



Contract Management
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Outline



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Definitions



- **Contract Administration** - management of terms and conditions of procurement or asset disposal contracts made with contractors or suppliers after tender award ;
- **Contract period** - period between contract signing and the end of the defects liability period;
- **Procurement contract** - agreement concluded between the procuring entity and a contractor (or contractors) resulting from a tendering proceeding;

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Definitions Cont'd



- **Framework contract** - pact between a procuring entity and a selected supplier (or suppliers) identified for a definite term to supply goods works or service whose quantities and deliveries are not definable or determinable at the beginning, with a commitment to order a minimum quantity of the required goods, works, or services;

Definitions Cont'd



- **Complex and specialized contracts** - contracts where the terms and conditions of an agreement are different from standard commercial terms and conditions;
- **Contractor-** a person who enters into a procurement contract with a procuring entity, and includes the main contractor;
- **Contract Amendment** – Change of T & C of Contract
- **Contract Variation** – Change of price/Completion time/Statement of requirements

Preparation of Contracts – Section 134



- The accounting officer shall be responsible for preparation of contracts in line with the award decision.
- All contracts of a value exceeding Kenya shillings **5 billion** are cleared by the Attorney-General before they are signed.
- Each Cabinet Secretary shall regularly inform the Cabinet and national treasury of all government contracts exceeding **Kenya shillings 5 billion.**

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Preparation of Contracts – Section 134 Cont'd



- Cabinet Secretary may brief Cabinet on any other project of national importance irrespective of its value. For county government the Head of County Treasury may brief the CEC on any project of countywide interest.
- Such briefing shall not apply to contracts by Parliament and the Judiciary.

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Preparation of Contracts – Section 135



- The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties .
- The contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity and the successful tenderer.
- An Accounting officer of a procuring entity shall enter into a written contract with the person submitting the successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings.

Creation of Contracts – Section 135



- Tender Documents for procurement contracts to Constitute at minimum:
 - Contract Agreement Form
 - Tender Form
 - Price Schedule of BoQs submitted by the Tenderer
 - Schedule of Requirements
 - Technical Specifications
 - General Conditions of the Contract
 - Special Conditions of Contract
 - Notification of Award

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Publication of Contracts – Reg. 131



- An accounting officer of a procuring entity shall :
- publish and publicize all procurement contracts at its notice boards and websites within fourteen days after signing the contract; and
- report all signed contracts to the Authority within fourteen days after the end of every month in the format provided by the Authority.
- Contract shall not be signed before end of 14 days from the date of notification within tender validity period.
- The Authority shall publish on its website notices of the reports on contract awards from procuring entities.

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Publication of Contracts Cont'd



- Reporting format to include the following information:
 - name of contractor or supplier;
 - names of directors/owners/leadership
 - subject of procurement;
 - date of commencement or signing;
 - date of contract expiry or completion; and
 - contract price
 - Details of the firm awarded contract (executive order No.2 of 2018)

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Amendment or Variation of Contracts



- An amendment or a variation to a contract resulting from a procurement proceeding is effective only if:
- The variation or amendment has been approved in writing by the respective tender awarding authority within a procuring entity; and
- Any contract variations or amendments for goods, works and services shall be as follows :

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Amendment or Variation of Contracts Cont'd



- The price variation is based on the prevailing consumer price index obtained from Kenya National Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya;
- The quantity variation for goods and services does not exceed **fifteen per cent** of the original contract quantity;
- The quantity variation of works does not exceed **twenty per cent** of the original contract quantity;
- The price or quantity variation is to be executed within the period of the contract; and
- The cumulative value of all contract variations do not result in an increment of the total contract price by more than **twenty five per cent** of the original contract price.

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Amendment or Variation of Contracts Cont'd



- An Accounting Officer of a Procuring entity, on the recommendation of an evaluation committee, may approve the request for the following, which request shall be accompanied by a certificate from the tenderer making a justifications for such cost :
 - ❖ Extension of contract period;
 - ❖ Use of prime costs;
 - ❖ Use of contingencies;
 - ❖ Reimbursable costs; and
 - ❖ Use of provisional sums
- No contract price shall be varied upwards within **twelve months** from the date of the signing of the contract.

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Amendment or Variation of Contracts Cont'd



- Contract variations or amendments may either emanate from procuring entity on its own volition or from the contractor because of circumstances that were not foreseen during project design.
- Any variation request shall be reviewed by—
 - the contract implementation team as set out under section 151 of the Act for complex and specialized contracts; or
 - an evaluation committee envisaged under section 139(2) of the Act for other contracts,

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Amendment or Variation of Contracts Cont'd



- Variations shall be submitted through the head of a procurement function to accounting officer for approval.
- The extension of contract period under section 139(2)(a) of the Act where delivery is delayed shall not have a financial implication.
- Any additional funding required shall be secured and committed prior to a variation of contract under section 139(1)(a) of the Act.

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Interest on Overdue Amounts and Liquidated Damages –Sect 140



- The following shall apply with respect to delayed performance and overdue amounts owed by a procuring entity and a contractor under a contract for a procurement :
 - unless the contract provides otherwise, the procuring entity shall pay interest on the overdue amounts;
 - the contractor shall be liable to liquidated damages for delayed performance;
 - the interest and liquidated damages to be paid shall be in accordance with prevailing mean commercial lending rate as determined by Central Bank of Kenya.

Interest on Overdue Amounts and Liquidated Damages –Reg. 133



- The methods to be used for computing interest liquidated and ascertained damages is as follows :
 - Any ascertained liquidated damages shall be deducted from –
 - Amount of approved invoices due for payment
 - performance security bond
 - Damages emanate from delayed completion of works or poorly executed activities or both
 - If liquidated damages exceed the value of performance bond then the contract is terminated and the contractor shall be held responsible.

Framework Contracting- Reg.134



Pursuant to Section 141 of the Act An accounting may:

- use open tendering method to develop a list of contractors/suppliers for an award of indefinite delivery framework contracts or multiple awards of indefinite quantity framework contracts for procurement;
- enter into a framework contract for a duration not exceeding 3 years, subject to the satisfactory performance;
- enter into a framework contract with an unlimited number of suppliers or contractors; and
- ensure that the price of goods, works or services to be procured is established in the framework contract.

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Framework Contracting Cont'd



An accounting officer may enter into Framework contract where it is determined that:

- the need for the subject matter of procurement is expected to arise on a repeated basis during a given period of time;
- by virtue of the nature of the subject matter of procurement, the need for it may arise on an urgent basis during the period of the framework contract; or
- other grounds and circumstances have arisen which justify recourse to a framework contracting arrangement.

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Framework Contracting Cont'd



- The head of the procurement function shall prepare quarterly reports and submit to the accounting officer and internal auditor the report should detail
 - analysis of pattern of usage
 - procurement costs in relation to the prevailing market cost
 - any recommendations
- The conditions and procedure for framework agreements provided in Regulations 102 to 106 of these Regulations shall apply

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Performance Security



- A successful tenderer shall submit a performance security equivalent to not more than ten per cent of the contract amount before signing of the contract.
- Performance security for contracts above Ksh. 5 Million
- Not applicable if professional indemnity is provided by the Consultant
- The performance security shall unconditionally be fully seized by the procuring entity as compensation without prejudice to other penalties provided for by the Act.
- No more than 1% for AGPO group
- Head of Procurement is the Custodian of tender Security, Performance Security & Professional Indemnity

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Advance Payment – Section 146



- No advance payment shall be made except, when:-
 - Specified in the tender document and contract agreement
 - shall not be paid before a contract is signed
- Advance Payment shall not to exceed 20% of the tender price and shall be paid upon submission of an advance payment security equivalent to the advance itself.
- Accounting Officer to be the custodian of the Security, a copy to be with Head of procurement
- Misuse of advance payment to be considered as a debt and shall be recovered from payment security.

Advance Payment Cont'd



The head of procurement function shall ensure that—

- the bank guarantee has been authenticated by the issuing bank in writing to the accounting officer;
- the bank guarantee shall be on demand;
- the bank guarantee shall not be allowed to lapse unless the contractor has done a commensurate work or has supplied goods of equivalent value to the guarantee; and
- any payments made to the contractor shall be done in a manner to reduce the advance payment progressively.

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Advance Payment Cont'd



- Where the advance payment has not been fully paid and the contract is terminated or frustrated, the outstanding advance payment shall be paid by the contractor.
- The contractor shall confirm in writing that the advance payment shall only be used for purposes of the contract.
- Where it has been confirmed that the advance payment has been used contrary to the intended purpose, the advance payment shall be recovered from the bank guarantee.
- A procuring entity may apply for and open a letter of credit in international transactions

Complex and Specialized Contracts – Reg. 13



- The following shall apply in managing complex and specialized contracts (Sec. 151):
 - The AO shall establish a Contract Implementation Team to ensure right quality and quantity of goods, works and services are delivered;
 - The team should include:
 - Procurement function, requisitioner, relevant technical department and consultant where applicable
 - The contract shall have a commencement date;
 - Contract implementation shall be as per the project implementation plan agreed by the PE and contractor;

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Complex and Specialized Contracts Cont'd



- ✓ The plan shall include but not limited to, list of activities planned to be carried out; deadline for each activity; monthly cash planning forecast;
- ✓ Implementation of the contract shall be monitored closely so that any deviations and risks are identified and dealt with.
- ❑ The contract implementation team shall also have a contract management plan which shall provide for review meetings.
- ❑ The review meetings shall be held periodically to review contract performance, charting way forward and to prepare status reports to the accounting officer through the head of procurement function

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Complex and Specialized Contracts Cont'd



- The contract review shall consider :
 - timeliness,
 - cost quality;
 - risk analysis;
 - operational effectiveness;
 - appropriateness of the procedure of delivery;
 - any other relevant information about the contract.

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Complex and Specialized Contracts Cont'd



- The team shall maintain a risk register to monitor all identified risks which may include :
 - incomplete or incorrect specifications;
 - poor communication;
 - supplier lacking sufficient resources;
 - production problems;
 - quality problems including technology;
 - shipment details;
 - underestimation of costs by supplier;
 - inflation trends; and unexpected events.

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Complex and Specialized Contracts Cont'd



- Risks identified shall be isolated and addressed within a reasonable time.
- The status report to be prepared by the parties shall include the following:
 - Executive Summary;
 - Report on performance of activities and budget; and,
 - Environmental concerns, performance ratings including any other relevant issue.
- The Contract Manager shall report to the AO the outcome of the Contract Review meeting.

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Payments to a Contractor – Reg. 139



- A procuring entity shall make prompt and timely payments to a contractor that meets its contractual obligations.
- Payments shall only be made after an invoice or fee note is accurately raised and submitted as per the contract.
- a procuring entity shall pay interest on the overdue amounts in accordance with the prevailing commercial bank rates.
- A procuring entity shall plan its procurement and cash or fund flows to facilitate prompt payment to contractors
- a procuring entity shall make payment on first come first paid basis.
- Make prompt payments to contractors within 60 days of receipt of invoice subject availability of funds and proper certification of the items (reg.150(1))

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Contract Monitoring– Reg. 140



- ❑ Head of Procurement to prepare monthly progress report to accounting officer that includes:
 - Contract description
 - Contract Number
 - Value of the Contract
 - Commencement Date
 - Current Status
 - Amount of money paid
 - Expected completion date

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Contract Termination– Reg. 141



- ❑ A contract shall specify the grounds and the procedure for termination.
- ❑ An accounting officer may approve the termination of a contract upon request by the head of procurement function.
- ❑ The request for approval shall clearly state the reasons for termination, the contractual grounds for termination and the cost of terminating the contract.

Contract Termination Cont'd



- ❑ An accounting officer of a procuring entity shall be required to terminate a contract within a reasonable time when it becomes apparent that a contract is frustrated based on the evidence from the contract implementation team pursuant to section 151(2)(a) and (g) of the Act.
- ❑ A procuring entity shall seek legal advice or clearance from the Attorney-General or such person designated in writing by the Attorney- General before terminating a contract under the Act or these Regulations.
- ❑ All terminated contracts shall be submitted to the Authority on a quarterly basis.

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Handover and Acceptance – Reg. 142



Pursuant to Section 151 of the Act, in managing the handover and acceptance of goods or services the PE may provide the following in the contract:

- for partial provisional acceptance by taking possession and utilizing part of the goods, works and services accepted;
- That the contractor be responsible for the repairs resulting from defects of poor workmanship and make the corrections pointed out in the partial provisional acceptance report; or
- For provisional acceptance where the entire subject matter of procurement is dealt with in the same manner and have the same consequences as the partial provisional acceptance referred to above.

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Handover and Acceptance Cont'd



- The final acceptance of all goods, works or services shall take place on the following grounds:
 - Within the period or last period of guarantee for the provisional acceptance if there has been partial acceptances; or
 - Within sixty (60) days before the end of the last period of guarantee on which all defects, poor workmanship and any other snags pointed out in the minute of acceptance are corrected.

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The END



Thank You for Listening

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