 84 days after receiving the Taking-Over the Engineer six copies of a Statement at completion with supporting documents, in accordance with Application for Interim Payment Certificates], showing:

- a) The value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- b) Any further sums which the Contractor considers to be due, and
- c) An estimate of any other amounts which the Contractor considers will become due to him under the Contract, Estimated amounts shall be shown separately in this Statement at completion. The Engineer shall then certify in accordance with Issue of Interim Payment Certificates.

Application for Final Payment Certificate must be done within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer.

- a) The value of all work done in accordance with the Contract, and
- b) Any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer with a copy to the Contractor and Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Obtaining Dispute Adjudication Board’s Decision or Amicable Settlement, the Contractor shall then prepare and submit to the Employer with a copy to the Employer a Final Statement.

## **12.6 Discharge**

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

## **12.7 Contract Close-out**

Close out procedures are usually in five parts as follows:

### **PART ONE – BASIC PROCEDURES**

- Step 1: Determining who is Responsible for Contract Closeout
- Step 2: Building a Closeout File
- Step 3: Determining Physical Completion and Quick Closeout Procedures
- Step 4: Payment Histories and Funding Resolution
- Step 5: Applicable Clauses and Provisions
- Step 6: Determining Security Classification
- Step 7: Letter to the Contractor
- Step 8: Letter to the Technical Group
- Step 9: Request for Audit
- Step 10: Negotiation and Invoice Payment
- Step 11: Final Closeout Documents and Amendment of Solicitation/Modification of Contract.
- Step 12: Management and Legal Review
- Step 13: Completion of Closeout Actions

### **PART TWO – PROBLEM CONTRACT CLOSEOUT**

1. Contractor No Longer in Business
2. Contractor in Bankruptcy
3. Contractor Fails to Submit Indirect Cost Data
4. Contractor is Unable to Submit Supporting Indirect Cost Data
5. Contractor Fails to Submit Final Invoice

**PART THREE – CONTRACT QUICK CLOSEOUT PROCEDURES**

**PART FOUR – PROCEDURES FOR SIMPLIFIED ACQUISITIONS**

**PART FIVE – CONTRACT RETENTION, STAGING AND RETRIEVAL PROCEDURES**

**PART SIX – BLANKET PURCHASE AGREEMENT (BPA) AND BASIC ORDERING AGREEMENT (BOA) PROCEDURES**

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## APPENDIX 1

### CONTRACT ADMINISTRATION SCHEDULE AND PLAN



## Contract Administration Schedule

### 1. Contract Summary

<b>Start date</b>	/ /	<b>Term</b>	
<b>Background</b>			
<b>History</b>			
<b>Objectives</b>			
<b>Key deliverables</b>			

### 2. Contacts

#### 2.1 Procurement Entity (PE) contacts

<b>Name</b>	<b>Role</b>

#### 2.2 Contractor contacts

<b>Name</b>	<b>Role</b>

#### 2.3 Map of relationships

*Functional links between PE & Contractor team members*

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### 3. Communication

*Detail how parties are to communicate about the contract both internally, across PE and publicly. If contractor and/or PE is to promote the contract within PE what are the protocols for doing this.*

--

### 4. Disclosure

*Detail contract disclosure requirements and responsibilities (i.e. at execution and any significant variations).*

**5. Payment processes**

*How will contracts be placed?*

**6. Performance**

*Reference Key Performance Indicators (KPIs) and Measures*

**7. Consequences**

*What will happen if KPIs are not met, e.g. Contractor must explain issue and actions in place to remedy, actions to be monitored. What are the penalties for under performance?*

**8. Reporting**

*What reports are required, when are they required and who are they sent to?*

**9. Meetings and reviews**

*Insert meeting and review requirements (based on whether this is an operational, tactical or strategic arrangement). Indicate meeting type, timing, required attendees and expected protocols*

**10. Disputes**

*Detail how day to day operational issues are to be handled and how and when these should escalate. Reference contract clause for more formal/legal process.*

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**11. Variations**

*Detail how variation requests are to be administered.*

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**12. Risk management**

*Develop a risk management plan and establish a process for raising, recording and monitoring.*

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**13. Document sign off**

**PE sign off**

<b>Name</b>		<b>Position</b>	
<b>Signature</b>		<b>Date</b>	/ /

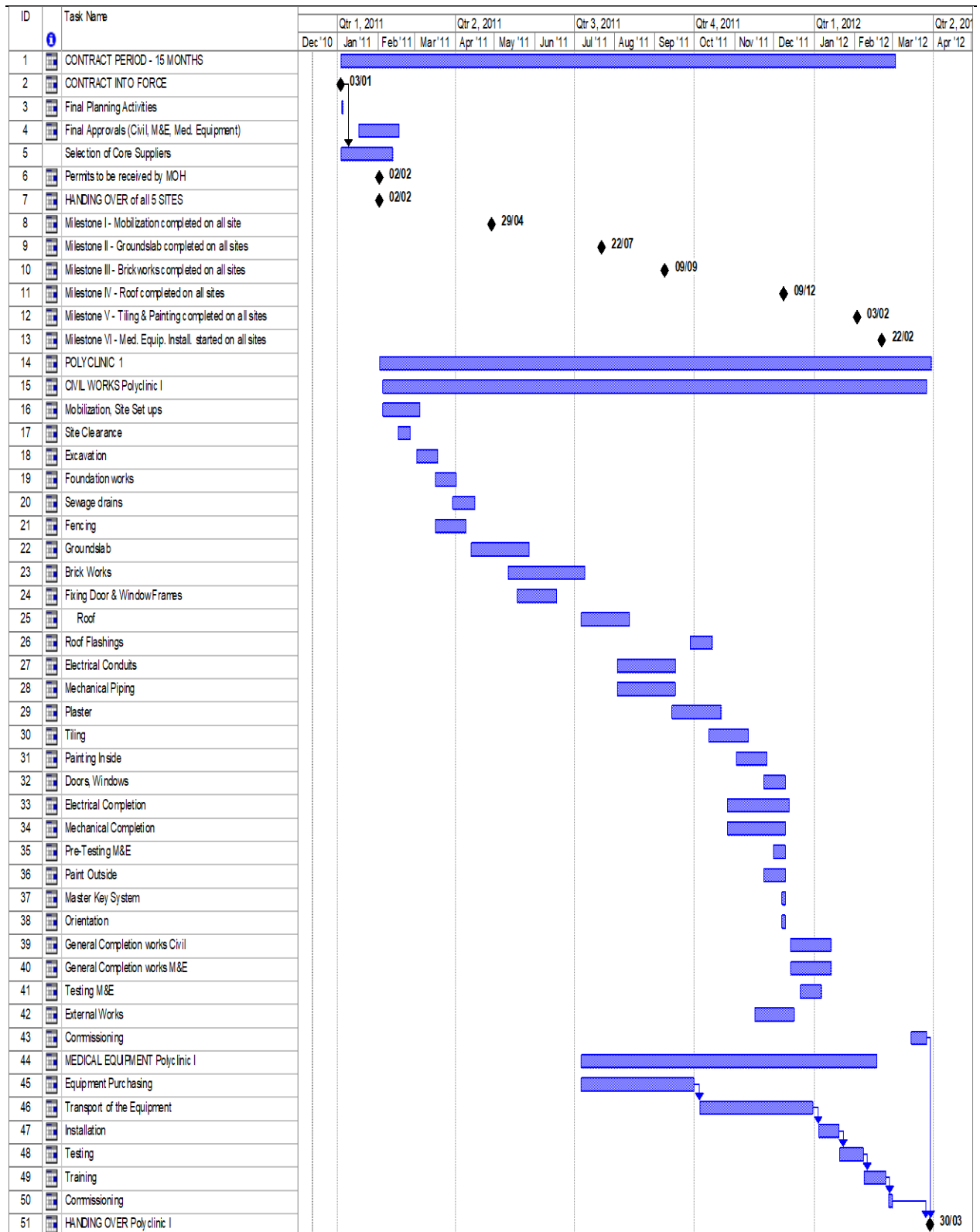
**Contractor sign off**

<b>Name</b>		<b>Position</b>	
<b>Signature</b>		<b>Date</b>	/ /
<b>Version</b>		<b>Date</b>	/ /

<b>ID</b>	<b>Tasks</b>	<b>CA's Start Date</b>	<b>Target Completion Date</b>	<b>Actual Completion Date</b>
1.	<b>CONTRACT PERIOD - 12 MONTHS</b>			
2.	Contract Effectiveness	Mon 11.04.15	Mon 11.04.15	
3.	Contract Commencement	Tues 26.04.15	Tues 03.05.15	
4.	Planning	Wed 27.04.15	Wed 04.05.15	
5.	Review Contractor drawings	Mon 9.05.15	Mon 16.05.15	
6.	Ordering materials by Contractor	Check Contractor action	Mon 23.05.15	
7.	Possession of site	Mon 16.05.15	Thurs 26.05.15	
8.	Milestone I - Mobilization completed	Check Contractor action	Wed 01.06.15	
9.	Milestone II – Preparation. Rights of way granted and all affected residents informed	Mon 23.05.15	Thurs 02.06.15	
10.	Milestone III – All trenches marked out and excavated	Mon 27.06.15	Fri 08.07.15	
11.	Milestone IV – All pipes and other materials arrived at store.	Check Contractor action	Wed 31.08.15	
12.	Milestone V – All pipes laid	Check Contractor action	Fri 16.09.15	
13.	Milestone VI – All pipes connected and blanked off for testing	Check Contractor action	Tues 03.01.16	
14.	Milestone VII – All pipes passed pressure testing and witnessed by employer	Wed 04.01.16	Mon 06.02.16	
15.	Milestone VIII – Replaced and compacted all removed	Mon 05.03.16	Mon 12.03.16	

<b>ID</b>	<b>Tasks</b>	<b>CA's Start Date</b>	<b>Target Completion Date</b>	<b>Actual Completion Date</b>
	material and site made good and cleaned			
16.	Milestone VI – Handover		Mon 30.04.16	

**APPENDIX 2**  
**PROGRAMME**



## APPENDIX 3 – METHOD STATEMENT

### **Plan for executing the Works and brief details of Proposed Programme.**

The Works will be carried out and undertaken in a manner as broadly detailed in the Proposed Programme attached.

Highlights of the Elements of Work, the Human Resources and Plant and Equipment to be employed on the Works as required have been assessed and reflected in the attached Proposed Programme for ease of reference and evaluation.

Materials as specified in the Preambles and Bills of Quantities will be followed unless otherwise varied.

Materials Requisition/Orders and Stock Levels will be done with due diligence to ensure scheduled deliveries for early completion of works as programmed.

Generally, the project will be under the overall supervision of a Project Engineer with three (3) Supervisors as Assistants heading the three (3) Teams to carry out the Works concurrently – for the Executive Wing, Main Office and the Greenfield/3<sup>rd</sup> Floor Remedial. Trades Supervisors for the various sections will enhance direct artisanry and labourer/helper supervision. Tasks will be allotted and workmen will be organized into trade gangs to facilitate and quicken operations.

The Project will commence from the Executive Wing with the dismantling/demolition and re-fixing/alteration.

Due to the urgency of the Works, we shall work on day and night basis up to 8pm and on Saturdays and Sundays.

From details as provided, the volume of works have been assessed and we propose to engage upon the works the best of specialist artisans for a standard finish as expected by the Drawings and Specifications to ensure a good blend with existing structures/infrastructure.

We have examined the Drawings and visited the site and are fully aware of the extent of Plant and Equipment, including the use of Generating set, needed for the works.

We shall bring our cherished experience on other and similar Projects to bear on this particular Project.



## APPENDIX 4

### PROGRESS REPORT

#### Format for Monthly Progress Reports

#### 1. Summary

- 1.1 Introduction [*≈3 short paragraphs - Source of Funds, Location, Scope of Works e.g. Spot Improvement*]
- 1.2 Contract Details [*Tabular Format update monthly*]
  - Contract Title
  - Reporting Period
  - Employer
  - Contractor
  - Supervising Consultants
  - Contract Start Date
  - Initial Contract Period
  - Initial Time for Completion
  - Extensions of Time Granted
  - Extended Time for Completion
  - Percentage Time Elapsed
  - Estimated Completion Date
- 1.3 Financial Summary [*Tabular Format update monthly*]
  - Original Contract Price
  - Agreed Adjustments to Contract Price (Breakdown and Summary)
  - Summary of Claims and Valuations Outstanding
  - Estimated Final Value
- 1.4 Summary of Physical Progress [*Bar Chart Format*]
  - Current Programme
  - Estimate of Overall Progress Against Current Programme
  - Summary of Progress of Major Work Items

#### 2. Details of Physical Progress

*[SHORT narratives ≈ 1-2 paragraphs for each section]*

- 2.1 Weather
- 2.2 Assessment of Validity of Current Programme
- 2.3 Progress against Programme, Difficulties and their Resolution
  - Clearance
  - Earthworks – Shaping
  - Culvert, Drainage and Protection Works
  - Earthworks – Embankment Construction
  - Gravel Wearing Course
  - Sub-base

- Base Course
  - Surfacing Works
  - Borrow Areas and Reinstatement
- 2.4 Contractor’s Equipment - Arrivals, Departures and Daily Status (working, standing or broken down) *[Tabular Format]*
- 2.5 Contractor’s Labour *[Tabular Format]* and Problems *[Short narrative]*
- 2.6 Procurement of Materials and Problems *[Short narrative]*
- 2.7 Workmanship and Problems *[Short narrative]*
- 2.8 Contractor’s Organisation On Site and Problems *[Short narrative]*

### **3. Financial and Contractual Progress**

- 3.1 Summary Table - Certificates Issued to Date
- 3.2 Summary Table - Variation Orders Issued
- 3.3 Summary Table – Site Instructions Issued
- 3.4 Summary Table – Provisional Sum Orders Issued
- 3.5 Summary Table – Daywork Orders Issued
- 3.6 Claims for Additional Payment and Progress Towards Their Resolution *[Short narrative]*
- 3.7 Claims for Extension of Time and Progress Towards Their Resolution *[Short narrative]*

### **4. Administration**

*[SHORT narratives ≈ 1-2 paragraphs for each section]*

- 4.1 Site Safety and Accidents
- 4.2 The Contractor’s Site Staff
- 4.3 The Project Manager’s Representative’s Site Staff
- 4.4 Visitors to Site

### **5. Appendices**

- 5.1 Progress Photographs
- 5.2 Minutes of Progress Meetings

## APPENDIX 5

### EXTENSION OF TIME

*Letterhead)*

*(The Contractor's Name)*  
*(The Contractor's Address)*

*(Reference)*  
*(Date)*

*(Contract Title)*  
 ORDER №SR/ *[enter sequential №]*

#### Extension of Time

Dear Sirs,

We refer to your application dated *[insert date]* reference *[insert reference]* made for an extension to the period of performance of the contract to which you consider yourself entitled pursuant to Clause xxx of the Conditions of Contract.

In consultation with the Employer, we have carefully considered your application for an extension to the period of performance and all the circumstances affecting the works outlined therein. I now confirm at the behest of the employer that we are able/unable to grant any extension to the period of performance.

Any delays [beyond those for which an extension of the period of completion was previously granted] are considered wholly attributable to circumstances or default for which you as Contractor are held solely responsible under the terms of the contract.

This notice is given pursuant to Clause xxx of the Conditions of Contract.

Yours faithfully,

C.C.

*(Letterhead)**(The Contractor's Name)**(The Contractor's Address)**(Reference)**(Date)**(Contract Title)***Notification of Extension of the Intended Completion Date**

Dear Sirs,

We refer to your application dated *[insert date]* reference *[insert reference]* made for an extension of the Intended Completion Date to which you consider yourself entitled pursuant to Sub-Clause 28.2 of the Conditions of Contract.

In consultation with the employer, we have carefully considered your application for an extension of the Intended Completion Date and all the circumstances affecting the Works outlined therein. I now confirm at the behest of employer that at this time it is considered that you are entitled to an *[interim/overall]* extension of the Intended Completion Date amounting to *[insert number]* days.

The said *[interim/overall]* extension is awarded pursuant to the Sub-Clauses of the Conditions of Contract and the grounds tabled below: *[delete lines and complete table as appropriate]*

Sub-Clause №	Compensation Event	Days
44.1(a)	Delay owing to Employer's failure to give Possession of Site	
44.1(b)	Contractor's work delayed or disrupted by Employer's modification of Schedule of Other Contractors	
44.1(c)	Project Manager orders a delay or fails to issue Drawings, Specifications or Instructions required for timely execution of the works	
44.1(d)	Project Manager orders additional testing or uncovering of non-defective Work	
44.1(e)	Project Manager unreasonably does not approve a subcontract to be let	
44.1(f)	Unforeseen adverse ground conditions	
44.1(g)	Project Manager's instruction for additional work, etc.	
44.1(h)	Delay caused by the Employer or other agency outside the control of the Contractor	
44.1(i)	Delayed Advance Payment	
44.1(j)	Delays caused by any of the Employer's Risks	
44.1(k)	Project Manager unreasonably delays issuing a completion certificate	
44.1(l)	Compensation Events as determined by the Project Manager	
	Total	

This notice is given pursuant to Sub-Clause 28.2 of the Conditions of Contract.

Yours faithfully,  
C.C.

## APPENDIX 6

### CERTIFICATE OF SUBSTANTIAL/PRACTICAL COMPLETION

*(Letterhead)*

*(The Contractor's Name)*

*(The Contractor's Address)*

*(Reference)*

*(Date)*

*(Contract Title)*

#### **Certificate of Substantial/practical Completion**

Dear Sirs,

Pursuant to Clause xxx of the Conditions of Contract we hereby certify that the works were substantially completed in accordance with the contract and ready for acceptance on *[insert date]* and, in accordance with the provisions of Clause xxx, the maintenance period commenced on that date.

Yours faithfully,

C.C.