



**FREQUENTLY ASKED QUESTIONS
CONTRACT MANAGEMENT TO CLOSE-OUT**

No.	Question	Category	Response
1	Is contract management a function of the Procurement Department? How much of a role does the Procurement Department, User Department and the Legal Department have in contract management?	Contract Management to Close-out	<p>“Contract Management is an effective and efficient monitoring of procurement contract activities to ensure that goods, works and services are delivered in a timely manner at the agreed cost and to the specified requirements” (OPR’s General Guideline, Management and Monitoring of Procurement Contracts, p. 3).</p> <p>All contracts including purchase orders (POs) must be monitored by the User Department with the support of the Procurement Department, and the Legal Department (for specialist advice). In effectively managing major procurement projects, a project management team which comprises of personnel (at a minimum) from the User, Procurement and Legal Departments must be set-up to manage the procurement contract. The project management team would be responsible for developing a contract management plan that reflects both the technical and administrative aspects of the contract (UN Procurement Practitioner’s Handbook, 2017, p. 121-122).</p>



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			<p>The User Department or the project management team is responsible for ensuring that the goods, services or works are delivered in accordance with the agreed contractual terms and conditions, within the stipulated timelines and at the contracted price. The Procurement Department is responsible for ensuring that there is a shared understanding, distribution of responsibilities and systems and procedures are in place to monitor and control contract performance and effectively deal with potential changes and disputes. Additionally, the Finance Department has the responsibility of clearing invoices and managing budgets. (UN Procurement Practitioner’s Handbook, 2017, p. 121).</p> <p>All Departments will be responsible for maintaining records in relation to their respective responsibilities.</p>
2	With reference to the procurement cycle, if a public body is not satisfied with the performance of a supplier or contractor, should the supplier or contractor be paid prior to a report being done by the public body?	Contract Management to Close-out	Monitoring of contract performance is a key function in the contract administration process as it ensures that all involved parties are performing their duties in accordance with the contract (OPRs General Guideline, Management and Monitoring of Procurement Contracts, p. 18).



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			<p>The procurement officer must routinely oversee the management of contract administration and supplier or contractor relations, ensuring compliance with the terms and conditions of the contract, especially where said terms and conditions may diminish the value of the contract to the public body. As such, it is important that the User Department promptly inform the Procurement Department of any discrepancies or areas of dissatisfaction with a supplier or contractor’s performance under the contract.</p> <p>Where supplier or contractor performance issues arise, the public body may consider paying the non-disputed amount and retaining the disputed amount until the respective issue is resolved.</p> <p>Payments to a supplier or contractor must be made in accordance with the terms and conditions of the contract and subsequent to the requirements under the contract being fulfilled. Contractual issues relating to the performance of a supplier or contractor must be managed.</p>

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			<p>If a public body is not satisfied with the performance of a supplier or contractor under the contract, the public body must officially notify the supplier or contractor and give the supplier or contractor the opportunity to remedy the defects. In the drafting of the contract agreement, public bodies must ensure that risk management provisions (e.g. indemnity clauses, defect liability period clauses, performance bonds etc) and methods for handling contract disputes (Alternative Dispute Resolution and litigation processes) are included in its contract documents.</p> <p>Refer to the General Guidelines for Management and Monitoring of Procurement Contracts and Managing of Risks in Procurement for additional details.</p>
3	Is there a supplier or contractor evaluation programme that may be recommended?	Contract management to Close-out	<p>Each Public Body is required to develop a supplier or contractor evaluation programme.</p> <p>Public Bodies may refer to the General Guidelines on Management and Monitoring of Procurement Contracts and Procurement of Works to guide in the development of a supplier or contractor evaluation programme.</p>



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4	Would the Office propose a supplier or contactor performance model or module or evaluation sheets or templates that will assist organisations in evaluating suppliers or contractors for performance?	Contract Management to Close-out	The General Guideline, Management and Monitoring of Procurement Contracts and the General Guideline, Procurement of Works provide a framework for contract and supplier or contractor performance monitoring, the evaluation sheets and templates will be provided on the Office's website www.oprptt.org at a later date.
5	How to differentiate a variation to an existing contract from a new contract?	Contract Management to Close-out	<p>A variation may be to add, alter or omit work from the original scope (Halsbury's Laws of England)</p> <p>Variations may involve dealing with circumstances where a supplier or contractor makes a claim for additional unforeseen work or costs, or where the public body has varied its requirements from the supplier or contractor. Typical variations include: delays (excusable, non-excusable); and minor variations to the scope of work or execution conditions. (UN Procurement Practitioner's Handbook, 2017, p. 128)</p> <p>When a request for the variation of a contract agreement arises, the public body must determine whether the request for a variation is significant to the scope of works, the reason for the variation, whether it is a one-time or continuing</p>



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			<p>occurrence, the impact on the contract in terms of time and cost etc. Based on this analysis by the contract management team, a decision must be taken regarding the most effective and corrective action to address the variation within a reasonable time so as not to disrupt the performance of the contract. Any analysis of variations should be timely and “it is especially important to act promptly during the early stages of contract performance when corrective action is likely to have the greatest effect” (UN Procurement Practitioner’s Handbook, 2017, p. 126).</p> <p>If the variation would result in a significant change to the contract scope and cost, then a new procurement process should be initiated to ensure the process is fair, transparent and best value is obtained.</p>
6	Supplier or Contractor performance is subjective and dependent on the entity's standard. How would the Office guard against improper disqualification and de-listing? If a supplier or contractor is made ineligible by one public body and they	Contract Management to Close-out	<p>Supplier or Contractor performance management should not be subjective, but rather assessed in accordance with the performance of the terms and conditions of the contract.</p> <p>Further, section 58 of the Act defines ‘ineligibility list’ as “a list of suppliers or contractors who shall not participate in procurement proceedings”.</p>



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	<p>are satisfying five other contracts with five public bodies and they are ineligible, do you then stop all other contracts?</p>		<p>Section 58(3) of the Act provides that “The Office may add a supplier or contractor to the ineligibility list where the supplier or contractor— <i>(a)</i> consistently fails to provide satisfactory performance; <i>(b)</i> is found to be indulging in corrupt or fraudulent practices; or <i>(c)</i> is convicted of an offence under this Act.” Pursuant to section 59(8) “A supplier or contractor whose tender or proposal is rejected or revoked under subsection (7) shall be added to the ineligibility list, pursuant to section 58, for a period of ten (10) years following the date of rejection or revocation of his tender or proposal.”</p> <p>“Where ineligibility arises from a supplier or contractor’s failure to provide satisfactory performance (s58 (3)(a)), the supplier or contractor should be given an opportunity to rectify the issue. Further, where a public body makes a recommendation for a supplier or contractor to be placed on the ineligibility list, all documentary evidence in terms of a performance management system, to illustrate that the public body provided the supplier or contractor with</p>



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			<p>adequate opportunity to fix and manage the problem, will be required to be produced to support the public body's case. "</p> <p>Pursuant to section 58(5) "A supplier or contractor shall be accorded an adequate opportunity to be heard and to make representation before he is added to the ineligibility list."</p> <p>All other public procurement contracts being performed by that supplier or contractor will need to closely managed by the respective public bodies to completion. Thereafter, the ineligible supplier or contractor will not be able to participate in any new public procurement processes for the specified period.</p> <p>The Public Procurement and Disposal of Public Property Regulations will dictate the mechanism and manner for adding a supplier or contractor to the ineligibility list. It is proposed that a committee will be appointed to conduct such ineligibility proceedings, the composition of the ineligibility committee and procedures will be detailed or defined in the said Regulations.</p>



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7	Will the Office require entities to submit the selected contractors for specific projects periodically?	Contract Management to Close-out	<p>In keeping with section 36 of the Act, all public bodies are required to promptly publish on its website or in any other electronic format, notice of awards of procurement contracts or framework agreements, specifying the name of any supplier or contractor with whom the procurement contract or framework agreement was entered into, the goods or services to be supplied, the works to be effected and, in the case of procurement contracts, the date of the award of the contract and the contract price.</p> <p>Additionally, in keeping with section 37, of the Act, all public bodies are required to, “no later than three (3) weeks after the end of each quarter, a report of all contracts awarded during the immediately preceding quarter”.</p>