



PUBLIC PROCUREMENT AUTHORITY (PPA)

ACCRA, GHANA

**CONTRACT ADMINISTRATION MANUAL FOR
CONSULTANCY SERVICES**

MANUAL 3

PREPARED BY

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

FEBRUARY, 2018

FOREWORD

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

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

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

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

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

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 Doodoo, 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.

TABLE OF CONTENTS

FOREWORD	i
ACKNOWLEDGEMENT	i
TABLE OF CONTENTS.....	ii
LIST OF ABBREVIATIONS/ACRONYMS	viii
GLOSSARY OF TERMS	xi
INTRODUCTION	1
Background	1
Purpose of the Manuals	1
Scope of Manual on Consultancy Services-3	1
Content/Structure of Manual on Consultancy Services-3	1
Exceptions to the Manual	2
Forms/Templates	2
1.0 CONTRACT PRINCIPLES	3
1.1 Introduction	3
1.2 Contract –Definition.....	3
1.3 Essential Elements of a Valid Contract	3
1.4 Formation of a Contract.....	4
1.5 The Law Applicable to a Contract	4
1.6 The Nature and Types of Consultancy Services	4
1.7 Types of Contracts for Consultancy Services	5
1.8 Factors Affecting the Choice of Contract Type	7
1.9 General Principles for Contracts	7
2.0 BASICS OF CONTRACT ADMINISTRATION	9
2.1 Introduction	9
2.2 Objectives of Contract Administration	10
2.3 The Role of Contract Administration	10
2.4 The Benefits of Good Contract Administration	11
2.5 Summary of Main Tasks of Contract Administration	11
2.6 Important Parties in a Consultancy Service Contract	11
2.7 Organization for Contract Administration	12
2.7.1 Legal and Institutional Arrangements for Contract Administration in Ghana	12
2.7.3 Contract Administration Organization for Consultancy Services.....	15

2.8	Responsibilities of the Contract Administrator.....	15
2.9	Skills of the Contract Administrator.....	16
2.10	Poor and/or Fraudulent Contract Administration	16
2.11	Fraud and Corruption in Contract Implementation.....	17
2.11	Conflicts of Interest.....	20
3.0	FORMS OF CONSULTANCY SERVICES CONTRACT	21
3.1	Introduction	21
3.2	Basic Documentation for Consultancy Services Contract.....	21
3.3	Standard Forms of Contract for Consultancy Services	21
3.4	General Conditions of Contract (Time-based Contracts).....	23
4.0	CONTRACT ADMINISTRATION PROCESS: POST-AWARD PRELIMINARY TASKS.....	33
4.1	Introduction	33
4.2	Contract Administration Planning (Policies, Systems and Procedures).....	33
4.3	Inception meeting(s).....	34
4.4	Verification of Advance Payment Guarantee	34
4.5	Verification of Insurance Policies.....	34
4.6	Contract Administration Plan (CAP).....	35
4.6.1	Main Elements of a Contract Administration Plan	35
4.6.2	Examples of Contract Administration Plan Elements for a Consultancy Service Contract .	36
4.7	Managing the Contract Checklist.....	41
5.0	MONITORING CONTRACT PERFORMANCE & REPORTING.....	43
5.1	Introduction	43
5.2	Time control.....	43
5.3	Quality and Quantity Control.....	43
5.4	Communication with Stakeholders.....	44
5.5	Resolution of Performance Problems & Contract Remedies.....	44
5.6	Processing Payments	45
5.7	Contract Modifications	46
5.8	Maintaining Documentation.....	46
5.9	Contract Reporting and Monitoring.....	47
5.10	Scheduling and holding meetings	47
5.11	Management of Securities and Insurance (if any)	47
6.0	MANAGING CONTRACT CHANGES/VARIATIONS	48

6.1	Introduction	48
6.2	Areas of Contract Changes/Variations.....	48
6.3	Types of variations	48
6.4	Issuing Contract Variations	50
6.5	Contract Variations Checklist.....	50
7.0	PAYMENTS	51
7.1	Introduction	51
7.2	Review and Approval of Payment Applications	51
7.2.1	Invoices for Services.....	52
7.2.2	Procedure for Invoices-Delivery of Payment Documentation	52
7.2.3	Receipt of Invoices	52
7.2.4	Interest on Delayed Payment	53
7.2.5	Approval of Invoices.....	53
7.2.6	Errors in Invoices.....	53
7.3	Deductions from Invoices	54
7.3.1	Types of Deductions.....	54
7.3.2	Assessment of Deduction Amounts	54
7.4	Processing of Invoices to payment	55
7.5	The GIFMIS Payment System	55
7.5.1	Introduction	55
7.5.2	GIFMIS Budget Reforms At MOF.....	58
7.5.3	GIFMIS Procure To Pay Process (P2P)	58
7.5.4	GIFMIS Detailed Business Processes.....	60
7.5.5	GIFMIS Implementation Status	64
8.0	CLAIMS & SETTLEMENT OF DISPUTES.....	66
8.1	Introduction	66
8.2	Claims	66
8.3	Disputes	66
8.4	Contract Provisions	67
8.5	Dispute Avoidance	67
8.6	Contract Condition	67
8.7	Dispute Management	68
8.8	Dispute Resolution Procedures.....	68

8.8.1	Negotiation	68
8.8.2	Alternative Dispute Resolution (ADR) Procedures.....	69
8.8.3	Arbitration.....	71
8.8.4	Litigation	73
9.0	TERMINATION OF CONTRACT	74
9.1	Introduction	74
9.2	Termination for Default	74
9.2.1	Termination for Default Notifications.....	75
9.2.2	Notice of Termination	75
9.3	Termination for Unlawful Acts.....	75
9.4	Termination for Insolvency of Consultant	76
9.5	Termination of Contract by Consultant	76
9.6	Termination for Convenience	76
9.10	Contingency Planning.....	77
10.0	CONTRACT RECORDS MANAGEMENT.....	78
10.1	Introduction	78
10.1.1	What Is Records Management?.....	78
10.1.2	Importance of Records.....	78
10.1.3	Procurement and Contract Records	78
10.1.4	Benefits of Good Records Management.....	79
10.1.5	Principles of Good Records Management	79
10.1.6	Consequences of Failure to Maintain Adequate Procurement Records	80
10.1.7	The Records Life Cycle.....	80
10.1.8	Opening a New File	81
10.1.9	Filing of Papers.....	81
10.1.10	File Movement Controls.....	81
10.1.11	Closing a File.....	82
10.1.12	Records Accommodation/Space	82
10.1.13	Equipment.....	82
10.1.14	Records Personnel	83
10.2	Contract Administration File and Documentation.....	83
10.2.1	Contracts Register	84
10.2.2	Separate Contract Files	84

10.2.3	Contract Sub-files.....	84
10.3	Automation of Records Management (Electronic Records Management)	84
10.3.1	Benefits of Automation.....	85
10.3.2	Records Management Functions That Can Be Automated.....	85
10.3.3	E-mail	85
10.3.4	Digitization (Imaging/Scanning).....	85
10.3.5	Challenges in the Management of Electronic Records	86
11.0	EVALUATION OF CONTRACT PERFORMANCE	88
11.1	Introduction	88
11.2	Evaluation of Consultant Performance	88
11.3	Evaluation of Management/Supervision of Contract	89
11.4	Evaluation Processes.....	90
11.5	Evaluation checklist.....	91
11.6	Contract Review.....	91
11.7	Case Study: Evaluation Shapes Next Contract	92
12.0	POST IMPLEMENTATION TASKS.....	93
12.1	Introduction	93
12.2	Warranties in Consultancy Contracts	93
12.3	Contract Close-out	93
13.0	MAIN RISKS IN CONSULTANCY CONTRACTS	95
13.1	Introduction	95
13.2	General.....	95
13.3	Time-based contracts.....	95
13.4	Lump sum contracts.....	95
	REFERENCES.....	96
	APPENDIX 1 -TEMPLATES.....	98

LIST OF FIGURES

Figure 1: Institutional Arrangements for Contract Administration in Ghana	13
Figure 2: Organization of Principal Procurement Bodies/Structures For Contract Administration	14
Figure 3: Procure To Pay Process.....	59

LIST OF TABLES

Table 1: Example of Contract Deliverables.....	37
Table 2: Contract Schedule/Milestones	38

Table 3: Table 3: Work /Activity Schedule	40
Table 4: Risk Factors & Remedial Actions for a Consultancy Contract	41

LIST OF ABBREVIATIONS/ACRONYMS

AAA	American Arbitration Association
ADR	Alternative Dispute Resolution
AISCC	Arbitration Institute of the Stockholm Chamber of Commerce
AGP	Auditor-General’s Department
APG	Advance Payment Guarantee
BG	Bank Guarantee
BL	Bill of Lading
CA	Contract Administrator
CAP	Contract Administration Plan
CAR	Contract Administration Records
CAM	Contract Administration Manual
CAGD	Controller & Accountant General’s Department
CGGL	Central Government General Ledger
CC	Contract Close-out
COA	Chart of Accounts
CRM	Contract Reporting and Monitoring
CS	Counterpart Staff
CSC	Consultancy Services Contract
CPC	Criminal Procedure Code 1960(Act 30)
CPR	Contract Performance and Reporting
CVC	Contract Variations Checklist
DANIDA	Danish International Development Agency
DFID	Department for International Development
DF	Donor Funds
DR	Dispute Resolution
DRP	Dispute Resolution Procedures
EFT	Electronic Funds Transfer
ERMS	Electronic Records Management Strategy
ERP	Enterprise Resource Planning
ETC	Entity Tender Committee
EU	European Commission
FC	Forms of Contract
FBS	Fixed-Budget Selection
FM	Force Majeure
GoG	Government of Ghana
GCC	General Conditions of Contract
GIFMIS	Ghana Integrated Financial Management Information System
HRMIS	Human Resource Management Information System
HS	Health and Safety
ICC	International Chamber of Commerce
ICT	Information & Communication Technology
IDP	Interest on Delayed Payments

IFIs	International Financing Institutions
IGF's	Internally Generated Fund
INCOTERMS	International Commercial Terms of the International Chamber of Commerce
ISO	International Organization for Standardization
IPPD	Integrated Personnel and Payroll Database
JV	Joint Venture
LD	Liquidated Damages
LCIA	London Court of International Arbitration
LCS	Least-Cost Selections
LSC	Lump Sum (Firm Fixed Price) Contract
LSP	Lump Sum Payments
MDAs	Ministries, Department and Agencies
MJAGD	Ministry of Justice & Attorney-General's Department
MoF	Ministry of Finance
NITA	National Information Technology Agency
NT	Notice of Termination
OAP	Oracle Accounts Payable
OCM	Oracle Cash Management
OPO	Oracle Purchase Ordering
PAA	Public Anti-corruption Agencies
PE	Procuring Entity
PC	Percentage Contract
PPA	Public Procurement Authority
PCAPT	Post Contract-Award Preliminary Tasks
PE	Procurement/Procuring Entity
PFM	Public Financial Management
PM	Project Manager
PSC	Public Services Commission
PO	Purchase Order
PRAAD	Public Records and Archives Administration Department
PRM	Procurement Records Management
PV	Payment Voucher
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
SCC	Special Conditions of Contract
SEC	Selection and Employment of Consultants
SFC	Standard Forms of Contract
SRA	Stores Receipt Advice
STDs	Standard Tender Documents
TBC	Time-Based Contracts
TD	Tender document
TC	Termination of Contract
TIN	Tax Payer Identification Numbering
TL	Team Leader
TM	Training Modules
TOR	Terms of reference
ToT	Training of Trainers

TP	Time-based Payments
UNCITRAL	United Nations Commission on International Trade Law
WB	World Bank

GLOSSARY OF TERMS

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

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

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

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

INTRODUCTION

Background

Since the establishment of the Public Procurement Authority (PPA) as a result of the promulgation of the Public Procurement Act, 2003 (Act 663) as amended, it has instituted a number of pragmatic and far-reaching initiatives aimed at ensuring maximum returns for the tax-payers' money. Despite these laudable efforts, the annual procurement 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 Consultancy 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 Consultancy Services-3

The Manual covers contract administration for the provision of consultancy services for the post-award phase. The period commences from signing of the contract agreement by both Client and Consultant 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 Manual on Consultancy Services-3

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

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

- ❖ 4.0: Contract Administration Process: Post-Award Preliminary Tasks
- ❖ 5.0: Monitoring Contract Performance & Reporting
- ❖ 6.0: Managing Contract Changes/Variations
- ❖ 7.0: Payment
- ❖ 8.0: Claims & Settlement of Disputes
- ❖ 9.0: Termination of Contract
- ❖ 10.0: Contract Records Management
- ❖ 11.0: Evaluation of Contract Performance
- ❖ 12.0: Post Implementation Tasks
- ❖ 13.0: Main Risks and Red Flags in Consultancy Contracts

Exceptions to the Manual

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

Forms/Templates

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

1.0 CONTRACT PRINCIPLES

1.1 Introduction

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

1.2 Contract –Definition

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

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

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

1.3 Essential Elements of a Valid Contract

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

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

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

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

1.4 Formation of a Contract

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

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

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

1.5 The Law Applicable to a Contract

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

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

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

1.6 The Nature and Types of Consultancy Services

Consultancy Services are services which are of an 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. They are knowledge-based and the outputs are usually in the form of reports. The absence of any concrete, “hard” deliverables (like in the case of goods or civil works) puts many Clients in difficulty when managing these types of contracts.

The types of consultancy services in public procurement include the following:

- Sector, Feasibility Studies.
- Preparation of Tender documents.
- Construction Supervision.
- Project Management.
- Procurement Assistance.
- Reorganization/Privatization.
- Institutional Building.
- Social and Environmental Studies
- Training and Knowledge Transfer
- Management Advice

1.7 Types of Contracts for Consultancy Services

Different types of contracts are used for consultancy services depending on the type and complexity of the assignment and related tasks. The characteristics of different types of consultancy contracts are explained in the following paragraphs. Some of these contracts (the most used ones) have corresponding Standard Tender Documents (STD's) while the other less used contract types have not.

i. Lump Sum (Firm Fixed Price) Contract

Lump sum contracts are used when the assignment is precisely defined - scope, staff weeks, input and output, and duration. The amount is normally not too high, and the risk of contingency activities is low. They will be typically used under Quality and Cost Based Selection (QCBS), Fixed-Budget Selection (FBS) and Least-Cost Selection (LCS) methods.

The main characteristics of this type of contract is that the price is fixed, and that payments will be based on one or several Lump Sum amounts based on delivery of specified outputs, for example submission of reports and documents, delivery of training sessions, etc. These contracts are therefore easy to manage; however, the rigidity of payment terms may result in dispute when the performance or obligation of one or both parties is considered by the other party as non-satisfactory with regard to timely delivery and/or quality of input or output.

Examples of Lump Sum contract assignments are: Simple feasibility studies, Environment studies, Preparation of Tender documents/Request for Proposals, Data processing, Clearly defined strategy and management studies, and Detailed design of standard structures.

The Public Procurement Authority (PPA) has developed standard forms of contract with General Conditions and Special Conditions of Contract for use by Procurement Entities in the public sector. These are:

- a) Standard and Sample Contract for Consultancy Services (Large Assignments, Lump sum Payments)
- b) Standard and Sample Contract for Consultancy Services (Small Assignments, Time-Based Payments)

The above forms of contract are fully explained in Session 4 of this Module.

ii. Time-Based Contract

Time based contracts are used when the assignment is complex; for instance when the scope cannot be sufficiently defined or several options can be envisaged during the execution under successive phases, or when the duration cannot be determined, like in supervision of works, or for the implementation of large training programs, etc. They will typically be used under Quality Based Selection (QBS) but also under QCBS for long duration assignments or assignments including different types of phases -e.g. design, preparation of tender documents, and implementation supervision.

The main characteristics of these types of contract are that the price - which includes specified unit rates for staff salaries, allowances and reimbursables - is not fixed, although it normally will be subject to a ceiling amount, including contingencies. Payments will be made against regular invoices -e.g. monthly, covering actual expenses based on the contractual factors. The contract may also include provision for price adjustments, as appropriate. These contracts are more complex to administer by both parties, since, the Consultant will have to keep a strict record of activities, and the Client will need close monitoring of the performance of the assignment. However, these contracts also allow more flexibility in their execution.

Examples of Time-Based contract assignments are: Country economic, sector or investment studies, Complex feasibility studies, Design of complex projects, Supervision of construction works, Large-scale Training Assignments, and other complex advisory services.

The Public Procurement Authority (PPA) has also developed standard forms of contract with General Conditions and Special Conditions of Contract for use by Procurement Entities in the public sector. These are:

- a) Standard and Sample Contract for Consultancy Services (Large Assignments, Time-Based Payments)
- b) Standard and Sample Contract for Consultancy Services (Small Assignments, Time-Based Payments)

They are fully explained in Chapter 4 of this Manual.

iii. Retainer and/or Contingency (Success) Fee Contract

This type of contract is used in the cases of financial services and it is based on a retainer fee and a success fee. In these contracts the Client would finance the retainer fee, but not the success fee which will be paid from the amount obtained from the transaction.

In the cases of operation and management contracts, the price and payment terms are also based on a fixed remuneration, reimbursable and success fee. However, the provisions regarding the scope of services, rights and obligations of both parties are more complex, and the calculations of the success fee is based on detailed calculation of monitored performance.

When those types of contract have to be prepared, it is recommended that the assistance of a specialized legal expert is sought.

Examples of Retainer and/or Contingency (Success) Fee Contract assignments are: Privatization operations, Financial sector Reforms, Valuation and sale of government shares, etc.

iv. Percentage Contract

These contracts are typically used in the cases of the use of procurement and inspection agents, as well as for architectural services. Since the Consultant's remuneration is based on a percentage of the cost of the activities carried out -e.g. the annual amount of goods procured or inspected, it is important that the scope of services and the level of expertise required have to be clearly specified, otherwise there could be abuse of invoicing by the Consultant. When those parameters are clearly defined, those contracts are easy to manage for both parties. Typical examples of assignments where this contract is applicable are Procurement of goods by Procurement Agents/Consultants, Inspection of goods and, in some instances, Architectural designs.

v. Indefinite Delivery Contract (Price Agreement)

These contracts are used in the cases of services delivery, provided by a "contractor" who makes available "on call" the services of advisers or experts for a certain amount of time. This may also cover a type of after sale services where repairs and maintenance would be provided by the Supplier, his agent or a contractor. The provisions in the contract will have to specify these parameters, like type of expertise and availability requirements. The contract may include a type of retainer fee plus payment for the costs of services actually provided based on unit rates to be paid to the expert. Examples of assignments where this type of contract is applicable is Medical services (where doctors are on call) and Maintenance services (where technical experts are on call).

1.8 Factors Affecting the Choice of Contract Type

Some of the general factors, which may affect or influence the choice of a consultancy contract type by a Client or Procurement Entity, are:

- the nature and complexity of the consultancy services (for instance, when the scope cannot be sufficiently defined or several options can be envisaged during the execution under successive phases, or when the duration cannot be determined, like in supervision of works, etc.);
- the duration of the contract (e.g. long duration assignments or short-term assignments, etc.);
- the degree of definition of the consultancy services and the element of risk/uncertainty (e.g. definition of the tasks to be performed is clear and unambiguous, when the commercial risks to be taken by the Consultant are relatively low);
- the financial resources available and /or budget constraints;
- the previous experience of the Client in a particular type of contract, and
- the practices and procedures of the associated funding agencies, and the degree of compliance required with their Standard Request for Proposals (SRFP)

1.9 General Principles for Contracts

The following general principles apply to contracts:

- The terms of contract must be precise, definite and without any ambiguities.
- Standard forms of contracts should be adopted wherever possible, if not, legal and financial advice should be sought in drafting the clauses.
- Price variation clause to be provided only in long-term contracts, where the delivery period extends 18 months.

- The contract should also contain the mode and terms of payment.
- The terms of a contract, including the scope and specification once entered into, should not be materially varied.
- All contracts shall contain a provision for recovery of liquidated damages for defaults on the part of the service provider.
- A warranty clause should be incorporated in the contract
- Suitable provision for settlement of disputes shall be incorporated into the contract.

2.0 BASICS OF CONTRACT ADMINISTRATION

2.1 Introduction

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

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

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

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

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

Nature of Contract Management and Administration

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

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

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

³ UN Handbook on Procurement, 2006

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

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

2.2 Objectives of Contract Administration

The main objectives of Contract Administration are:

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

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

2.4 The Benefits of Good Contract Administration

Effective contract administration will provide the following benefits:

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

2.5 Summary of Main Tasks of Contract Administration

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

2.6 Important Parties in a Consultancy Service Contract

The important parties in a consultancy contract are the Client and the Consultant

- **The Client**

The Client is the Procurement 'Entity conducting public procurement under Act 663 as Amended.' The Procurement Entity engages a Consultant to provide advisory services in order to fulfill a need. The output of the Consultant is usually in the form of a report, drawing or plan.

- ***The Consultant***

A ‘Consultant means a person, natural or corporate, dealing in the provision of services including consultancy services’.

The Consultant can be one or more individuals, partnerships, public or privately-owned corporate bodies, non-profit organizations and universities, providing one or more advisory services (usually of intellectual nature) to and on behalf of the Procurement Entity in exchange for a fee or other valuable consideration.

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

2.7 Organization for Contract Administration

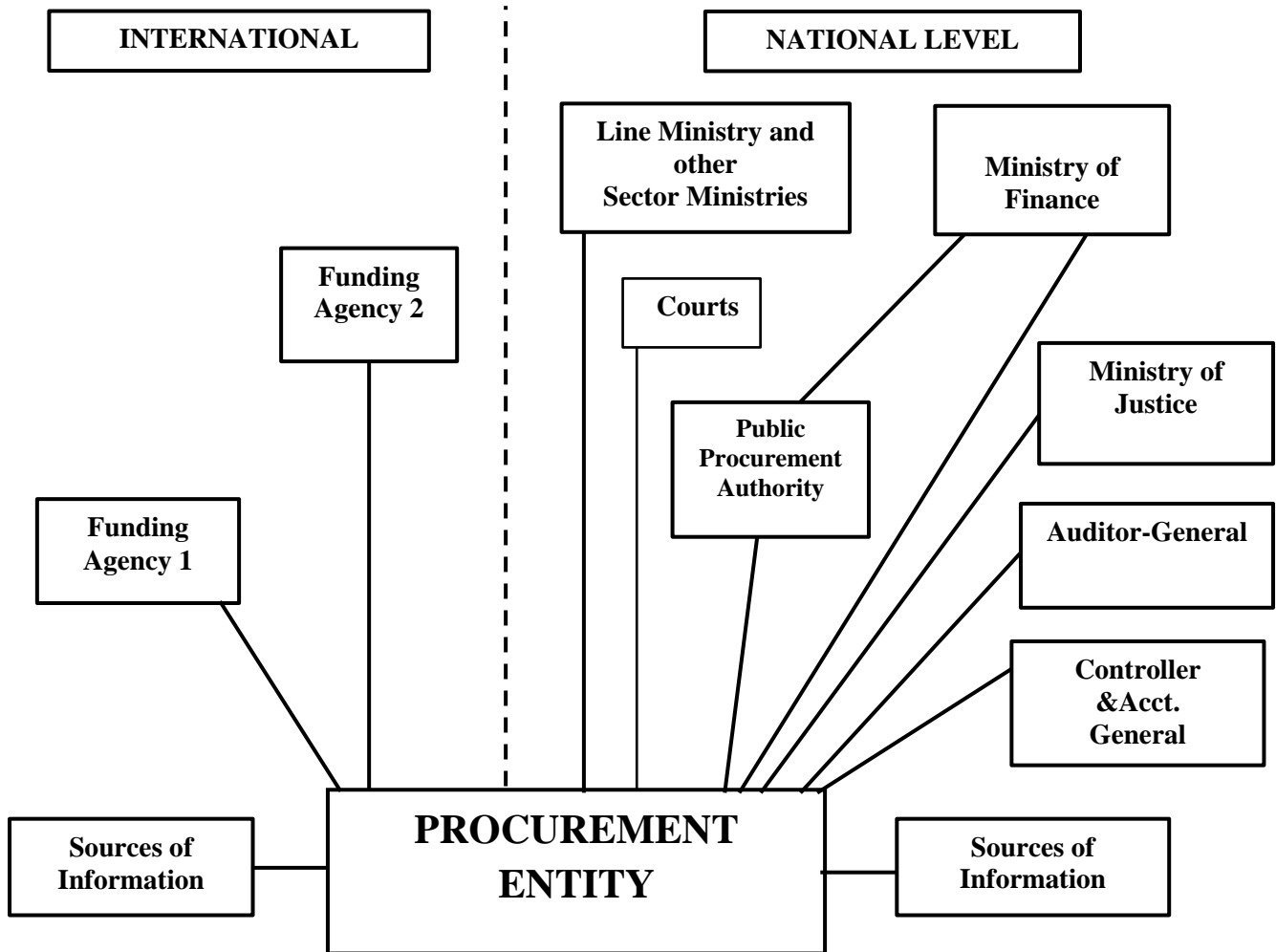
2.7.1 Legal and Institutional Arrangements for Contract Administration in Ghana

Figure 1 illustrates the current legal and institutional arrangements for Contract Administration in Ghana. The figure displays the coordination and reporting obligations of the Procurement Entity at 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 Procurement Entity
- The Line Ministry and other Sector Ministries
- The Ministry of Finance (MoF)
- The Auditor-General’s Department
- The Controller & Accountant General’s Department (CAGD)
- The Ministry of Justice & Attorney-General’s Department
- The Public Procurement Authority(PPA)
- The Courts

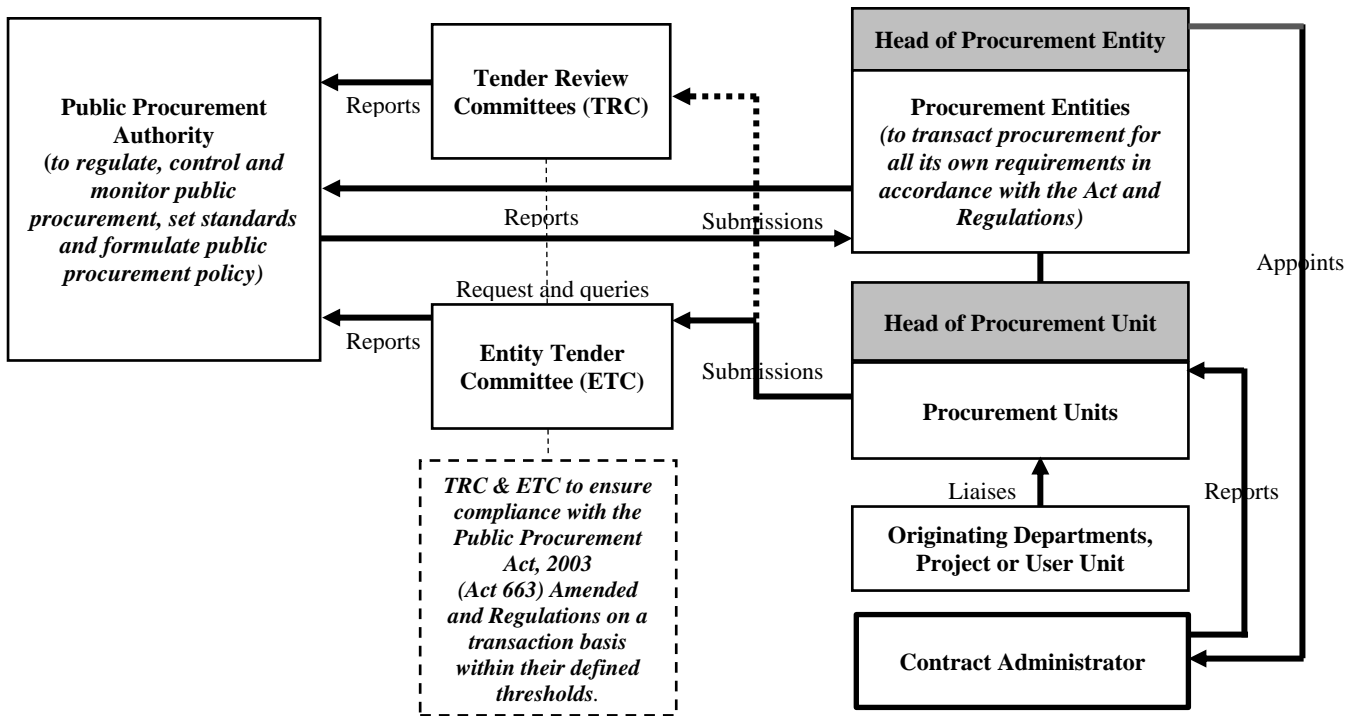
Figure 1: Institutional Arrangements for Contract Administration in Ghana
[Reporting & Coordination Obligations of the Procurement Entity]



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

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

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



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

The Public Procurement Authority

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

The Tender Review Committees and the Entity Tender Committees

The role of the Tender Review Committees and the Entity Tender Committees is to ensure compliance with the Public Procurement Act, 2003 (Act 663) 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.

2.7.3 Contract Administration Organization for Consultancy Services

There must be one person who will serve as the primary contact in the Procurement Entity for administering a consultancy contract, and that person is called the Contract Administrator, Assignment Coordinator or Project Manager as in most Consultancy Engineering firms. It is important that the Consultant gets direction from only one person for day-to-day matters involving plan reviews, deliverables, schedules, etc., to avoid conflicting directions and to establish the authority of that one person. It is equally important that this one person be accountable for and have the authority to administer those 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 staff in the contract administration process will vary from one to many depending on the size, level of risk and complexity of the contract. Early in the procurement process, there is the need to identify the Contract Administrator and those who are to assist him/her; this will allow for roles and responsibilities to be assigned.

It is worth noting that in most consultancy assignments, the Assignment Coordinator, acting as the Contract Administrator can handle all responsibilities with the support of an Assistant.

2.8 Responsibilities of the Contract Administrator

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

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

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

2.9 Skills of the Contract Administrator

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

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

2.10 Poor and/or Fraudulent Contract Administration

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

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

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

The most frequent causes of badly managed contracts are often linked

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

Poor capacity, while dangerous for the contract implementation, can be remedied through continuous and intensive training (both formal and on-the-job); hiring staff with the appropriate expertise and experience; and through close supervision. Consequently, the negative effect of

lack of capacity can be successfully mitigated, especially if the issue of capacity is addressed at an early stage during contract implementation.

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

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

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

2.11 Fraud and Corruption in Contract Implementation

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

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

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

As part of international best practices, guidelines and tender documents of international financing institutions as well as national procurement systems have provisions which require Consultants and their agents to observe the highest standard of ethics during execution of contracts. The following forms of corrupt and fraudulent practices are defined here for the attention of Consultants:

- a) “**Coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to influence the actions of

a party in connection with the implementation of any contract supported, in whole or in part, including such actions taken in connection with the execution of a contract,

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

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

The most frequent cases of fraud and corruption involve:

- Scope of the contract is not achieved (works not completed, goods and services not delivered), although the money has been spent;
- Unjustified variations and change requests granted by the client;

- Products/works/services are substituted by inferior, less expensive and lower quality ones than specified in the contracts;
- Unapproved replacement of key personnel or replacement of key personnel with less qualified staff.
- The Client 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.

Possible Indicators of Corruption:

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

1. frequent change orders /variation requests especially with regard to items with high rates and prices;
2. requests for subcontracting, especially to firms that took part in the selection process and were rejected or offered higher prices;
3. failure to report any deviations from the contract;
4. substitution of Consultants by less qualified or inexperienced replacements;
5. failure to use proper project management tools – Consultants might avoid using standard project management tools (e.g. GANTT charts, Microsoft Project, etc.) in order to hide cost overruns and make actual progress of work impossible to determine;
6. poor filing and records keeping (missing invoices, timesheets, logs, deliverables, supporting documents etc.).

Remedial and pro-active Actions:

- Maintain close control on the Project Manager / Engineer (permanent contact, spot checks, site visits, issues log, inspection and control logbook etc.);
- Enforce a relevant and comprehensive reporting system (monthly, quarterly, by milestone etc.) to monitor closely all aspects that are important for contract administration: actual vs. planned progress (both quantity and quality); timeliness of deliverables; quality of inputs and outputs etc.;
- Enforce internal audit procedures, four eyes principle (particularly with regard to the actual verification of invoices and supporting documents).The person approving the payment should not be involved in the verification of payment documents (separation of duties and responsibilities);
- Penalize promptly any failure to report delays, cost overruns, variation orders, use of substandard materials and workmanship, deviations from the technical specifications and any leniency towards the Consultants;
- Enforce all applicable and reasonable contract remedies – liquidated damages for delays or for non-compliance; remedies against the insurance policies and performance securities, etc.;

However, all these precautionary measures should not be interpreted as instigations to abuse the contract mechanisms and remedies against the contractors. Overzealous and abusive contract 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 Consultant into agreeing to kickbacks or other kinds of informal payment.

2.11 Conflicts of Interest

The Consultant shall not have a conflict of interest. All Consultants, found to have a conflict of interest shall be disqualified, unless the conflict of interest has been mitigated and the mitigation is approved by the Public Procurement Authority or the Procurement Entity. The Procurement Entity requires that Consultants hold its interest's 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 Consultant, including all parties constituting the Consultant and any agents or sub-consultants for any part of the contract, including related services, and their respective personnel and affiliates may be considered to have a conflict of interest in terms of Conflicting activities, Conflicting assignments and Conflicting relationships and in the case of a Consultant, the Contract may be terminated.

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

Examples of Conflict of Interest situations:

- While under contract on a consultancy assignment for the preparation or implementation of a project, consultants specify equipment or design works in such a way as to create favourable competing conditions for themselves or their affiliates in the procurement process of such equipment or works.
- The consultants supervise the contract implementation of works executed by a firm with which they are affiliated.
- A consultant who has advised an MDA on the privatization of a state-owned enterprise advises the potential purchasers of such enterprise.
- Consultants propose their services for, or accept, an assignment for which they have prepared the Terms of Reference (TOR) under a prior assignment.
- The consultant competing for an assignment has a family or a business relation with a member of the client's staff involved in the selection process for that assignment.
- A consultant nominates a client employee as key staff in its technical proposal.

3.0 FORMS OF CONSULTANCY SERVICES CONTRACT

3.1 Introduction

There are various forms of consultancy services contracts. This chapter identifies the set of documents that comprises a consultancy service contract and explains the types of PPA Standard Forms of Contract, including the General Conditions of Contract and Special Conditions of Contract.

3.2 Basic Documentation for Consultancy Services Contract

This comprises a set of documents that constitutes the contract between the Procurement Entity and the Consultant in such a way as to minimize misunderstanding. The documents include:

- The Form of Contract- the actual document signed by both parties
- General Conditions Of Contract
- Special Conditions Of Contract
- Terms of reference
- Work plan
- Breakdown of Contract Price & Schedules of Rates
- Minutes of any relevant meetings, such as Contract Negotiations, and/or letters which have been exchanged;
- Curricula vitae of key staff selected to carry out the assignment;
- Specimens of securities or bonds
- Staff schedule

3.3 Standard Forms of Contract for Consultancy Services

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

- Standard Form of contract for Large Assignments Lump Sum Payments.
- Standard Form of contract for Large Assignments Time-based Payments.
- Standard Form of contract for Small Assignments Lump Sum Payments.
- Standard Form of contract for Small Assignments Time-based Payments.

The difference between the large and small assignments is that the small assignments have their forms of contract combined or integrated with the conditions of contract. Furthermore, in the case of the small assignments, the conditions of contract are not separated into General and Special Conditions of Contract as can be found in the large value assignment documents.

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

A typical Form of Contract for Large Assignments Time-based Payments is presented below.

SECTION I: CONTRACT FORM

TIME-BASED PAYMENTS

(Text in brackets [] is optional; all notes should be deleted in the final text)

This CONTRACT (hereinafter called the “Contract”) is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Procurement Entity]* (hereinafter called the “Client”) and, on the other hand, *[name of Consultant]* (hereinafter called the “Consultant”).

[Note: If the Consultant consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Client”) and, on the other hand, a Joint Venture (name of the JV) consisting of the following entities, each member of which will be jointly and severally liable to the Client for all the Consultant’s obligations under this Contract, namely, *[name of member]* and *[name of member]* (hereinafter called the “Consultant”).] ”

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the “Services”);
- (b) the Consultant, having represented to the Client that it has the required professional skills, expertise and financial resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- (c) The Client intends to apply a portion of his budgetary allocation/local/credit/grant/financing] to eligible payments under the contract.

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a) Section II: The General Conditions of Contract;
 - (b) Section III: The Special Conditions of Contract;
 - (c) Appendices:
 - Appendix A: Terms of Reference
 - Appendix B: Key Staff
 - Appendix C: Remuneration Cost Estimates
 - Appendix D: *[Reimbursables]* Cost Estimates
 - Appendix E: Form of Advance Payments Guarantee
 - (d) Minutes of Negotiation Meeting

In the event of any inconsistency between the documents, the following order of precedence shall prevail: the Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A; Appendix B; Appendix C and Appendix D; Appendix E. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract and abide by the provisions of the Constitution of the Republic of Ghana regarding corrupt and fraudulent practices; and
- (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

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

For and on behalf of *[Name of Client]*

[Authorized Representative of the Client – name, title and signature]

For and on behalf of *[Name of Consultant or Name of a Joint Venture]*

[Authorized Representative of the Consultant – name and signature]

[Note: For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]

For and on behalf of each of the members of the Consultant [insert the name of the Joint Venture]

[Name of the lead member]

[Authorized Representative on behalf of a Joint Venture]

[add signature blocks for each member if all are signing]

3.4 General Conditions of Contract (Time-based Contracts)

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

As there are two different forms of contract that may apply to consultancy services contracts there are two different sets of GCCs. The Contract Administrator needs to be aware of this to ensure that each contract is reviewed to ascertain the GCC that apply to the contract in question. The GCC for each type of contract will differ slightly depending on whether the contract is a Lump Sum contract type or a Time-based contract.

The General Conditions of Contract for Large Assignments Time-based contract is discussed below.

SECTION II: GENERAL CONDITIONS OF CONTRACT

A. General Provisions

1. Definitions

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

2. Relationship between the Parties

This clause defines the relationship between the parties to the contract as not being a master and servant one. The Consultant, subject to this Contract, has complete charge of the Staff and sub-Consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf.

3. Law Governing the Contract

This clause confirms the law of the contract which is stated in the SCC. The Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law. Legal advice should always be sought in respect of any issues relating to the law applicable to the contract that the laws of Ghana are applicable.

4. Language

This clause defines the language of the contract but the detail is contained in the SCC.

English, the official language of the Republic of Ghana, shall be the binding and controlling language for all matters relating to the meaning or interpretation of the Contract.

5. Headings

The headings shall not limit, alter or affect the meaning of the Contract.

6. Communications

This clause explains how the two contracted parties are to formally communicate. The emphasis is on the addresses of the parties as detailed in the SCC. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.

7. Location

This clause defines the location that the services are to be provided. The Services shall be performed at such locations as are specified in an Appendix hereto or at such locations as the Employer may approve.

8. Authority of Member in Charge

This clause provides for one member to have the authority to speak and act on behalf of a Joint Venture, including without limitation the receiving of instructions and payments from the Procurement Entity/Client, and is specified in the SCC.

9. Authorized Representative

This clause provides the name, title and address of the official of each party authorized to commit actions under the contract, as specified in the SCC.

10. Commissions and Fees

The Client requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract.

11. Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract, except under specified conditions.

B. Contract Commencement, Completion, Modification and Termination

The sub-clauses are summarized below:

12. Effective date of Contract

This clause specifies the date that the Contract shall come into force and effect (i.e. the “Effective Date”). The effectiveness conditions will be stated in the SCC.

13. Termination of Contract for failure to become effective

This clause specifies that if the contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, within a period of written notice to the other Party, declare the Contract to be null and void.

14. Commencement of Services

The Consultant shall confirm availability of Key Staff and begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC.

15. Intended Completion Date

It states that the Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

16. Entire Agreement

This clause confirms that the Contract contains all covenants, stipulations and provisions agreed by the Parties and no agent or representative of either Party has authority to do anything outside the contract.

17. Modifications or variations

This specifies that any modification or variation of the terms and conditions of the Contract, may only be made by written agreement between the Parties.

18. Force Majeure

The contract includes a clause of **force majeure protecting** both parties from certain risks/events which are beyond the control and /or prior knowledge of either party, and have major consequences for contract performance. The related clause specifies the meaning of "Force Majeure" and the procedure and measures to be taken in such circumstance.

19. Suspension

This clause specifies conditions under which the Procurement Entity/Client may suspend all payments to the Consultant. The Contract Administrator needs to be aware of these provisions in case there is a need to suspend a contract.

20. Termination

This clause provides procedural details for the termination of contract by the Client and also by the Consultant. The Contract Administrator needs to appreciate the mechanism that is agreed in the contract for the termination of the contract.

C. Obligations of the Consultant

This section details the Consultant's obligations in the performance of the contract.

21. General

21.(1-3) Standard of Performance

This clause defines the criteria and standards of work required of the Consultant.

It is essential that the Contract Administrator is aware of the provisions of this clause as it will impact on the acceptability of the deliverables presented to the Client.

21.(4-6) Law Applicable to Services

This clause states the law that is applicable to the services provided. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Staff and Sub-consultants, comply with the Applicable Law.

22. Conflict of Interests

This clause defines the restriction that will apply to the Consultant to ensure that no Conflicts of Interest occur and covers Consultant Not to Benefit from Commissions, Discounts, Consultant and Affiliates Not to Engage in Certain Activities, Prohibition of Conflicting Activities and Strict Duty to Disclose Conflicting Activities.

23. Confidentiality

This clause states the requirement for confidentiality required of the Consultant.

24. Liability of the Consultant

This clause defines the limit of liability of the Consultant in the performance of the contract. Additional provisions, if any, are set forth in the **SCC**.

25. Insurance to be Taken out by the Consultant

This clause defines the insurance coverage that the Consultant is required to take out for the period of the contract as specified in the **SCC**.

26. Accounting, Inspection and Auditing

The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs. The Consultant shall permit and shall cause its Sub-consultants to permit, the Client and/or persons appointed by the Client to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Client if requested by the Client.

27. Labour Laws

The clause stipulates that the Consultant shall comply with all the relevant labour laws applicable in Ghana, including laws relating to workers employment, working hours, health, safety, welfare, and immigration and shall allow them all their legal rights.

28. Health and Safety

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

29. Protection of the Environment

The Consultant shall at all times observe the laws and regulations regarding the protection of the environment.

30. Consultant's Actions Requiring Client's Prior Approval

This clause lists the Consultant's actions that will require the Client's prior approval. Additional actions can be further listed in the SCC.

31. Reporting Obligations

This clause places an obligation on the Consultant to provide the reports that are required. The clause refers to Appendix A of the contract which lists all reports required.

32. Proprietary Rights of the Employer in Reports and Records

Unless otherwise indicated in the SCC, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Employer.

33. Equipment, Vehicles and Materials

Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Employer's instructions.

Any equipment or materials brought by the Consultant or its Staff into the country for the use either for the project or personal use shall remain the property of the Consultant or the Staff concerned, as applicable.

34. Liquidated Damages

The Consultant shall pay liquidated damages to the Client at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. Payment of liquidated damages shall not affect the Consultants' liabilities.

35. Correction for Over-payment

If the Intended Completion Date is extended after liquidated damages have been paid, the Client shall correct any overpayment of liquidated damages by the Consultant by adjusting the next payment certificate

D. Consultant's Staff and Sub-Consultants

36. Description of Key Staff

The title, agreed job description, minimum qualification and time-input estimates to carry out the Services of each of the Consultant's Key Staff are described in Appendix B.

37. Replacement of Key Staff

Except as the Client may otherwise agree in writing, no changes shall be made in the Key Staff. The substitution of Key Staff during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

38. Approval of Additional Key Staff

This clause specifies how additional Key Staff of the Consultant can be engaged to carry out the Services for the Client.

39. Removal of Staff or Sub-consultants

If the Client finds that any of the Staff or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Client determine that Consultant's Expert or Sub-consultant have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.

40. Replacement or Removal of Staff – Impact on Payments

This clause places responsibility of the replacement or removal of staff on the Consultant.

41. Working Hours, Overtime, Leave, etc.

Working hours and holidays for Staff are set forth in Appendix B.

E. Obligations of the Employer

42. Assistance and Exemptions

This clause specifies various forms of assistance the Client will offer to the Consultant in respect of exemptions, subject to the SCC.

43. Access to Project Site

This clause warrants free access to project site by the Consultant

44. Change in the Applicable Law Related to Taxes and Duties

This clause deals with changes in the law (particularly that relating to changes in taxes and duties) after contract signature and how such changes should be reflected in the contract.

45. Services, Facilities and Property of the Client

The Client shall make available to the Consultant, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Appendix A**) at the times and in the manner specified in said **Appendix A**.

46. Counterpart staff

The Client shall make available to the Consultant free of charge such professional and support counterpart staff, to be nominated by the Employer with the Consultant's advice, if specified in **Appendix A**.

47. Timely Responses by Employer

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

The Consultant shall be entitled to compensation if the agreed Contract duration is exceeded due to delays by the Client. The compensation shall be subject to negotiations between the Consultant and the Client.

48. Payment Obligation

In consideration of the Services performed by the Consultant under this Contract, the Client shall make such payments to the Consultant and in such manner as is provided by **GCC F**.

F. Payments to the Consultant

49. Ceiling Amount

This clause defines the maximum amount payable under the contract

50. Remuneration and Reimbursable Expenses

This clause specifies the remuneration and reimbursable rates to paid under the contract. It is essential that the Contract Administrator is aware of the details of the clause to be able to recommend approval of invoices and claims for payment.

51. Taxes and Duties

The Consultant, Sub-consultants and Staff are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the SCC.

52. Currency of Payment

Any payment under this Contract shall be made in the currency (ies) specified in the SCC.

53. Mode of Billing and Payment

This clause specifies the mode of payments and the whole mechanism for payments that are to be made.

54. Interest on Delayed Payments

If the Client had delayed payments beyond fifteen (15) days after the due date stated in Clause **GCC 53.1 (c)**, interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the **SCC**.

G. Good Faith

55. Good Faith

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

H. Settlement of Disputes

56. Amicable Settlement

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

57. Dispute Resolution

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

SECTION III: SPECIAL CONDITIONS OF CONTRACT

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

- i. Communications (GCC 6.1)
- ii. Authority of Member in Charge (GCC 8.1)
- iii. Authorized Representatives (GCC 9.1)
- iv. Effective date of Contract (GCC 12.1)
- v. Termination of Contract for Failure to Become Effective (GCC 13.1)
- vi. Commencement of Services (GCC 14.1)
- vii. Intended Completion Date (GCC 15.1)
- viii. Conflict of Interests- Consultant and Affiliates Not to Engage in Certain Activities (GCC 21.3)
- ix. Liability of the Consultant (GCC 24.1)
- x. Insurance to be taken out by the Consultant (GCC 25.1)
- xi. Health and Safety (GCC 28.4)
- xii. Consultants' Actions Requiring Client's Prior Approval (GCC 30.1c)
- xiii. Proprietary Rights of the Client in Reports and Records (GCC 32.1, 32.2)
- xiv. Liquidated Damages (GCC 34.1)
- xv. Assistance and Exemptions (GCC 42.1g)
- xvi. Ceiling Amount (GCC 49.2)
- xvii. Remuneration and Reimbursable Expense (GCC 50.4)
- xviii. Taxes and Duties (GCC 51.1, 51.2)
- xix. Currency of Payment (GCC 52.1)
- xx. Mode of Billing and Payment (GCC 53.1)
- xxi. Interest on Delayed Payments (GCC 54.1)
- xxii. Dispute Resolution (GCC 57.1)

Appendix A – Terms of Reference

[Note: This Appendix shall include the final Terms of Reference (ToR) worked out by the Client and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements; Client's input, including counterpart personnel assigned by the Client to work on the Consultant's team; specific tasks that require prior approval by the Client.

Insert the text based on the Section 5 (Terms of Reference) of the ITC in the RFP and modified based on the Technical Proposal Forms 3A through 3H in the Consultant's Proposal. Highlight the changes to Section 5 of the RFP]

If the Services consist of or include the supervision of civil works, the following action that require prior approval of the Client shall be added to the "Reporting Requirements" section of the TORs: Taking any action under a civil works contract designating the Consultant as "Engineer", for which action, pursuant to such civil works contract, the written approval of the Client is required.]

Appendix B - Key Staff

[Insert a table based on Form 3F of the Consultant’s Technical Proposal and finalized at the Contract’s negotiations. Attach the CVs (updated and signed by the respective Key Staff) demonstrating the qualifications of Key Staff.]

[Specify Hours of Work for Key Staff: List here the hours of work for Key Staff; travel time to/ from the Client’s country; entitlement, if any, to leave pay; public holidays in the Client’s country that may affect Consultant’s work; etc. Make sure there is consistency with Form 3I. In particular: one month equals twenty-two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.]

Appendix C – Remuneration Cost Estimates

1. Monthly rates for the Staff:

[Insert the table with the remuneration rates. The table shall be based on *[Form 4D]* of the Consultant’s Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to *[Form 4D]* at the negotiations or state that none has been made.]

4.0 CONTRACT ADMINISTRATION PROCESS: POST-AWARD PRELIMINARY TASKS

4.1 Introduction

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

4.2 Contract Administration Planning (Policies, Systems and Procedures)

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

- i. Assigning detailed tasks to the individual or the team responsible with the specific duties during the contract administration process. This would be equivalent to creating job descriptions for everyone involved. The tasks assigned to each individual should be precise and realistic (taking into account the specific experience, expertise and workload of each staff). For example, the procurement specialist should know that he/she would be responsible for keeping track of the main contract milestones (effective date; deadlines for deliverables etc.); the technical expert should be conversant with the conditions of contract (particularly with regard to the Terms of Reference and deliverables);
- ii. Establishing internal procedures (hierarchy, communication, level of authority, flow of documents, verification and acceptance procedures, payment procedures, internal audit etc.);
- iii. Evaluation of main risks associated with the implementation of the contract and identification of the main remedies or mitigation measures, as well as the parties responsible with their enforcement;
Risks to achieving contract objectives must be identified and treatments for addressing them must be developed for implementation. Treatments may be effected through contract provisions and through active management of the contract. A key issue to be considered is the level of risk assumed by each party to a contract;
- iv. Coordination arrangements with third parties (other agencies, end users, beneficiaries etc.), especially when the consultancy services are contracted on behalf of end users (e.g. training).
- v. Development of procedure for keeping track of the contract's price adjustment mechanism(if any);
- vi. Development of contract administration plan and milestones
(See section 4.6 below for full details)

4.3 Inception meeting(s)

An inception or commencement meeting with the Consultant is critical at the start of the assignment/project. The Contract Administrator or Client's Coordinator and the rest of Client's staff involved in contract supervision should be present. If the services are contracted for a group of end users, their representatives should also be present.

Critical issues to be established during the kick-off meeting include:

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

4.4 Verification of Advance Payment Guarantee

The Contract Administrator must verify the bank guarantee for Advance Payment in respect of the following:

- Amount;
- Validity;
- Issuing bank and certified signatures;
- Unacceptable deviations/conditions.

A major difference between Lump sum and Time-based contracts is the regime of the advance payment. In Lump sum contracts the advance payment is a milestone in the payment schedule and no actual recovery must be done from future payments. However, in time-based contracts the amount of the Advance Payment must be recovered from subsequent payments as per the contract clauses.

4.5 Verification of Insurance Policies

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

- Coverage;

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

In the case of complex consultancy assignments, where consultant’s professional responsibility is critical (complex design, studies etc.), particular attention should be paid to the consultant’s professional liability insurance policy.

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

4.6 Contract Administration Plan (CAP)

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

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

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

4.6.1 Main Elements of a Contract Administration Plan

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

Deliverables

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

Schedules

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

Finances

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

Work Plan

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

Risk Management

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

4.6.2 Examples of Contract Administration Plan Elements for a Consultancy Service Contract

1. Contract Deliverables.

Examples of contract deliverables are given in Table 1 below.

Table 1: Example of Contract Deliverables.

No.	Name of report	Content	Time of submission
1.	Inception Report	Analysis of existing situation and work plan for the project	Not later than 1 week after the start of implementation
2.	Report on review of Training Manuals	Report on review of Materials to serve as basis for further work.	Not later than 2 weeks after the acceptance of the inception report.
3.	Submission of Training Modules	Modular arrangement of Manuals to facilitate training.	Not later than 4 weeks after the acceptance of the review report
4.	Training of Trainers	Testing of Modules at seminars with prospective Trainers.	Not later than 2 weeks after the acceptance of the training modules
5.	Final Report	Short description of achievements including problems encountered and recommendations;	Within 3 weeks after the Training of Trainers

2a. Schedules

A schedule of milestones from a consultancy contract is presented in Table 2 below.

Table 2: Contract Schedule/Milestones

No.	Milestone/Deliverable	Target Date	Revised Date	Actual Date
1.	Start Date/Inception Meeting	e.g. 15 January, 20...		
2.	Draft Inception Report	26 January, 20...		
3.	Revised Inception Report	10 February, 20...		
4.	Draft Report on Review of Contract Administration Manuals.	27 February, 20...		
5.	Revised Report on Review of Contract Administration Manuals	23 March, 20...		
6.	Draft Training Modules on Contract Administration	22 April, 20...		
7.	Revised Training Modules on Contract Administration	4 June, 20...		
8.	Stakeholder Validation Workshop	8 June, 20...		
9.	Final Training Modules on Contract Administration	18 June, 20...		
10.	Draft Training Plan	25 June, 20...		
11.	Revised Training Plan	14 July, 20...		
12.	Training of Trainers Workshop	21 July, 20...		
13.	Draft Training of Trainers Report	28 July, 20...		
14.	Revised Training of Trainers Report	13 August, 20...		
15.	Draft Assignment Report	19 August, 20...		
16.	Final Assignment Report	4 Sept, 20...		

2(b) Key Milestones of a Contract for Consultancy Services

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

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

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

3. Finances

Typical Payment Terms

The payment schedule for the assignment is as follows:

- 10% - upon submission of Inception Report
- 20% - upon submission of Report on review of Contract Management Manuals.
- 30% - upon submission of Training Modules
- 20%--completion of Training of Trainers
- 20%--upon submission and acceptance of Final Report.

Payments will only be made upon Client's acceptance of deliverables in terms of quality and quantity specified.

4. Work Plan

A typical work/activity schedule culled from a Consultant's proposal is presented in Table 3 below.

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

Table 3: Table 3: Work /Activity Schedule

NO.	DELIVERABLES	WEEKS												TOTAL
		1	2	3	4	5	6	7	8	9	10	11	12	
D1	Inception Report													1 Week
	1) Meeting with Client													
	2) Preliminary Review of Relevant Documents													
	3) Design of Data Collection Instruments													
	4) Prepare and Submit Inception Report													
D2	Report on Review of Training Manuals													3 Weeks
	1) Conduct limited consultations with identified stakeholders													
	2) Undertake a comprehensive review of the contract management manuals													
	3) Incorporate Client's comments													
D3	Training Modules													4 Weeks
	1) Develop training modules													
	2) Incorporate Client's comments													
	3) Hold stakeholders' validation workshop													
	4) Incorporate stakeholders' comments													
D4	Training Plan													1 Week
	1) Prepare Training Plan													
	2) Incorporate Client's comments													
D5	Training of Trainers													1 Week
	1) Facilitate TOT Session													
	2) Prepare TOT Report													
D6	Final Assignment Report													2 Weeks
	1) Prepare Final Report													
	2) Incorporate Client's comments and submit													
	TOTAL													12 Weeks

5. Risk Management

Presented in Table 4 are examples of Risk Factors & Remedial Actions for a Consultancy Contract

Table 4: Risk Factors & Remedial Actions for a Consultancy Contract

No.	Risk Factors	Remedial Actions
1.	Loss of key Consultant personnel	<ul style="list-style-type: none"> Promptly arrange with Consultant for replacement in accordance with contract terms and conditions.
2.	Failure of Consultant to meet standards of quality.	<ul style="list-style-type: none"> Meet with Consultant and draw his attention. Document proceedings. Specify/emphasize quality requirements. Seek remedy to reports.
3.	Delays in assignment execution	<ul style="list-style-type: none"> Draw Consultant's attention to the delays. Serve notice to invoke liquidated damages clause, if any. Make references to clauses on suspension of work and contract termination
4.	Natural disasters	<ul style="list-style-type: none"> Apply Force Majeure clause and monitor situation closely.
5.	Financial insolvency(Consultant)	<ul style="list-style-type: none"> Terminate contract in accordance with contract provisions.
6.	Delays in payments to the Consultant	<ul style="list-style-type: none"> Consultant to draw Contract Administrator's attention to overdue payment. Consultant to submit claims for interest on delayed payment.

4.7 Managing the Contract Checklist

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

Contract commencement

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

Ongoing Management

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

Contract Extension/Renewal

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

Ending the Contract

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

5.0 MONITORING CONTRACT PERFORMANCE & REPORTING

5.1 Introduction

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

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

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

5.2 Time control

This has to do with compliance with the contract milestones (submission of deliverables, reports etc.) and actions to speed up progress and ensure compliance with contractual time for completion of the assignment. The contract milestones presented in Section 4.6 should help in exercising time control.

5.3 Quality and Quantity Control

i. Deviation of deliverables from the specific requirements of the Terms of Reference.

In the absence of performance security in consultancy contracts, the only actual remedy available to the Client is the rejection of the deliverables and reports submitted by the Consultant. The rejection is justified when the deliverables deviate from the specific requirements of the Terms of Reference in relation to quality of content and presentation.

Notice of rejection or rejection of non-conforming deliverables and reports should be advised in writing to the Consultant as soon as the Client conclusively determines deviations from the contract's requirements as per the terms of reference. Quality conformance is provided for in the contract, usually under terms of payment, whereby payment is conditional to acceptance of deliverables by the Client.

Erroneous or faulty acceptance of deliverable (except for fraud or latent defects) impose severe limitations on the Contracting Authority's rights or choices to invoke remedies.

Check also for the ***quantity of deliverables and reports***. Note that a shortfall in the number or quantity of deliverables and reports submitted by the Consultant will not constitute sufficient grounds for rejection. In such cases, the Consultant must be asked to provide the additional copies.

ii. Dissatisfaction with the Performance of certain Key Staff

If the Client is dissatisfied with the performance of certain key staff, it has the right to request the Consultant to replace the respective staff with a more experienced and qualified substitute. However, this practice should not be abused and must be restricted to those situations in which the Client has sufficient grounds to make such a request.

iii. Lump Sum Contracts

In the implementation of a Lump sum contract, the Client has no control on the actual input of the Consultant. If the Consultant has duly and timely submitted all requested deliverables, then all due payments should be made regardless of any other consideration (e.g. Consultant's key staff did not spend as much time as the Client wanted in the field, etc.). This is one of the reasons why the choice of the most appropriate type of contract is very important and must be aligned with the nature of the assignment.

5.4 Communication with Stakeholders

The effective management of a Procurement Entity's activities requires establishing and maintaining open and constructive lines of communication with internal and external stakeholders.

Senior managers are important internal stakeholders who will require periodic assurance that the Procurement Entity's policies are being adhered to and that its reporting and accountability responsibilities are being met. In this regard, better practice entities will have:

- clearly articulated contract reporting and accountability responsibilities, including the individual and/or work areas with primary responsibility for meeting these responsibilities;
- incorporated reporting of its compliance with these requirements into its regular management reporting regime; and
- included the oversight of compliance with contracting responsibilities as part of the broader legislative compliance responsibilities of the Procurement Entity's Audit function.

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

Such arrangements could be expected to include:

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

5.5 Resolution of Performance Problems & Contract Remedies

When problems arise during the implementation of consultancy assignments, the Procurement Entity should discuss these with the Consultant with the intention of reaching an agreement on solutions. When the Procurement Entity identifies a problem with the Consultant's performance, it must decide what action is appropriate. The Procurement Entity can follow a three-step procedure to resolve performance problems:

- First, the Procurement Entity discusses the problem with the Consultant, describing the areas of the Consultant’s performance that it considers unsatisfactory; explaining the performance levels required; and directing the Consultant toward ways to improve its performance, for example by replacing experts whose performance is unsatisfactory, using additional personnel, reporting back more frequently on progress, modifying processes or systems and involving senior management from both parties in formal discussions or written communications. The Procurement Entity documents such discussions and decisions. The Consultant is requested to formally respond with an action plan to improve performance.
- Second, if the Consultant’s performance continues to be unsatisfactory and formal contractual action appears to be necessary, the Procurement Entity may consider withholding payments until performance returns to a satisfactory level and/or suspending the consultant’s contract.
Contracts with consultancy firms can be suspended in part or in whole. The notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.
- Third, if the Consultant’s performance has not improved following suspension, the Procurement Entity may consider terminating the Consultant’s contract. When the Procurement Entity believes that the Consultant has not adequately responded to the written warning and decides to terminate the contract, it should hold consultations to decide if termination is warranted.

The Procurement Entity advises the Consultant of the decision in accordance with the provisions of the contract. The Procurement Entity is responsible for ensuring that the provisions of the contract are applied, including the steps required to terminate the contract. A summary of the remedial action required and a proposal for completing the assignment should be prepared.

5.6 Processing Payments

A sound payment system must:

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

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

5.7 Contract Modifications

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

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

5.8 Maintaining Documentation

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

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

- **Telephone logs:** Another useful aid to memory is a telephone log, which is a record of all incoming and outgoing calls. It identifies the date and time of each call, whether it was incoming or outgoing, and if outgoing, the number called. It lists all parties to the call and includes a brief notation about the discussion.

5.9 Contract Reporting and Monitoring

The timing, nature, and number of reports that the Consultant should provide are normally contained in the consultancy services contract. These may vary considerably, depending on the type of work being undertaken. If the assignment is of a routine nature over a long period (for example, implementation supervision), then monthly, quarterly, and annual progress reports may be required. On the other hand, if the assignment is to prepare a study or to implement a particular task, a more specific type of reporting may be required. This could entail, besides the inception report mentioned earlier, interim or mid-term reports, design reports, reports at the end of each phase of the work, a draft final report, and a final report. These may be provided in a number of media and formats but normally will entail hard and soft copy versions. The production or acceptance of various reports is often used as a milestone for payment under Lump-sum contracts and some Time-based contracts.

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

5.10 Scheduling and holding meetings

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

Minutes of meetings should be recorded and circulated as required.

5.11 Management of Securities and Insurance (if any)

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

6.0 MANAGING CONTRACT CHANGES/VARIATIONS

6.1 Introduction

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

The clause in the General Conditions of Contract for consultancy services states that:

‘Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party’.

6.2 Areas of Contract Changes/Variations

The changes that require contract variations/amendments in consultancy assignments include changes in the:

- Scope or implementation arrangements;
- Experts performing the services;
- Experts’ remuneration;
- TOR or staffing schedule;
- Expenses, including the addition of new expenses;
- Start or completion dates, or contract termination; and
- Contact details or remittance instructions for payments.

Changes in the experts’ remuneration always have cost implications. Changes in the scope, the implementation arrangements, the experts, their TOR, their staffing schedule or the completion date may or may not have cost implications. Contract variations without cost implications include changes in the:

- payment schedule,
- consultant’s contact details or payment remittance instructions, or
- other administrative changes.

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

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

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

6.3 Types of variations

A variation can be categorized as one of the following:

- Unavoidable Variation;

- Variation for the Convenience of the Client; Or
- Variation for the Convenience of the Consultant.

i. Unavoidable Variations

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

Examples of unavoidable variations are:

- a variation to overcome a fault (for example an error, ambiguity or inconsistency other than an omission or lack of completeness which may be the responsibility of the Consultant) in the brief or documentation which, unless it is remedied, could result in health, safety or security problems or prevent work from continuing; or
- a variation to overcome a change in statutory requirements that has occurred since tenders closed. For instance, a new government payment system-GIFMIS

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

ii. Variations for the Convenience of The Client

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

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

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

iii. Variations for the Convenience of the Consultant

Variations for the convenience of the Consultant are variations that are requested by the Consultant. They are not unavoidable variations. There is no obligation on the Procurement Entity to agree to a variation for the convenience of the Consultant. However, it may be beneficial to the project. When a request is made, it should be considered if only to maintain good contractual relationships. The Consultant should be required to provide sufficient detail to permit proper evaluation.

Variations for the convenience of the Consultant are not to be instructed until the full impacts

have been agreed and the Consultant has taken responsibility for ensuring there are no adverse impacts on the rest of the work.

6.4 Issuing Contract Variations

The formal method of making and documenting a change in the consultancy services contract is through a contract variation. Contract variations are used to document agreed-upon changes in the scope of work, personnel inputs, costs, TOR, timing of the submission of reports, or out-of-pocket expenditures. There are few consultancy services contracts of any type that do not require a contract variation at one time or another. Normally, these relate to changes that have a cost implication, but when there is a significant change in the timing of an activity or a particular output, these should also be recorded through a contract variation. Normally, the request for contract variation is prepared by the Consultant or consultancy firm and submitted to the Client for approval. If the variation entails an increase in the contract amount, prior written approval is required.

One common type of variation involves a change of personnel. Sometimes a change of personnel is unavoidable because of resignation, illness, accident, inadequate performance, or personality conflict. When personnel are to be replaced, certain factors need to be considered:

- Any replacement should be as well qualified or better qualified than the person being replaced.
- Under Quality and Cost Based Selection (QCBS), Fixed Budget Selection (FBS), and Least Cost Selection (LCS), the same remuneration will apply to the replacement as was agreed upon for the person being replaced.
- The Consultant should bear all costs arising out of or incidental to the replacement (such as airfares for the substitute expert).

6.5 Contract Variations Checklist

Key issues to consider in managing contract variations include:

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

7.0 PAYMENTS

7.1 Introduction

A consultancy contract requires the Consultant to perform the tasks under the scope of services to meet the standards specified in the contract. In return, the Client or Procurement Entity has an obligation to pay the Consultant for the services provided within a specified period of time. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under Lump sum contracts). Payments for advances, if any, should normally be backed by Bank Guarantee.

Payment must be made promptly in accordance with the terms of the contract since late payment entitles the Consultant to claim interest charges.

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

7.2 Review and Approval of Payment Applications

In consideration of the services performed by the Consultant under the Contract, the Client/Procurement Entity shall make such payments to the Consultant and in such manner as is provided by the **GCC and SCC**.

The payment terms for Donor funded projects may be different from the standard GOG payment terms and will be stipulated in the contract.

A major difference to note between Time-based and Lump sum contracts is that Lump sum contracts are paid solely on the basis of acceptance of deliverables, with no actual verification of the inputs used by the Consultants.

Conversely, payments under time-based contracts should be made only after due verification of all supporting documents (reports, timesheets, invoices, receipts etc.).

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

- i. Well-established mechanism for the verification and approval of payment documents – internal audit, four eyes principle (i.e. the transaction must be approved by at least two people as a form of control mechanism) etc.
- ii. Verification of professional rates, actual time spent (for remuneration and per diems), unit prices and quantities (for reimbursable expenditures);
- iii. Verification of supporting documents in time-based contracts (timesheets, reports, invoices, receipts etc.) – ensure that the dates on flight tickets match the days claimed for per diems and professional time spent in the field ;
- iv. Ensure that the appropriate recovery of the advance payment has been deducted from the payment (only in the case of time-based contracts);
- v. Check if the requested amounts have not been already paid;

- vi. Verification of invoices (correct name, address, identification information and bank account of the payee);
- vii. Check if the payee's information in the invoice is the same as in the contract and previous payments;
- viii. Check if the payment request fits the payment schedule/milestones in the contract;
- ix. Availability of funds and applicable payment method (payment from Special Account; Direct Payment etc.).

7.2.1 Invoices for Services

Invoices for Services normally contain the following details:

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

The invoice will, depending on the scope of the contract, be for the provision of the contracted services. The invoice may be in respect of:

- Stage payments that are permitted under the contract (usually a Lump Sum Contract);
or
- For Consultant's fees for time spent on the project and for reimbursable costs (usually for a Time-based contract).

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

7.2.2 Procedure for Invoices-Delivery of Payment Documentation

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

7.2.3 Receipt of Invoices

All correspondence received by the Procurement Entity should be stamped on arrival with the date and preferably the time of receipt. This is particularly important with invoices as the date of receipt determines the latest date of payment.

All invoices and any form of payment requests received by the Procurement Entity should initially be forwarded to the Finance/Accounts Department.

The Finance/Accounts Department of the Procurement Entity will record receipt and pass all invoices in respect of procurement to the Contract Administrator to certify to pay the invoices.

7.2.4 Interest on Delayed Payment

Some contracts make provision for the Consultant to be compensated with interest as a result of delay in receiving payments due from the Procurement Entity. Where this is specified in the contract, it should be paid in accordance with the contract provisions.

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

7.2.5 Approval of Invoices

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

- The purpose of invoice certification is to confirm that:
 - the invoice is correct in accordance with the contract and that there is no contractual reason to prevent timely and prompt payment of the invoice to the Consultant.
- The scope and method of invoice certification will include the following to ensure:
 - the correct contract milestone has been reached and have been applied to the invoice or the correct fees and reimbursables are correct and permissible according to the contract;
 - the correct contract unit prices have been applied to the invoice for services provided
 - the correct extension of actual quantities supplied and correct contract unit prices have been applied to the invoice;
 - the line item totals have been correctly totalled;
 - the correct percentage has been applied to the value of the invoice. (In cases where stage payment terms of the contract have been agreed (i.e. 10% advance payment, a 80% against provision of services and 10% against acceptance of the Deliverables), then the correct percentage must be applied to the invoice for the milestone that is claimed for); and
 - the invoice is in all other respects correct and accurate and in accordance with the contract.

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

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

7.2.6 Errors in Invoices

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

- the incorrect amounts/sums or quantities being invoiced for,

- the incorrect application of unit prices;
- calculation errors in the invoice;
- incorrect payment term percentage applied to the value of the services supplied.
- Payment claimed for a contract milestone not reached or verified.

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

7.3 Deductions from Invoices

7.3.1 Types of Deductions

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

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

7.3.2 Assessment of Deduction Amounts

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

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

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

the contract. It would be unreasonable to withhold payment on any invoice where only a portion is in dispute.

7.4 Processing of Invoices to payment

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

7.5 The GIFMIS Payment System

7.5.1 Introduction

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

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

Implementation of GIFMIS and Government Directive

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

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

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

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

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

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

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

What is PFM System?

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

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

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

What Is GIFMIS?

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

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

PFM Definition of GIFMIS (PFM Act 2016, (Act 921) Section102)

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

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

Aims of GIFMIS

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

Why GIFMIS?

- Lack of timely, accurate and current information on budgetary allocations, commitments and actual revenue and expenditures

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

Expected Outcome of GIFMIS

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

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

GIFMIS Financial Modules

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

Key PFM Problems Being Addressed By GIFMIS

1. Lack of interface/integration of various PFM Systems
2. Inadequate budgetary controls over public expenditure
3. Lack of transparency in budget execution
4. Poor record keeping on public financial transactions
5. Undue delays in processing transactions due to cumbersome manual processes

6. Lack of reliable data for effective fiscal planning due to weak accounting and fiscal reporting system
7. Delays in financial reporting, especially at the National level

Key Users of GIFMIS

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

7.5.2 GIFMIS Budget Reforms At MOF

The key budget reform initiatives under the GIFMIS include:

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

Budget Preparation

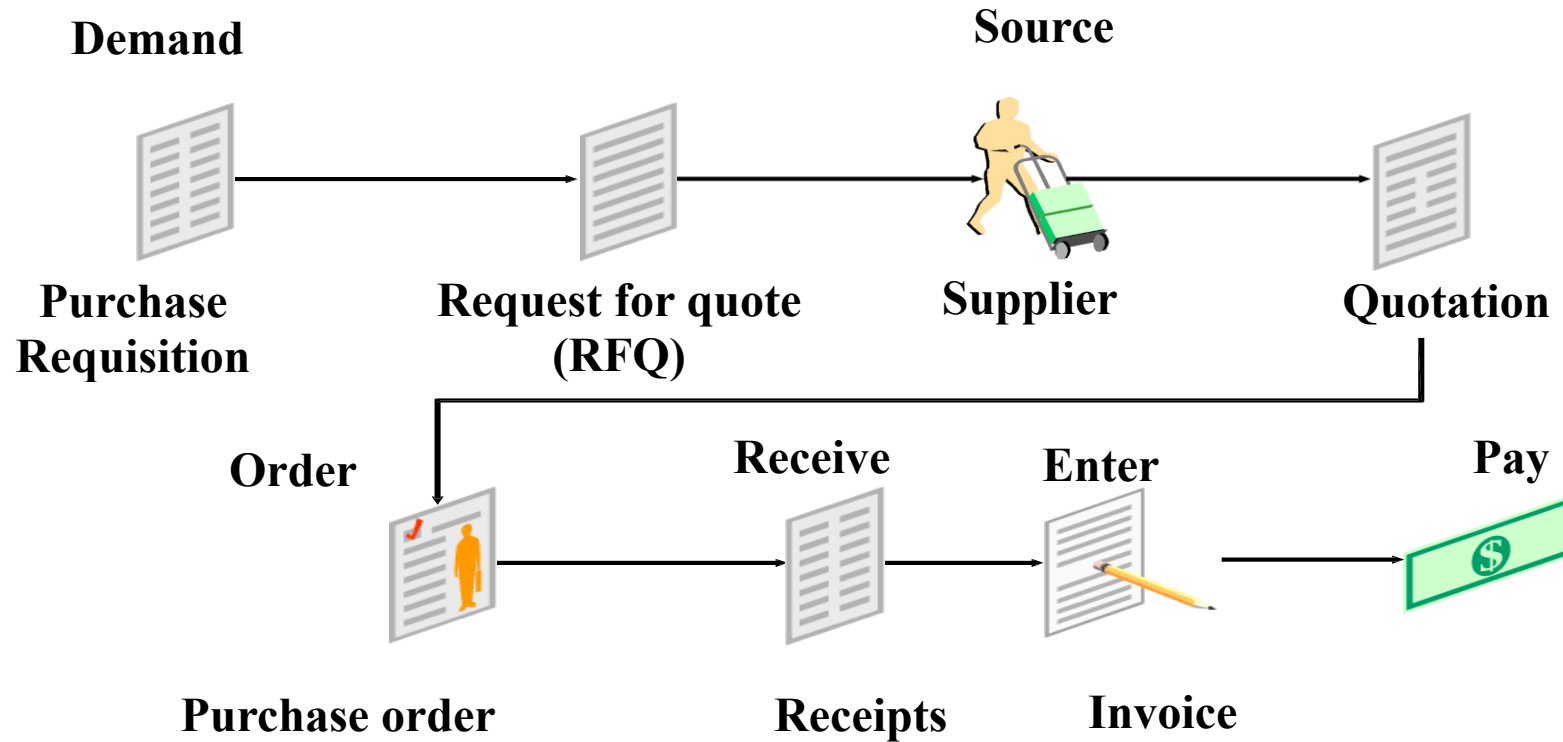
The budget preparation steps include:

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

7.5.3 GIFMIS Procure To Pay Process (P2P)

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

Figure 3: Procure To Pay Process



Summary of GIFMIS Business Processes (P2P)

The Standard Processes are:

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

The expenditure processes include:

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

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

7.5.4 GIFMIS Detailed Business Processes

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

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

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

Expenditure Process (P2P)

Type of Purchase Orders on GIFMIS

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

- 1. Standard Purchase Orders:** You generally create standard purchase orders for one-time purchase of various items. You create standard purchase orders when you know the details of the goods or services you require, estimated costs, quantities, delivery schedules, and accounting distributions. If you use encumbrance accounting, the purchase order may be encumbered since the required information is known.
- 2. Contract Purchase Orders:** You create contract purchase agreements with your suppliers to agree on specific terms and conditions without indicating the goods and services that you will be purchasing. You can later issue standard purchase orders referencing your contracts, and you can encumber these purchase orders if you use encumbrance accounting.

3. Planned Purchase Order

- a) A planned purchase order is a long-term agreement committing to buy items or services from a single source. You must specify tentative delivery schedules and all details for goods or services that you want to buy, including charge account, quantities, and estimated cost.

- b) You can issue scheduled releases against a planned purchase order to place the actual orders. **If you use encumbrance accounting, you can use the planned purchase order to reserve funds for long term agreements.**
You can also change the accounting distributions on each release and the system will reverse the encumbrance for the planned purchase order and create a new encumbrance for the release.

4. Blanket Purchase Agreements

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

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

Preparation of Store Receipt Advice (SRA) on GIFMIS

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

Setting up of Suppliers

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

Company details

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

Supplier Bank Details:

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

NB.

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

Definition and Scope of Fixed Assets for MDAs/MMDAs

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

The GIFMIS Fixed Assets Module

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

Implementation Strategy

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

- Major (Motor Vehicles)
- Minor (Salon Cars)
- Mapping of Fixed Assets Categories to Natural Accounts which are used to prepare Appropriation Budget.

- FA has been deployed to the following MDAs
CAGD ,MOF, MOH, MWRWH, MTR

7.5.5 GIFMIS Implementation Status

1. Systems Set-ups

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

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

Additional hardware and software are being installed for enhancement

2. System Rollout

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

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

3. System Maintenance

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

Next Steps

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

Some Challenges

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

8.0 CLAIMS & SETTLEMENT OF DISPUTES

8.1 Introduction

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

8.2 Claims

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

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

Any claim should include:

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

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

Contracts cannot be closed out until all claims are resolved.

Lessons learned

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

8.3 Disputes

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

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

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

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

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

8.4 Contract Provisions

There are two clauses in the contract on the settlement of disputes. These are GCC Clause 56 and GCC Clause 57.

GCC Clause 56.1—56.2 Amicable Settlement

This clause states: “The Parties shall seek to resolve any dispute amicably by mutual consultation. If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, **GCC Clause 57** shall apply”.

GCC Clause 57.1-Dispute Resolution

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

8.5 Dispute Avoidance

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

8.6 Contract Condition

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

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

8.7 Dispute Management

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

8.8 Dispute Resolution Procedures

The four main categories of dispute resolution are:

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

8.8.1 Negotiation

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

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

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

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

Techniques for initiating negotiated techniques to a dispute include:

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

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

Advantages

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

Disadvantages may be that:

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

8.8.2 Alternative Dispute Resolution (ADR) Procedures

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

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

Mediation

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

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

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

Adjudication

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

Dispute Review Board/Dispute Advisor

This is a more formalized version of mediation.

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

Advantages of ADR

The advantages of using an ADR procedure include:

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

8.8.3 Arbitration

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

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

Using Arbitration Procedures

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

Appointment of Arbitrator

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

Rules of Arbitration

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

Jurisdiction of Arbitrator(s)

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

Arbitrators' Fees and Awards

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

Rights of Appeal

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

Arbitration in International Contract

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

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

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

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

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

Merits and Demerits of Arbitration**Merits**

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

Demerits

- Selection of experts
- Expensive
- Enforceability of the decision

8.8.4 Litigation

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

Merits and Demerits of Court Action**Merits**

- Available to every body
- Free process

Demerits

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

9.0 TERMINATION OF CONTRACT

9.1 Introduction

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

Termination may be initiated by any party. A contract may be terminated under distinct processes: Termination for Default, Termination for Insolvency of Consultant and Termination for Convenience.

GCC Clause 20 specifies conditions under which contract termination can be effected.

9.2 Termination for Default

The Procurement Entity may terminate a contract for default when any of the following conditions affect its implementation:

- i. Outside of *force majeure*, the Consultant fails to deliver or perform the outputs and deliverables within the period/s specified in the contract, or within any extension thereof granted by the Procurement Entity pursuant to a request made by the Consultant prior to the delay;
- ii. As a result of *force majeure*, the Consultant is unable to deliver or perform a material portion of the outputs and deliverables for a period of not less than sixty (60) calendar days after the Consultant's receipt of the notice from the Procurement Entity stating that the circumstance of *force majeure* is deemed to have ceased; or
- iii. The Consultant fails to perform any other obligation under the contract.

Termination must be undertaken within the terms and conditions of the contract document and these are spelt out in both the Standard Lump-sum Contract document and the Standard time-based Contract document. These provide for a notice period of 30 days, the payment by the Procurement Entity of any legitimate outstanding fees and costs to the Consultant and the payment of legitimate costs to return the team to their home countries, where applicable.

The Consultant shall be recommended for blacklisting. The Consultant shall be paid on a *quantum meruit* basis. The Procurement Entity will not be liable for payment to the Consultant costs related

to the terminated portion of the work or any work performed or costs incurred after the effective date of termination.

Critical factors to consider prior to making a termination for default decision include:

- i. Has the Procurement Entity done everything within reason to assist the Consultant in curing or remedying any default?
- ii. The provisions of the contract and applicable regulations.
- iii. The specific contractual failure(s) and the explanation provided for the failures.
- iv. The urgency of the need for the contracted services. The Procurement Entity may need to weigh the respective benefits and/or disadvantages of allowing a delinquent Consultant to continue performance or re-engaging a new Consultant.
- v. The availability of the services from other sources and the time required to obtain them (compared to the additional time the current Consultant needs to complete the assignment).
- vi. Availability of funds and/or resources to re-engage in the event such costs cannot be recovered from the delinquent Consultant. Under a termination for default, the Procurement Entity is within its rights to demand re-engagement costs from the defaulting Consultant. Nevertheless, the Consultant may not be financially capable to finance this, or such demand may result in protracted legal action. If a Consultant is terminated for default, the Consultant is liable for actual damages and costs incurred by the state unless the contract states otherwise.

9.2.1 Termination for Default Notifications

Prior to terminating a contract for default, a cure notice should be sent to the Consultant. A cure notice is a letter provided to the Consultant that allows a period of time in days to correct or “cure” the deficiency or violation. A cure notice format/template is provided in **Appendix 2**.

9.2.2 Notice of Termination

If the Consultant fails to cure the situation or provide a satisfactory explanation as requested, the contract may be terminated. The Notice of Termination should contain the following

- i. The contract number, if any, and date of contract;
- ii. The effective date of termination;
- iii. Reference to the clause under which the contract is being terminated;
- iv. A concise, accurate statement of the facts justifying the termination; and
- v. A statement that the services being terminated may be re-procured and that the Consultant will be held liable for any additional costs incurred due to the re-engagement. Before including this statement, the contract should be reviewed to determine whether the right is available under the contract.

9.3 Termination for Unlawful Acts

The Procurement Entity may terminate the contract in case it is determined *prima facie* (with available evidence) that the Consultant has engaged, before or during the implementation of the

contract, in unlawful deeds and behaviours relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

- i. Corrupt, fraudulent, collusive and coercive practices;
- ii. Drawing up or using forged documents;
- iii. Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- iv. Any other act analogous to the foregoing.

The Consultant shall be paid on a *quantum meruit* basis.

9.4 Termination for Insolvency of Consultant

The Procurement Entity should terminate the contract if the Consultant is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Consultant, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procurement Entity and/or the Consultant.

9.5 Termination of Contract by Consultant

The Consultant may terminate its agreement with the Procurement Entity if the latter is in material breach of its obligations pursuant to the contract and has not remedied the same within sixty (60) calendar days following its receipt of the Consultant's notice specifying such breach.

The Consultant must serve a written notice to the Procurement Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination.

In cases of termination, the Procurement Entity shall return to the Consultant any securities, including insurance and unpaid claims.

9.6 Termination for Convenience

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

Any of the following circumstances may constitute sufficient grounds to terminate a contract for convenience:

- i. If physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible, as determined by the Procurement Entity;
- ii. The Procurement Entity has determined the existence of conditions that make project implementation impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in laws and government policies;

- iii. Funding for the project has been withheld or reduced by higher authorities through no fault of the Procurement Entity; or
- iv. Any circumstance analogous to the foregoing.

9.10 Contingency Planning

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

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

10.0 CONTRACT RECORDS MANAGEMENT

10.1 Introduction

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

10.1.1 What Is Records Management?

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

10.1.2 Importance of Records

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

10.1.3 Procurement and Contract Records

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

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

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

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

10.1.4 Benefits of Good Records Management

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

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

10.1.5 Principles of Good Records Management

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

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

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

10.1.6 Consequences of Failure to Maintain Adequate Procurement Records

Failure to effectively manage procurement records means:

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

10.1.7 The Records Life Cycle

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

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

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

Non-current or inactive records

These are documents that are hardly ever referred to for the conduct of business operations. Non-current records should be reviewed and appraised in order to make judgment on their further retention. Those that are selected as valuable records should be preserved in a departmental records centre or with prior arrangements transferred to the National Archives for long term preservation as archival records. Note that procurement records must be kept for at least six (6) years from the date the contract started.

10.1.8 Opening a New File

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

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

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

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

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

10.1.9 Filing of Papers

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

10.1.10 File Movement Controls

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

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

- Officers do not overstay with files issued to them.

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

A file movement register should have the following format:

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

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

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

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

10.1.11 Closing a File

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

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

10.1.12 Records Accommodation/Space

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

10.1.13 Equipment

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

- File folders of the right quality;
- Good quality shelving including both secure file cabinets and mobile bulk filing units;

- Computers and related equipment;
- Relevant software programmes;
- Office furniture; and
- Boxes-archival boxes.

10.1.14 Records Personnel

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

10.2 Contract Administration File and Documentation

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

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

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

Contract Management File/Folder

- Bid Evaluation Report and Recommendation for Contract Award
- Notification of Contract Award
- Copy of Advance Payment Guarantee, if required.
- Copy of Performance Security or Performance Bond
- Copy of Signed Contract
- Contract Administration Plan,
- Minutes of Kick-off/Commencement Meeting
- Copies of Guarantees
- Payment Certificates and supporting documents
- Claims and Disputes
- Inspection certificates-*Goods only*
- Delivery Certificates- *Goods only*
- Copies of all Correspondence between Purchaser and Supplier- *Goods only*
- Minutes of all Site Meetings-*Works only*
- Contract Supervision Reports-*Works only*
- Copies of all Correspondence between Employer and Contractor- *Works only*

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

10.2.1 Contracts Register

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

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

10.2.2 Separate Contract Files

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

10.2.3 Contract Sub-files

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

10.3 Automation of Records Management (Electronic Records Management)

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

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

10.3.1 Benefits of Automation

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

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

10.3.2 Records Management Functions That Can Be Automated

The following areas of records management can be automated:

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

10.3.3 E-mail

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

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

10.3.4 Digitization (Imaging/Scanning)

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

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

The other benefits of digitization include:

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

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

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

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

10.3.5 Challenges in the Management of Electronic Records

Some of the challenges of managing electronic records include:

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

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

11.0 EVALUATION OF CONTRACT PERFORMANCE

11.1 Introduction

Contract performance evaluation encompasses the overall performance of the contract and of the Procurement Entity's administration of the contract. The evaluation of the operation of the contract and of contract outcomes can be very useful in understanding and improving overall contract administration, improving Consultant 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 Consultant Performance

Consultant 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 Consultant's qualifications for future work.

Performance evaluation of Consultants 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 **outcome** than if the evaluation is done only at the end of the project.

Factors or criteria to evaluate Consultant'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 Consultant'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 Procurement Entity or other parties, outside the Consultant's control.

Management and suitability of project personnel

The Consultant'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 proposal for the assignment; 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 Consultant;
- need to engage another Consultant to undertake additional or remedial work; and
- extent of involvement required from the Procurement Entity to achieve the desired standard of work.

Co-operative relationships

Assessment items include:

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

11.3 Evaluation of Management/Supervision of Contract

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

Ineffective management/supervision of a contract by the Procurement Entity or Contract Administrator can obviously result in poor performance of the Consultant. Therefore, it is important for the Contract Administrator to put in place measures to monitor the performance of the Consultant 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 Client's obligations in accordance with the terms and conditions of the contract.
 - Collaborative relationship.
 - Providing Client's inputs, for instance data, as and when required.
 - Reviewing Consultant's deliverables and providing feedback on time.
 - Maintaining regular contacts with Consultant 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 Consultant; 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 Consultant; Client and end-user feedback; quality assurance reports; complaints data; and reports of any disputes.

Feedback to the Consultant

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

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

Lessons learned

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

Report to stakeholders.

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

11.5 Evaluation checklist

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

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

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

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

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

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

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

11.6 Contract Review

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

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

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

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

11.7 Case Study: Evaluation Shapes Next Contract

The following case study discusses a situation where a contract evaluation was used to improve the new contract.

An entity's IT services were provided under contract. It evaluated the operation of the existing contract, as part of preparing to issue a new request for tender. The review was conducted by the contract administrator, in conjunction with senior staff in operational roles and the Chief Financial Officer. Overall conclusions were:

- The services had been generally provided in accordance with the contract. The contract had focused on minimizing the costs of basic services at required service levels, and this had been achieved.
- There was scope for fine-tuning a number of detailed contract clauses.
- The entity had faced a number of significant changes and new requirements during the three years of the contract, and that the contract had not anticipated this. Accordingly achieving the required changes had been more difficult and expensive than desirable.
- The entity is now considering options for specifically including flexibility as an objective in the next contract.

12.0 POST IMPLEMENTATION TASKS

12.1 Introduction

Post implementation tasks in consultancy contracts involve two main issues- Warranty and Contract Close-out.

A **Warranty** is normally a promise or undertaking that the services delivered will meet the required standard. Warranty clauses govern the rights and obligations of the Consultant and the Procurement Entity in relation to defective services. They serve to promote a minimum standard of performance.

Contract Close-out is a formal process for bringing a contract to a close after completion of an assignment.

12.2 Warranties in Consultancy Contracts

In consultancy, a warranty is an assurance that the Consultant who prepared the design or undertook construction supervision for the project shall be held liable when structural defects and/or failures arise during the applicable warranty period due to faulty and/or inadequate design and specifications as well as construction supervision. It is required of a Consultant for detailed engineering design and construction supervision, but may also be incorporated as a provision of the contract for other consultancy services, as mutually agreed upon by the Consultant and the Procurement Entity.

The Consultant in a contract remains liable for performance for a longer period of time than in goods and works contracts (usually not less than 5 years). However, the liability of the Consultant is usually fixed by a ceiling amount determined in the contract corresponding to the amount of insurance cover that the Consultant can reasonably be expected to obtain for such assignments. Sometimes this amount is limited to the fee received by the Consultant or a multiple of that fee, depending on the criticality of the assignment.

12.3 Contract Close-out

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

A consultancy contract is completed when all reports have been delivered and accepted; all administrative actions have been accomplished; all Procurement Entity furnished equipment and materials have been returned; and final payment has been made to the Consultant.

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

- All deliverables, including reports have been delivered and accepted by the Procurement Entity. The Contract Administrator should compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed;
- Final payment has been made;
- All monitoring issues have been resolved
- All property inventory and ownership issues are resolved, including disposition of any equipment or licenses purchased under the contract;
- Final acceptance from the Procurement Entity has been received (if applicable); and
- Consultant is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance.
- Any deficiencies found as part of the closeout process are documented and communicated to all appropriate parties.
- Preparation of evaluation report as to the performance of the Consultant to be used as a future reference.
- Findings and lessons learned from the particular contract to be used as guidance to avoid pitfalls or shortcomings of the current contract in the future.

13.0 MAIN RISKS IN CONSULTANCY CONTRACTS

13.1 Introduction

The main risks in consultancy contracts are indicators or clues that something may go wrong in the future and therefore requires attention now. Literally it is a warning of danger.

13.2 General

- i. Except for some full-time assignments, no Consultant is fully dedicated to your Contract;
- ii. Consultants usually submit proposals for more projects at the same time, so they might end up with more work than they can handle;
- iii. Frequent requests for replacement of staff (by less qualified experts);
- iv. “Babysitting” the Consultant – wasting excessive time for making him understand the needs of the Client, the scope of assignment and the constraints;
- v. Consultants do not spend the requested time working with Client’s staff - no actual transfer of knowledge/capacity building is achieved.

13.3 Time-based contracts

- i. Because of the flexible nature of the contract, Consultants may have the tendency to slow down the progress of the assignment and seek additional time;
- ii. Consultant is over-charging, especially the “home/office” time;
- iii. Consultant tries to reallocate time from field to home/office activities;
- iv. Payments are not related to actual deliverables;
- v. Tendency of front-loading: claiming more days at the start of the assignment and delay completion once most of the money has been paid;
- vi. Use of “ghost” (non-existent) Consultants or less senior consultants;
- vii. Same Consultant charging the same professional time (same days) in two or more assignments.

13.4 Lump sum contracts

- i. Due to the inflexible nature of the contract, the scope of assignment cannot be easily modified or adapted to fit the changing needs of the Client;
- ii. When negotiating additional tasks
 - Consultant is over-estimating actual input;
 - Ensure that the rates used to calculate any additional services are the unit rates included in the contract.

REFERENCES

1. **Jorge A. Lynch T. Public Procurement & Contract Administration: A Brief Introduction. (2017).** Procurement Classroom Series, Volume No.1
2. **International Training Centre (ILO),(1999).** Training of Trainers in Public Procurement, Module III: Tendering for Goods.
3. **International Training Centre (ILO), (1999).** Training of Trainers in Public Procurement, Module IV: Tendering for Works.
4. **International Training Centre (ILO), (1999).** Training of Trainers in Public Procurement, Module V: Tendering for Services.
5. **International Training Centre (ILO), (November 2014).** Selection and Employment of Consultants in World Bank –Financed Projects: Code of Conduct, Module 4.
6. **Gosta Westring (1985)** International Procurement- A Training Manual.
7. **The World Bank (2006)** Consultancy Services Manual 2006-A Comprehensive Guide to the Selection of Consultants.
8. **Gosta Westring and George Jadoun (Rev.15th November 1996).** Public Procurement Manual.
9. **The World Bank (2011).** Manual for Contract Management Procedures in World Bank-Financed Projects in Europe and Central Asia Region.
10. **Manual of Procedures for the Procurement of Consultancy Services-Module 4**
11. **Public Procurement Oversight Authority, Kenya (December 2008).** Procurement Records Management Procedures Manual.
12. **International Training Centre (ILO) and World Bank, (July 2010).** Equipment and Works Procurement Management –Procurement Environment in World Bank –Financed Projects: Module 1.
13. **International Training Centre (ILO) and World Bank, (September 2009).** Equipment Procurement Management –The Standard Tendering Documents in World Bank – Financed Projects: EPM Module 2.
14. **International Training Centre (ILO) and World Bank, (September 2009).** Equipment Procurement Management –The Standard Bid Evaluation, Contract Award and Management: EPM Module 3.
15. **International Training Centre (ILO) and World Bank, (May 2000).** Works

Procurement Management –Bid Opening and Bid Evaluation: WPM Module 4.

- 16. International Training Centre (ILO) and World Bank, (April 2000).** Works
Procurement Management –Bid Document: Types of Works Contract: WPM Module 2.
- 17. International Training Centre (ILO) and World Bank, (May 2000).** Works
Procurement Management –The Tendering Process: Standard Tendering Documents:
WPM Module 3/1.
- 18. International Training Centre (ILO) and World Bank, (April 2000).** Works
Procurement Management –The Tendering Process: Standard Tendering Documents:
WPM Module 3/2.
- 19. International Training Centre (ILO) and World Bank, (April 2000).** Works
Procurement Management – Contract Implementation and Management: WPM Module
5.
- 20. Public Procurement Authority Accra, Ghana (Rev, January, 2015)**
Standard and Sample Contract for Consultant’s Services -Small
Assignments, Time-Based Payments.
- 20. Public Procurement Authority Accra, Ghana (Rev, January, 2015)**
Standard tender document for selection of technical service providers
- 21. Public Procurement Authority Accra, Ghana (Rev, January, 2015)**
Standard and Sample Contract for Consultant’s Services -Small
Assignments, Lump-Sum Payments.
- 22. Public Procurement Act,2003 (Act 663) Amended 2015**
- 23. Public Procurement Authority Accra, Ghana (Rev, January, 2015)** Standard
Document for request of Expression of Interest
- 24. UN Handbook on Procurement,2006**
- 25. Baily,F et al. ‘Purchasing Principles and Management’**
- 26. Jessop, D. et al. ‘Storage and Supply of Materials’**
- 27. Lyson, K. ‘Purchasing’(1996)**

APPENDIX 1 - TEMPLATES

I. TERMINATION OF CONTRACT

FORMAT/TEMPLATE FOR CURE NOTICES

[Consultant's name] is notified that the [Procurement Entity's] considers [specify failures] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days from the date of this letter, the [agency name] may terminate for default under the terms and conditions of the Termination clause of this contract. Another format for a cure notice is:

Since you have failed to perform the above referenced contract within the time required by its terms, the agency is considering terminating the contract under the provisions for default. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the questions to {agency point of contact} within 10 days from the date of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist.

Any assistance given to you on this contract or any acceptance by [Procurement Entity's name] of delinquent services will be solely for the purpose of mitigating damages, and it is not the intention of [Procurement Entity's name] to condone any delinquency or to waive any rights the [Procurement Entity's name] has under the contract.

II. CONTRACT MILESTONE CHECKLIST

Task	Original Target Date	Revised Target Date	Actual Date

III. CONTRACT PAYMENT RECORD

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

IV. **CONTRACT ADMINISTRATOR CONTRACT STATUS REPORT**
 Page ___ of ___

Contract Ref	Consultant/ Contractor	Source Funding	Contractual Dates				Physical progress %		Financial Progress				
			Contract signature Date	Commence Date	Original completion Date	Revised Completion Date	During month	Cumu lative	Curr-ency	Original Contract sum	Revised contract sum	Payments in month	Cumulative payment

V. CONSULTANT PERFORMANCE EVALUATION FORM

1. Assignment and Project Name		
2. Consultant Name and Address:		
a).....		
b).....		
.		
3. Participating Firms (if in Associations)		
4. Description of Services (brief, less than a quarter of a page)		
5. Contract Date	6. Completion Date (Actual)	
7. Original Contract Amount	8. Final Contract Amount	
9. Evaluation (see next page for details)		
Score		
<p>Rating</p> <p>5 Outstanding</p> <p>4 Very Good</p> <p>3 Good</p> <p>2 Satisfactory</p> <p>1 Poor</p>		
Explanation of Above Score (use additional sheets, if necessary)		
Name of responsible officer	Signature	Date

Consultant Performance Evaluation Checklist

The following checklist is intended to serve only as a guide. Items of the checklist of each specific assignment may substantially differ from those of this checklist, depending on the characteristics of the assignment, type of contract, and Borrower's needs and expectations.

1. Has the consultant delivered all reports and documents specified in appendix B of the contract in the form and number and within the time periods set forth in said appendix?
2. Are all reports and documents written and edited in an orderly, concise, and clear manner that makes them easily understandable?
3. Are they well-coordinated between each other?

For each report/document not fulfilling the above conditions, specify the consistency of non-compliances, the reasons that have originated those non-compliances, and their possible impact on the subsequent project phases (if applicable).

4. Has the consultant satisfied the Borrower's expectations of services quality, such as adequacy, applicability, effectiveness, sustainability, innovativeness, and impartiality?
5. Has the consultant covered the scope of work and achieved the objectives of the assignment set forth in the "Description of Services" attached to the contract?

If answers to the above question(s) are negative, provide a brief but clear explanation of the reasons why the Borrower believes that the consultant's performance has not been satisfactory. Furthermore, specify whether, during the implementation of the assignment, the Borrower has called the attention of the consultant to these issues, how the consultant has reacted, and which remedial actions were taken.

6. Has the consultant used for the execution of the assignment the agreed-on key staff listed under appendix C of the contract?

For time-based contracts, this question mainly refers to the team leader and the key staff assigned by the consultant to work in the Borrower country. For lump-sum contracts, this question mainly refers to the team leader and to the experts responsible for the main technical disciplines of the assignment, including those who have carried out short-time missions to the Borrower country.

7. If replacement of some of the originally agreed-on key staff occurred, has the consultant timely provided acceptable reasons?
8. Has the replacement key staff been always considered by the Borrower of equivalent to, or better than, the qualifications and experience of the replaced staff?
9. Have the consultant staff always adequately behaved in dealing with Borrower staff, managing Borrower's resources, respecting local habits and laws?